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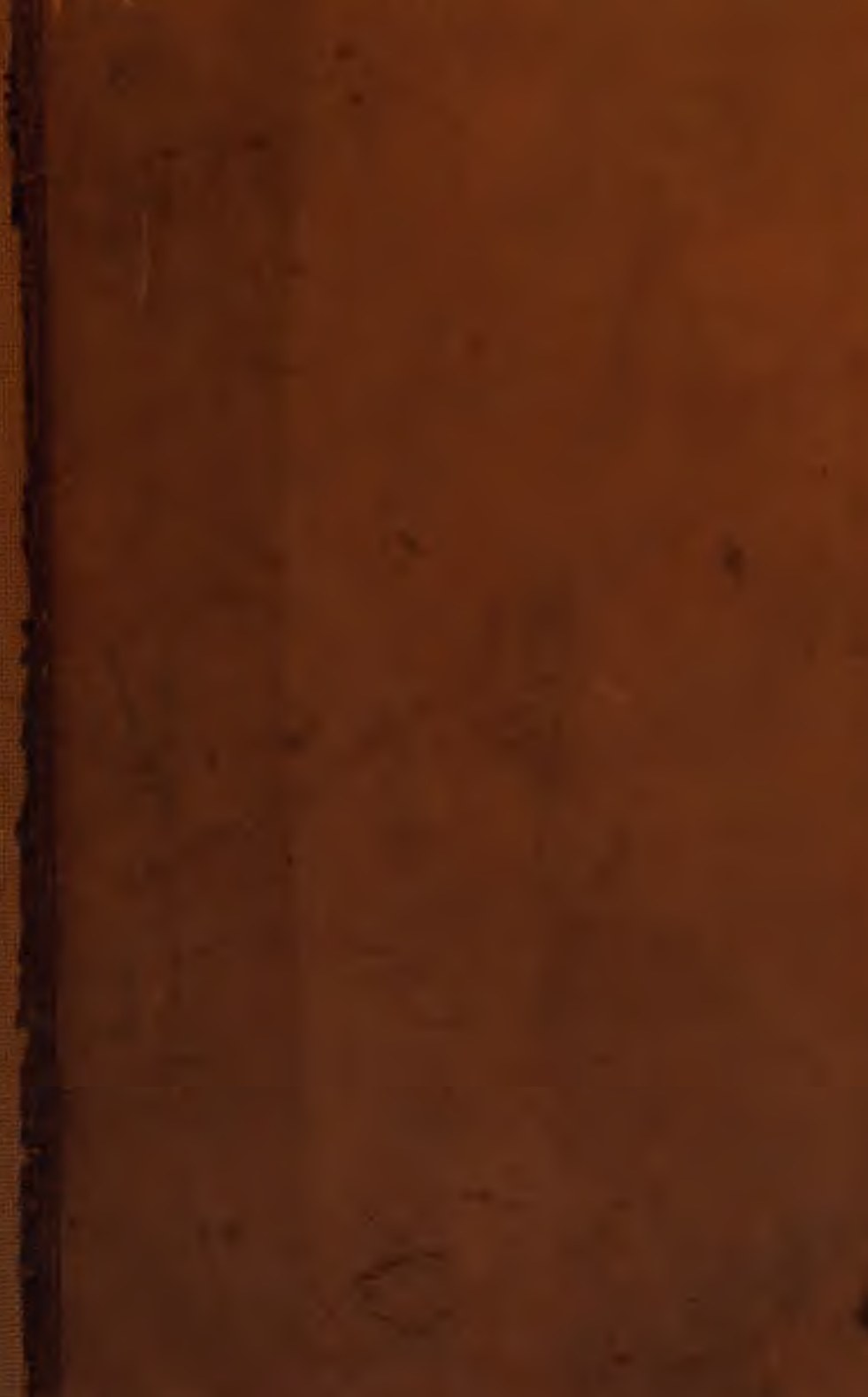
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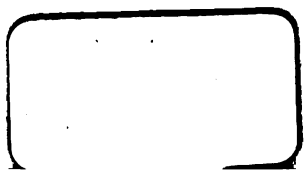
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A

PRACTICAL TREATISE

OR

The Law concerning Lunatics,

IDIOTS,

AND

PERSONS OF UNSOUND MIND.



—◆—
WITH

An Appendix

OF

THE STATUTES OF ENGLAND, IRELAND, AND SCOTLAND,
RELATING TO SUCH PERSONS;

AND

PRECEDENTS AND BILLS OF COSTS.



BY LEONARD SHELFORD, ESQ.

OF THE MIDDLE TEMPLE, BARRISTER AT LAW.



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PREFACE.



IN consequence of the numerous and important alterations and decisions which have taken place in the law respecting Lunatics, since the publication of any separate work upon that subject, the author was induced to undertake the present compilation, embracing the law and practice in Lunacy, with the hope that it might prove of some utility to those, or at least to the inexperienced, who are led to its consideration by professional or other duties, and at the same time be not otherwise than conducive to the humane treatment of that unfortunate class of persons, who either do, or are alleged to, labour under one of the greatest afflictions incident to human nature.

The course of proceeding provided by law for depriving persons of the exercise of civil rights, on the ground of insanity, and the manner in which their property and persons are afterwards disposed of, would at all times have been an object of interest to many, but the subject has now assumed greater importance, on account of the considerable increase within the last fifty years, in the number of the insane, and in that branch of the business of the Court of Chancery, which has for its object the management of their persons and estates.

In the year 1790, Lord Chancellor *Thurlow* made 138 orders in lunacy; in 1791, he made 91 orders; and in 1794, he made 94 orders. In 1821, Lord Chancellor *Eldon* made 245 orders; in 1822, he made 320 orders; and in 1823, he made 364 orders (*a*).

It appears by the return (*b*), made by the Secretary of Lunatics to the Lord Chancellor, of Lunatic Petitions which had been decided by the Lord Chancellors for the time being, in each year, during the last six years, that the numbers from the 1st May to the 30th April in the following years, were as follows, *viz.*—from 1824 to 1825, 291; 1825 to 1826, 344; 1826 to 1827, 428; 1827 to 1828, 403; 1828 to 1829, 463; 1829 to 1830, 483; and by a recent return (*c*) made to the House of Commons, that 386 lunatics were at that time confined, under the authority of the Lord Chancellor.

The number of other persons in England and Wales, who are in confinement as lunatics, is probably not accurately ascertained; as it is believed that the returns, directed to be made by recent acts of Parliament, are still very defective. Sir A. Halliday, in the year 1829, stated, that the number returned by the clerks of the peace, of the several counties of

(*a*) Report on the Chancery Commission, 9th March, 1826; evidence of Mr. Carr, then Secretary of Lunatics, p. 503.

(*b*) Ordered by the House of Commons to be printed, 8th June, 1830.

(*c*) Ordered, by the House of Commons to be printed, 3rd July, 1832, containing the following particulars—

109 Lunatics, whose property amounts to less than 200 <i>l.</i>			
<i>per annum</i> each:—Total annual amount of such property	£	s.	d.
	11,210	14	3
234 Lunatics, whose property amounts to 200 <i>l.</i> each <i>per annum</i> , and upwards:—Total annual amount of such property	264,464	14	7
	<hr/>		
	£ 275,675	8	10

43 Lunatics whose property is not ascertained.

England and Wales, and from other sources, was 13,720, and he estimated those not returned at 2,500, making a total of 16,220 (*d*). The last return, ordered by the House of Commons to be printed, appears to have been on the 25th March, 1831.

The present work is founded upon other materials than are scattered in the reports of the several cases in the different Courts, and in two other works (*e*), written expressly upon this subject, which, though extremely useful at the time of their publication, have now become very insufficient guides, in consequence of the changes which the law has undergone. The author has not, however, relied upon the statements of others, but has uniformly consulted the authorities which are quoted. Besides those sources of information, many cases not reported have been stated from the Order Books in the Lunatic Office (*f*), and from the Register Book.

The author has to acknowledge the assistance which he has received from Mr. Lowdham, the Secretary of Lunatics, and other Gentlemen, in supplying for this work materials of a practical nature.

(*d*) Letter to Lord Robert Seymour, September, 1829, p. 68, where the following particulars are stated:—

By the returns of the Clerks of the Peace of the several counties of England, it is ascertained that there exist	12,547
By the returns of the Clerks of the Peace in Wales	896
By a return from the Victualling Board, it is found that there are in the Naval Asylum at Haslar.....	155
By a return from the Army Medical Department, there are in the Military Asylum at Chatham	122
	13,720

(*e*) Highmore on Lunacy, 8vo. 1807; Collinson on Lunacy, 2 vols. 8vo. 1812.

(*f*) The early records of proceedings in lunacy are lost or destroyed; those now in existence in the Lunatic Office commence on the 9th Aug. 1737.

The cases which have been reported since this work went to press, and which could not be inserted in the places to which they would otherwise have been allotted, will be found in notes to the Precedents, and in the Addenda.

In consequence of the act for regulating the treatment of insane persons not having been passed until after the other statutes in the Appendix had been printed, that act does not appear in the order in which it otherwise would, but is placed after the statutes relating to Ireland and Scotland (*g*).

Such modern precedents, selected in almost every instance from cases of actual occurrence in practice, explanatory of other parts of the work, as it was thought would be useful to members of the Profession not already versed in this branch of practice, are inserted in the Appendix, with some Bills of Costs recently taxed by one of the Masters of the Court of Chancery.

MIDDLE TEMPLE,

Oct. 10th, 1832.

(*g*) It may be proper to observe, that the Lord Chancellor has, under the authority of the 2 & 3 Will. 4, c. 107, appointed the Right Hon. Lord Ashley, the Right Hon. Charles Watkins Williams Wynn, the Hon. Bartholomew Bouverie, Sir George Francis Hampson, Bart., Robert Gordon, Esq., Vernon Smith, Esq., Geo. Byng, Esq., Charles Ross, Esq., Col. James Clitherow, James Wm. Mylne, Esq., Bryan Waller Proctor, Esq., Francis Baring, Esq., the Rev. Dr. George Shepherd, the Rev. Archibald Montgomery Campbell, Dr. Thomas Turner, Dr. John Bright, Dr. Henry Herbert Southey, Dr. John Robert Hume, and Dr. Edward James Seymour, to be "the Metropolitan Commissioners in Lunacy," during the space of one year, for licensing and visiting all houses within the jurisdiction of the said Commissioners, and for carrying into effect the various other provisions of the said act. Robert Browne, Clerk and Treasurer, 19, Margaret-street, Cavendish-square.—*London Gazette*, Sept. 14, 1832.

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ERRATA.

- Page 112, line 1, for a regular, read an irregular.*
- 237, line 10, before money insert the.*
- 295, line 5, dele in.*
- 417, line 20, for power, read person.*
- 448, note (n), for Twiner, read Turner.*
- 655, line 11, for care, read are.*

INTRODUCTION.

AS a general knowledge of the nature of insanity must often be not only useful, but even necessary to many members of the legal profession, in the performance of duties arising out of that branch of law to which this work relates, as well to enable them to form an estimate of the weight to which evidence offered in proof of insanity is entitled, as to afford them a clew for putting such questions as shall elicit the truth, it is proposed to offer some general observations upon the subject of insanity, principally selected from medical writers, in the following order :

- I. *Of the faculties of the human mind.*
- II. *Of the definitions of insanity.*
- III. *Of the different species of insanity.*
- IV. *Of the causes and symptoms of insanity.*
- V. *Of lucid intervals.*
- VI. *Of the treatment of the insane.*

SECTION I.

Of the Faculties of the Human Mind.

IT has been often remarked, that there is a mutual connexion between the different arts and sciences; and that the improvements which are made in one branch of human knowledge frequently throw light on others, to which they have apparently a very remote relation. As every particular science is in this manner connected with others, to which it naturally directs the attention, so all the pursuits of life,

whether they terminate in speculation or action, are connected with that general science which has the human mind for its object.

The powers of the understanding are instruments which all men employ; and his curiosity must be small indeed, who, possessing means and opportunities, passes through life in total ignorance of faculties which his wants and necessities force him habitually to exercise, and which so remarkably distinguish man from the lower animals. The advantage to be derived from the study of the faculties of the human mind are manifest; that the memory, the imagination, or the reasoning faculty, are to be instantly strengthened in consequence of our speculations concerning their nature, it would be absurd to suppose; but it is surely far from being unreasonable to think, that an acquaintance with the laws which regulate these powers, may suggest some useful rules for their gradual cultivation; for remedying their defects in the case of individuals, and even for extending those limits, which nature seems at first sight to have assigned them.

The consideration of insanity is intimately connected with the mind in its sound state, and the healing art will be abundantly promoted by a knowledge of mind; for the remedy of its infirmities and perversions will depend very much upon the knowledge of its faculties and operations: for although we are unable to penetrate the dense veil which conceals the arcana of vitality and intellect, yet sufficient is exhibited in the ample volume of nature to satisfy our curiosity and stimulate the exercise of reason.

In contemplating the various beings which compose the animated creation, we behold some endued only with such confined sensibility, as distinguishes them but little from unfeeling matter; others, by the acquisition of sight or hearing, and a superior enjoyment of other senses, and by a greater degree of instinct and sagacity, occupying a much higher place in the scale of being; till, by pursuing a gradation of increasing intelligence, we arrive at *man*: at man, whose superior senses, aided and elevated by his powers of reflection and reason, enable him to perceive and act far beyond the limits of his apparent station; to be present, as

it were, throughout a considerable space surrounding that of his actual occupation, and to extend the influence of his knowledge and power even to distant places and times. Man derives this preeminent superiority from his mental faculties, aided by cultivation and reflection.

The attempt to define the nature of the mind, or soul, is as vain and presumptuous an undertaking as it is to try to find out by thought alone the nature of the Almighty; or whether he existed before time, or had himself a beginning. We have no means of throwing any light on such subjects as these, inasmuch as we have neither any direct facts which explain them, nor have we even the most distant analogies to justify and direct speculation, whether we elevate our thoughts to heaven, and consider the various constellations which enlighten the firmament, in the hope of discovering its wonderful fabric, or depress them to the globe which we inhabit, and analyze the many objects it presents to our senses; whether we take a grand and comprehensive view of the whole form and structure of the world, or examine with a curious and inquisitive eye the minuter parts of which it is composed, we shall find on every hand certain boundaries, beyond which it is impossible to penetrate either with success or safety.

The limits of human reason are clearly marked, and may easily be discerned by every inquirer, with whatever ardor his researches be conducted, provided his judgment be not fascinated by the passion of pride, nor incumbered with the strange and irremovable prejudice, that the powers and perfection of man and of human reason have no limits.

External objects first impress or operate upon the outward senses, which, by means hitherto unexplained, and perhaps altogether inexplicable, immediately impress or operate upon the mind, or excite in it perceptions or ideas of the presence and qualities of such objects. But the mind has various powers or faculties as well as the body, and they are quite as active and lively in their respective functions; in consequence of which the ideas of external objects are not only perceived, but retained, thought of, compared, compounded, abstracted, doubted, believed, desired; hence another very copious source of

ideas, namely, a reflex act or perception of the mind's own operations, the ideas derived from which are denominated ideas of reflection.

The act of the mind in resting upon one sensation or idea is called *attention*, which must be given to any object either of sense or of intellect, in order to form a distinct notion of it, or to discover its nature, its attributes, or its relations. And so great is the effect of attention, that in its absence it is impossible to acquire or retain a distinct notion of any object of thought. Thus a clock or a landscape may be for ever before our eyes, but unless we direct our attention to them, and study their different parts, although we cannot be deceived in their being such objects, yet we can have but a very inadequate idea of their character and composition. The mind seems to be determined to attention by the degree of interest, whether of pleasure or pain, which the objects presented to us create. When a perception or an idea passes through the mind, without our being able to recollect it next moment, our want of memory is ascribed to a want of attention, and it is quite clear that the impression which any thing makes on the memory, depends much on the degree of attention we give it; and it seems essential to memory, that the perception or idea that we would wish to remember should remain in the mind for a certain time, and should be contemplated by it, exclusively of every thing else; and that attention consists partly (perhaps entirely) in the effort of the mind to detain the idea or perception, and to exclude the other objects that solicit its notice. Upon the faculty of attention every faculty is dependent for its vigour and expansion; without it the perception exercises itself in vain; the memory can lay up no store of ideas; the judgment draws forth no comparisons; the imagination must become blighted and barren; and, where there is no attention whatever, the case must necessarily verge on fatuity.

The faculty of perceiving material objects, and their grosser qualities, by means of the senses, we possess in common with brutes; but the power of comparing their several relations and properties, and of reasoning analogically concerning them, the power of abstraction, and that reflex

action of the mind by which it is enabled to review its internal treasures, and to contemplate its own faculties and operations, which lead to the discovery of almost an infinity of new truths and probabilities, and are the inexhaustible sources of every species of knowledge, are, in a great measure, the exclusive privilege of man. About the former, it is obvious, that the mind can err in any considerable degree only by some defect in the bodily organs, whether natural or acquired, permanent or transient. About the latter, it may err from a variety of causes, which might all, perhaps, not improperly be arranged under the following heads:—a natural incapacity, or habitual deficiency of attention—weakness of memory—too great activity and indulgence of imagination—depravity of will—excess of passion, which is the natural consequence of them all—and disease of body. These errors may be very considerable, and unreasonable, without constituting madness; to deserve that appellation, they must appear of a certain magnitude, and under certain circumstances and limitations. It must, however, be acknowledged, that it is frequently difficult, especially with regard to the latter sort of mental errors, exactly to define where folly ends and insanity begins.

Among the various powers of the understanding, there is none which has been so attentively examined by philosophers, or concerning which so many important facts and observations have been collected, as the faculty of *memory* (*a*), a word which, although not employed uniformly in the same precise sense, always expresses some modification of that faculty which enables us to treasure up, and preserve for future use, the knowledge we acquire; a faculty which is obviously the great foundation of all intellectual improvement, and without which no advantage could be derived from the most enlarged experience. This faculty implies two things; a capacity of retaining knowledge, and a power of recalling it to our thoughts when we have occasion to apply it to use. The word memory is sometimes employed to express the capacity, and sometimes the power. When we speak of a retentive memory, we use it in the former

(a) See Locke on the Human Understanding, B. 2, c. 10.

sense; when of a ready memory, in the latter. The uses of this faculty are evident, and universally acknowledged to be highly important. Memory is the storehouse of all our knowledge, in which is accumulated every variety of thought which can either ennoble or debase man. His language, his science, his moral doctrines, and the tenets of his religion; the good and bad actions of his life, his attachments and endearments, his cares and causes of anxiety, the vicissitudes of fortune he has experienced, the conceptions and plans he has formed, and their failure or success—are all treasured up in this faculty. To memory we are indebted for many of our purest pleasures, and many of our most acute pains.

Our ideas are very apt to associate or run together in trains; and upon this peculiar and happy disposition of the mind, we lay our chief dependence in sowing the seeds of education, and in acquiring a knowledge of science. It often happens, however, that some of our ideas have been associated erroneously, and even in early life before education has commenced; and hence, from the difficulty of separating them, arise most of the sympathies and antipathies, the whims and prejudices, that occasionally haunt us to the latest period of old age. Although we are indebted to the principle of association of ideas for many of the benefits of knowledge and genius, yet it often becomes the source of much misery and distress by reviving unpleasant recollections, as well as of many false judgments, which, although not commonly considered as deliria, are no less aberrations from sound sense. When any accident or calamity happens to us, so as to excite some strong passion, every thing which afterwards brings it suddenly to our recollection occasions nearly the same powerful emotion as happened at first. Thus, suppose a person to have been much frightened and hurt by some fierce animal, the sight of a similar one occurring at any period of life afterwards will often excite alarm in the mind, even although the animal should be tame and secured.

The *imagination* is a faculty of a purely intellectual nature, yet its effects upon the body are very remarkable. When the mind is stored with ideas, either obtained from the perception of external objects, or from the operation of

its own powers, it possesses the faculty of combining these ideas in various forms, and of disposing them in new trains, different from those in which they were originally received. This constitutes the imagination, which thus becomes the source of a new set of feelings, often more powerful than those immediately derived from the direct impressions of external objects.

The power of imagination is exercised principally in combining various new assemblages; in forming, at our will, with a sort of delegated omnipotence, not a single universe merely, but a new and varied one, with every succession of thought. The materials of which we form them exist indeed in every mind—but only as the stones exist shapeless in the quarry, that require little more than mechanic labour to convert them into common dwellings, but that rise into palaces and temples only at the command of architectural genius.

..... Indistinct,
 In vulgar bosoms, and unnoticed, lie
 These pleasing stores, unless the casual force
 Of things external prompt the heedless mind }
 To recognize her wealth. But some there are
 Conscious of nature, and the rule which man
 O'er nature holds; some who, within themselves
 Retiring, from the trivial scenes of chance
 And momentary passion, can at will
 Call up these fair exemplars of the mind;
 Review their features; scan the secret laws
 Which bind them to each other; and display
 By forms, or sounds, or colours, to the sense
 Of all the world their latent charms.

• • • • •
 But the chief
 Are poets; eloquent men, who dwell on earth
 To clothe whate'er the soul admires or loves
 With language and with numbers. Hence to these
 A field is open'd, wide as Nature's sphere;
 Nay wider; various as the sudden acts
 Of human wit, and vast as the demands
 Of human will. The bard, nor length, nor depth,
 Nor place, nor form controls. To eyes, to ears,
 To every organ of the copious mind,
 He offereth all its treasures. Him the hours,
 The seasons him obey; and changeful Time

Sees him at will keep measure with his flight,
 At will outstrip it. To enhance his toil,
 He summoneth from the uttermost extent
 Of things which God hath taught him, every form
 Auxiliar, every power; and all beside
 Excludes imperious. His prevailing hand
 Gives to corporeal essence life and sense,
 And every stately function of the soul;
 The soul itself to him obsequious lies
 Like matter's passive heap; and, as he wills,
 To reason and affection he assigns
 Their just alliances, their just degrees;
 Whence his peculiar honours, whence the race
 Of men who people his delightful world,
 Men genuine and according to themselves,
 Transcend as far the uncertain sons of earth,
 As earth itself to his delightful world
 The palm of spotless beauty doth resign."

Pleasures of the Imagination, B. iv., 4to. ed. 1772, v. 66—130.

Imagination is a mental power, of extensive influence, and capable of being turned to important purposes in the cultivation of individual character. But, to be so, it must be kept under the strict control both of reason and of virtue. If it be allowed to wander at discretion, through scenes of imagined wealth, ambition, frivolity, or pleasure, it tends to withdraw the mind from the important pursuits of life, to weaken the habit of attention, and to impair the judgment. It tends, in a most material manner, to prevent the due exercise of those nobler powers which are directed to the cultivation both of science and virtue (*b*).

The power of *reason* is unquestionably the most important by far of those faculties which are comprehended under the general title of intellectual. It is on the right use of this power that our success in the pursuit both of knowledge and of happiness depends; and it is by the exclusive possession of it that man is distinguished, in the most essential respects, from the lower animals. It is, indeed, from their subserviency to its operations, that the other faculties, which have been already alluded to, derive their chief value (*c*).

(*b*) See Stew. Phil. of the Human Mind, vol. 1, ch. 7; and Dr. Brown's valuable Lectures on the Philosophy of the Human Mind, vol. 2. (c) See Stew. Phil. of the Human Mind, vol. 2.

The word *reason* itself is far from being precise in its meaning, it is commonly used to denote that power by which we distinguish truth from falsehood, and right from wrong; and by which we are enabled to combine means for the attainment of particular ends. The direct office of this faculty is to trace out the natural coincidences or disjunctions between things and ideas, and to connect or separate them by proper relations; for it is a just perception of the natural connexion and congruity, or of the natural repugnancy and incongruity of our ideas, that shews a sound mind, and constitutes real knowledge.

The defects of judgment do not always arise from any fault in the faculty of reason, but frequently from the materials upon which the judgment is founded; from a want of sufficient facts; from a too hasty examination of one, or any number of them; from not recollecting all the chain of analogies, or the different links of relation, by which the various parts of evidence or facts are connected with the general conclusion, or from the interference of matters of belief, prepossessions, prejudices, or passions. Every person, even of the soundest mind, is liable to incorrect judgment if he speaks on a subject with which he is not sufficiently acquainted, or if he attempts to give an opinion on a point which requires for its decision more facts than are laid before him; for it is evident that the judgment in such cases is founded on a partial view of the subject, and many facts which are not examined may stand in opposition to the general conclusion or judgment he forms.

A too hasty examination of any number of facts on which a question hinges, produces nearly the same effect as a want of sufficient evidence. The mind of every person requires to be habituated to dwell for a certain length of time on each fact which has any relation to the question, and which is consequently of use in forming a judgment. This habit is to be gained, in most cases, by education.

It must be evident that judgment depends greatly on the goodness of memory. A person who forgets the data of any science, is constantly liable to draw incorrect conclusions concerning those parts of it which have any relation to the data that are forgotten.

Among the frequent causes of incorrect judgment, the prepossessions, prejudices, and passions of men, are to be enumerated, for in such cases the various facts will be examined, as much by their relation to the various desires and aversions which predominate in the mind, as by their relation to the general question.

Erroneous judgments frequently arise from the diseases of the external senses, from diseases of the body preventing the due agency of external objects, from the causes which derange attention, mental perception, and memory, and the faculty we possess of abstracting and compounding thoughts.

Besides the intellectual faculties, or the powers of the understanding, we are acquainted with a variety of phænomena, which are said to take place within our minds; or which, to speak more philosophically, are the subjects of our consciousness—such are all the passions, desires, anxieties, hopes, and fears, which constitute the happiness and misery of human life. As all these phænomena are known to us through the same medium as the operations of the understanding, they are, for that reason, termed affections of the mind, or of the soul. By writers on the philosophy of the human mind, they are all included under the terms ‘active and moral powers,’ and are subdivided into two orders: the first of which may be termed passions or emotions; consisting of phænomena, which are attended, for the most part, with a strong and vehement impression on the mind, and do not immediately, or necessarily, excite to any particular action; such are hope, fear, joy, love, ambition, sorrow, regret, remorse, surprise, wonder, and the like. The second order comprises the bodily appetites or propensities, hunger, thirst, and the sexual passion, and also all those desires or aversions whose aim is something more remote from sensible objects; such as the desire of knowledge, or curiosity; the desire of possession, or covetousness; the love of power; and, in short, all those principles which afford the most common incentives to activity and exertion (*d*).

(*d*) See Stewart on the Active and Moral Powers of Man, 2 vols. 8vo.

Every man is conscious of a power to determine in things which he conceives to depend upon his determination. To this power we give the name of *will*; and, as it is usual, in the operations of the mind, to give the same name to the power and to the act of that power, the term *will* is often put to signify the act of determining, which, more properly, is called *volition*.

Volition, therefore, signifies the act of willing and determining; and the will is put indifferently to signify either the power of willing or the act. It may be briefly defined the determination of the mind to do, or not to do, something which we conceive to be in our power. Every act of the will must have an object—the immediate object of will must be some action of our own—such object must be something which we believe to be in our power, and to depend upon our will. A man may desire to make a visit to the moon, but he cannot in his senses determine to do it, because he knows it is not in his power.

When we will to do a thing immediately, the volition is accompanied with an effort to execute that which we willed, and in all determinations of the mind that are of any importance, there must be something in the preceding state of the mind that disposes or inclines us to that determination.

SECTION II.

Of the Definitions of Insanity.

OF all the afflictions to which human nature is subject, the loss of reason is at once the most calamitous and interesting, and the most distressing in its consequences on social happiness, of any to which mankind is subject. Deprived of reason, the faculty by which man is principally distinguished from the beasts that perish, the human form is frequently the principal mark which he retains of his proud distinction. His character, as an individual of the species, is always perverted—sometimes annihilated. His thoughts and actions are diverted from their usual and na-

tural course. The chain which connected his ideas in just series and mutual subserviency, is severed. His feelings for himself and others are new and uncommon. His attachments are converted into aversions, and his love into hatred. The affections which dignify the human character are weakened or abolished by insanity; which is frequently shewn not only by a mere state of apathy towards those who formerly claimed the tenderest regards, but often an implacable hatred, or rancorous hostility, is kindled against the ties of consanguinity or the objects of friendship. Viewed through this morbid medium, the dearest friends appear as enemies, the offspring seeks to kill the author of his being, the parent meditates the destruction of his child. His consciousness even is not unfrequently alienated, insomuch, that with equal probability he may fancy himself a deity, an emperor, or a mass of inanimate matter. Once the ornament and life of society, he is now become a stranger to its pleasures, or a disturber of its tranquillity. Impatient of restraint, and disposed to expend the unusual effervescence of his spirits in roving and turbulence, coercion of the mildest kind adds fury to his delirium, and colours with jealousy or suspicion every effort of friendly or professional interest in his fate. His personal liberty is at length taken from him; and taken from him, perhaps, by his nearest relative or dearest friend; retaining his original sensibility, or rendered more acutely sensible by opposition to his will, and deprivation of his usual gratifications, cooperating with a morbid excitement of his nervous functions, he gives himself up to all the extravagances of maniacal fury, or sinks, inexpressibly miserable, into the lowest depths of despondence and melancholy. If the former, he resembles in ferocity the tiger, and meditates destruction and revenge. If the latter, he withdraws from society, shuns the plots and inveiglements which he imagines to surround him, and fancies himself an object of human persecution and treachery, or a victim of divine vengeance and reprobation. To this melancholy train of symptoms, if not early and judiciously treated, idiotism, or a state of the most abject degradation in most instances sooner or later succeeds. The figure of the human species is now all that remains to him;

and, like the ruins of a once magnificent edifice, it only serves to remind us of its former dignity and grandeur, and to awaken our gloomiest reflections—our tenderest regret for the departure of the highest attribute of man.

It is a matter of great importance to fix the definition and characters of insanity with such precision as to render the practical application of just principles on the subject a matter of certainty (*e*). The imputation of insanity to any individual brings after it the most serious consequences; as it subjects him in the best regulated communities, to the loss of the common privileges of a man and a citizen; and, in certain states of society, and during the prevalence of certain opinions, is followed by subjection to the lowest degradation, to utter contempt, to horror, and even to cruelty. As soon as a man has been declared insane, it has too often happened that he has not only been excluded from the common enjoyments of society, but cut off from all that consideration and tenderness by which comfort is preserved, and has been committed to the custody of persons who had no interest in his recovery or welfare, and from whom no dutiful line of conduct was exacted or expected. The rash application of such an imputation, is an event, the possibility of which, under these circumstances, cannot be thought of without horror. But, even under the prevalence of the most humane principles, and discriminating treatment of the different descriptions of insane subjects, the question does not lose its importance—When ought any individual to be pronounced insane?

Human minds are so differently constituted, their excellencies and defects are so often and so strangely blended, and contrasts so striking present themselves in the mental features of the same individuals; the gradations of mental qualities and mental states, are likewise so numerous, and difficult to separate from one another, that this question is as hard as it is momentous to solve.

In endeavouring to define insanity, we meet with difficulties which are peculiar to itself, since there is a want of an entire coincidence in sentiment respecting the precise

(*e*) See *post*, Chap. III., pp. 35—47.

standard of mental health; and until such standard be agreed on by universal consent, the deviations from it cannot of course be pointed out with that decision and accuracy, which correct definitions demand; and accordingly we find that many writers upon this subject have declined altogether the attempt to give any definition of it, whilst others have not been deterred by the difficulties which they have to encounter.

As men differ greatly in the soundness and force of their judgment, so it may be proper here to ascertain more precisely what error or imperfection of our judging faculty is to be considered as morbid, and to admit of the appellations of delirium and fatuity. In doing this, the morbid errors of judgment will be first considered under the general appellation of *delirium*, which has commonly been employed to denote every mode of such error.

As our judgment is chiefly exercised in discerning and judging of the several relations of things, delirium has been defined to be—in a person awake, a false or mistaken judgment of those relations of things which, as occurring most frequently in life, are those about which the generality of men form the same judgment; and particularly when the judgment is very different from what the person himself had before usually formed. The perceptions of men are nearly similar; for this reason, there is also a similarity in the perception of relation. Simple perceptions, and their relations, are the materials on which the intellect is exercised. They are laid up in the mind by associations, and it is in following these associations, that the mind brings back before it the relations which it is to judge of; but, if the perception of relations is similar, so will the associations be in common with the most part of men; and as the perceptions, relations, and associations, are founded on the nature of things, so the judgments of men will be similar, and, in the exercise of it, they will follow the same train of associations. Notwithstanding this similarity, there may be a great diversity in the judgments of men—from want of perceptions; from some difference in perceptions, especially complex; from a great difference in the number of relations marked, and their exactness; and, lastly, from the number and variety of

associations: whence a different state of the mind in different individuals, or at different times. But, at the same time, there are so many circumstances of human life in common to all men, that there must be so much similarity as to establish a *common sense*, that is, perceptions, relations, associations, and judgments, in which all agree; and when any particular man differs from all others in these respects, we say, he is not in his senses, but insane (*f*).

Another circumstance attending delirium is an emotion or passion, sometimes of the angry, sometimes of the timid kind; and, from whatever cause in the perception or judgment, it is not proportioned to such cause, either in the manner formerly customary to the person himself, or in the manner usual with the generality of other men. It is true that, from various circumstances, the estimate of good and evil is very different in different men; but still, with a great degree of latitude, there is a measure or some limits established. Nothing is more common than to say, that a man, under a violent passion, is quite mad, and does not know what he does; but, further, though such a state of violent passion may be a temporary state of madness, yet, if it arises from present and very evident circumstances, which would excite the same passion, though not in the same degree, in another person, and when at the same time it is transitory, it is not considered as a disease; and then only, when the cause of it is not evident, or when, even to an evident cause, it is greatly disproportioned, and especially, or almost only, when the immoderate passion is connected with the incoherence of perceptions, relations, associations, and judgment, which have been mentioned, can insanity be considered as being present. Delirium, then, may be more shortly defined—in a person awake, a false judgment arising from perceptions of imagination, or from false recollection, and commonly producing disproportionate emotions (*g*).

With this mistaken judgment of relations, there is frequently joined some false perception of external objects,

(*f*) See Dr. Cullen's Works, edited by Dr. Thompson, 2 vol. pp. 510, 511.

(*g*) Id. pp. 511, 512.

without any evident fault in the organs of sense, and which seems, therefore, to depend upon an internal cause; that is, upon the imagination, arising from a condition in the brain, presenting objects which are not actually present. Such false perceptions must necessarily occasion a delirium, or an erroneous judgment, which is to be considered as the disease.

Another circumstance, commonly attending delirium, is a very unusual association of ideas. As, with respect to most of the affairs of common life, the ideas laid up in the memory are, in most men, associated in the same manner; so, a very unusual association, in any individual, must prevent his forming the ordinary judgment of those relations which are the most common foundation of association in the memory; and, therefore, this unusual, and commonly hurried association of ideas, usually is, and may be considered as a part of delirium. In particular, it may be considered as a certain mark of a general morbid affection of the intellectual organs, it being an interruption or perversion of the ordinary operations of memory, the common and necessary foundation of the exercise of judgment.

All the powers of the mind are as liable to be affected with various diseases, as those of the body; and may be enfeebled at the same time in all or some of their powers, or in a single power. A sound mind supposes an existence of all the mind's feelings and intellectual powers in a state of vigour, and under the subordination of the judgment, which is designed by nature to be the governing or controlling principle. And thus constituted, the mind is said to be in a state of order or arrangement. It often happens that this order or arrangement is slightly broken in upon by natural constitution, or some corporeal affection; but so long as the irregularity does not essentially interfere with the mental health, it is no more attended to than slight irregularities or inquietudes of the body. Yet, whenever it becomes serious and complicated, it amounts to a disease, and the mind is said, and most correctly so, to be deranged or disordered. This derangement may proceed from a morbid state of any of the intellectual or any of the impassioned faculties of the mind, for the perception may not correctly

convey the ideas we receive by the external senses, or the judgment may lose its power of discriminating them, or the memory may not retain them; or the imagination or the passions may be in a state of unruly excitement; all which will lay a foundation for different kinds or genera of diseases, and, in fact, form the foundation of that now under consideration. An attentive examination into the habits of an insane person will shew, first, that the judgment and the perception are *both* injured during the existence of insanity; and next, that though, from a violent or complicated state of the disease, the morbid condition often extends to some other, or even to all the other mental faculties, yet it does not necessarily or essentially extend to them; for a madman may be furious or passionate, yet every madman is not so; his memory may fail, or his attention be incapable of fixing itself, or his imagination be wild and extravagant; but these do not always occur. The faculties, however, of the judgment and the perception are affected in every case, though they are not always equally affected at one and the same time; for the morbid power seems, for the most part, unaccountably to shift in succession from one to the other, so as ultimately to leave the judgment, and alternately the perception, free, or nearly free, from all estrangement whatever; the disease being, however, always accompanied with irregular remissions, and often with such a diminution of sensibility, that the patient is uninfluenced by the effects of cold, and hunger, and very generally unsusceptible of febrile miasm (*h*). Thus, a madman will often mistake one person who is introduced to him for another, and, under the influence of this mistake, will reason correctly concerning him; and although he may have been for years his next neighbour, will ask him when he came from China or the East Indies, by what ship he returned home, and whether his voyage has been successful. In all which the error may be that of the perception alone. But if, as is frequently the case, the patient address his visitor by his proper name, he gives a ground for believing that he perceives him aright, and that

(*h*) See Dr. Good's Study of Medicine, edited by Cooper, 4 vol. p. 71.

the error is that of the judgment, which thus unites incongruous ideas, applying a visionary history to a real and identified person. At another time, he may, from the first, perfectly recognise the individual so presented to him; and, to prove his recollection and the correctness of his perception, may run over a long list of his relations, and a long string of anecdotes respecting his former life, after which he may suddenly start, and, looking at the visitor's walking-stick, tell him that that drawn sword will never save him from destruction, nor all the men that slept with him the night before; that his rival is now pushing forward with all speed, on a black horse, with a large army behind him, and that to-morrow he will fight and lose his crown (i).

The next author quoted appears to take quite an opposite view of the subject, and observes, that it will be found requisite, in attempting to define or form a correct idea of the nature of madness, to exclude all reference to the state of the judging or reasoning faculty. Indeed, the more he reflected on this subject, the more nearly he approached to a conviction, that the judging faculty is in nowise involved in the calamity; that no defect of the reasoning power constitutes any part of madness. Men, indeed, arrive every day at such diversities of opinion from the same data, that it seems impossible, by any rule or criterion, to define the limit of error which might be allowed without consigning the individual to the imputation of insanity. He also excludes from the characteristics of madness any primary derangement of the emotions or passions. Neither can madness be said to consist chiefly and essentially in any error or defect of the power of perception, distinctly considered, since lunatics in general have very acute perception, and distinguish very clearly and correctly the persons and objects that surround them. He concludes, that the faculties of the mind, to which our chief attention must be directed in investigating the nature of madness, are memory and imagination, or reverie; and, in fact, that the habit which characterises a lunatic, is that of confounding the results of these two mental opera-

(i) Dr. Good's Study of Medicine, edited by Cooper, 4 vol. p. 72.

tions, and mistaking the ideas of reverie for the impressions of memory and reflection (*j*).

The two authors next quoted consider madness as a disease of the imagination. Thus, one observes—"All madness is a disease of an injured imagination, which derives its origin from the mind, having been too long a time fixed on any one object (*k*)."

And the other—"Deluded imagination is not only an indisputable, but an essential character of madness, (that is, without which, all accidental symptoms being removed from our thoughts, we have no idea whatever remaining annexed to that sound), and precisely discriminates this from all other animal disorders; or, that man and that man alone is properly mad, who is fully and unalterably persuaded of the existence or of the appearance of any thing, which either does not exist or does not actually appear to him, and who behaves according to such erroneous persuasion (*l*)."

The mind, in a healthy state, possesses the peculiar power of arresting or changing the train of its thoughts at pleasure, of fixing the attention upon one, or transferring it to another, of changing the train into something which is analogous to it, or of dismissing it altogether. A recent author observes, that "this power is, to a greater or less degree, lost in insanity; and the result is one of two conditions—Either the mind is entirely under the influence of a single impression, without the power of varying or dismissing it, and comparing it with other impressions; or it is left at the mercy of a chain of impressions which have been set in motion, and which succeed one another according to some principle of connexion, over which the individual has no control. In both cases, the mental impression is believed to have a real and present existence in the external world; and this false belief is not corrected by the actual state of things as they present themselves to the senses, or by any facts or considerations which can be communicated by other sentient beings. Of the cause of this remarkable deviation

(*j*) Dr. Prichard on Diseases of the Nervous System, pp. 119—123.

(*k*) Dr. Mead's Works, p. 618.

(*l*) Dr. Battie on Madness, pp. 5, 6.

from the healthy state of the mental functions, we know nothing. We may trace its connexion with concomitant circumstances in the bodily functions, and we may investigate certain effects which result from it; but the nature of the change, and the manner in which it is produced, are among those points in the arrangement of the Almighty Creator which entirely elude our researches.

It appears that there is a remarkable analogy between the mental phenomena in insanity and in dreaming, and that the leading peculiarities of both conditions are referable to two heads—

1. The impressions which arise in the mind are believed to be real and present existences; and this belief is not corrected by comparing the conception with the actual state of things in the external world.

2. The chain of ideas or images which arise, follow one another according to certain associations, over which the individual has no control; he cannot, as in a healthy state, vary the series, or stop it at will.

In the numerous forms of insanity we shall see these characters exhibited in various degrees, but we shall be able to trace their influence in one degree or another through all the modifications; and in the higher states, or what we call mania, we see them exemplified in the same complete manner as in dreaming. The maniac fancies himself a king, possessed of boundless power, and surrounded by every form of earthly splendour, and, with all his bodily senses in their perfect exercise, his hallucination is in no degree corrected by the sight of his bed of straw, and all the horrors of his cell (*m*).

Dr. Spurzheim has given the following definition—"Insanity is an aberration of any sensation or intellectual power from the healthy state, without being able to distinguish the diseased state; and the aberration of any feeling from the state of health, without being able to distinguish it, or without the influence of the will on the actions of the feeling. In other words, the incapacity of distinguishing the

(*m*) Inquiries concerning the Intellectual Powers, by Dr. Abercrombie, pp. 306—307, 3rd Ed.

diseased functions of the mind, and the irresistibility of our actions, constitute insanity (n)."

Aberration of any sensation or intellectual power is so incident to all men, that it cannot constitute insanity. Hence some have made this distinction, that in the insane the aberrations are totally unperceived. Even this, however, fails to afford us a sure diagnostic. Maniacal aberrations of judgment seem only a greater degree and a more unaccountable form of that ignorance of ourselves, our motives, our character, and the relations in which we stand to others, which abounds among mankind. And with regard to the irresistible aberrations of feeling of the maniac, he is very far from being unconscious of their existence and influence. The following definition, although it does not present to the mind the striking image of insanity, has been lately proposed as more nearly designating all cases of this malady than any other which has been given:—"A continued impetuosity of thought, which *totally* unfits a man for judging and acting with the composure requisite for the maintenance of the social relations of life." Yet this definition will only apply with propriety in consequence of the emphasis to be laid on the word "*totally*." Upon this subject all definitions are unsatisfactory. Words are only aids to our minds in giving precision to our observations on phenomena, which must be presented to our actual view before a conception of them can be formed; and this is one of those subjects on which the words must be numerous, and extend to the length of an historical description, before they can communicate precise information (o).

Lord Byron has given the following beautiful description of madness.

A change came o'er the spirit of my dream.
The lady of his love;—Oh she was changed
As by the sickness of the soul; her mind
Had wandered from its dwelling, and her eyes

(n) Observations on the Deranged 71, 72.

Manifestations of the Mind, or Insanity. (o) See Dr. Brewster's Edinburgh Encyclopædia, art. Insanity.

They had not their own lustre, but the look
 Which is not of the earth; she was become
 The queen of a fantastic realm; her thoughts
 Were combinations of disjointed things;
 And forms impalpable and unperceived
 Of others' sight familiar were to her's.
 And this the world calls phrenzy: but the wise
 Have a far deeper madness, and the glance
 Of melancholy is a fearful gift:
 What is it but the telescope of truth?
 Which strips the distance of its phantasies,
 And brings life near in utter nakedness,
 Making the cold reality too real.

The Dream, st. vii.

Madness has been defined, an intensity of idea causing imagination to be converted into actual belief; which position is supported by the following illustration. Suppose an individual to be present at a theatrical representation, let his imagination be warmed, and his passions excited by the scenes which are presented to his senses. Let him follow with ardour the fortunes, and engage with interest in the events connected with the principal personage of the drama. Still he has no belief in the actual existence of the fictitious character—or at least his belief, if it does exist, is merely momentary, otherwise he would not applaud the faithfulness of representation in the actor, but the passion which the actor feigns. Again, one individual admires the beauty and fidelity to nature of the scenery, but he does not therefore suppose himself transported to the actual place which the scene represents. In other words his heightened conception or imagination still stops short of the pitch of overpowering his perceptions. Suppose, however, that the vividness of the representation should hurry the feelings and exalt the fancy to such a degree of intensity, as to break into, and in a manner overwhelm, the usual order of perceptive ideas; the spectator would now be carried above the reach of reason or of truth, he would actually, as a modern writer expresses it, “see Alexander and Cæsar before him in the persons of his old familiars, a room illuminated with candles now comes to him to be the plains of Pharsalia, or

he believes that his walk to the theatre has been a voyage to Egypt, and that he lives in the days of Anthony and Cleopatra (p)."

There seems to be more difficulty in fixing the meaning of the terms "*unsound mind*" than of even that of insanity, and hence a difference of opinion has frequently prevailed among the most eminent of the medical profession, where the same evidence and facts seem to have impressed one side with the opinion that a party is of unsound mind, and the other that he is of sound mind; this contrariety has been exhibited on various public occasions, and, with those who cannot make due allowance for discordant opinions, must have the effect of lowering the evidence of medical men in public estimation, as it must sometimes give the common observer an impression that they appear more as partisans on each side than as disinterested witnesses to state their unbiassed opinions. The cases of Lord Portsmouth in 1823, Mr. Davies, the tea-dealer, in December, 1829, and Miss Bagster, in July, 1832, may be noticed in support of the above remark.

This diversity of opinion thus exhibited both in the writings and oral testimony of medical men may probably be in part accounted for by the imperfect state of knowledge which is said to prevail even in their profession upon the subject of insanity. Sir H. Halford said—"We have much to learn on the subject of mental derangement; our knowledge of insanity has not kept pace with our knowledge of other distempers, from the habit we find established, of transferring patients under this malady, as soon as it has declared itself, to the care of persons who too frequently limit their attention to the mere personal security of their patients, without attempting to assist them by the resources of medicine. We want facts in the history of this disease, and if they are carefully recorded under the observation of enlightened physicians, no doubt, they will sooner or later be collected in sufficient number to admit of safe and useful inductions (q)."

(p) London Encyclopædia, 14 Vol. state of Madhouses taken in 1816, p. 177. pp. 13, 14.

(q) Minutes of Evidence on the

Sir A. Carlisle said—"It would be very important to the medical art, to the healing art altogether, if the public were made better acquainted with the history, the progress, and the treatment of insanity; it has been kept a secret, it has been kept close, and in the hands of individuals for a purpose which it is not necessary to mention; in consequence of that there is in the medical profession generally a great want of knowledge of what is done, or what ought to be done, and the history of the case, and the progress towards cure, or the relapses and causes which may lead to the one or the other are very insufficiently known; they are not diffused in the profession at all, but it would be of great importance and would lead to the improvement of the treatment of the disease, and certainly to a better understanding of it generally, if reports and registers were kept and made public from time to time, in which the resident medical gentleman inserted all 'the circumstances attending each case (r).'"

There are some states of the mind which, though they resemble insanity, cannot be properly so called; these are extreme absence and abstraction of thought; great peculiarity of actions or opinions; ungovernable impetuosity of temper; and unreasonable fears and timidity. "Partial affections of the brain may exist," says Dr. Ferriar (*s*), "which render the patient liable to imaginary impressions, either of sight or sound, without disordering his judgment or memory; from this peculiar condition of the sensorium, we conceive the best supported stories of apparitions may be completely accounted for."

It is impossible to extend an investigation on the nature of insanity into the numerous cases which may present doubts as to the strength of mind of individuals. Every instance must be tried on its own merits; and while weak-

(r) Minutes of Evidence before select committee of the House of Commons on pauper lunatics and asylums, 1827, p. 52.

(s) Theory of apparitions. Those who are desirous of pursuing this

subject further, will find much information upon it in a work entitled, "Sketches of the philosophy of apparitions; or an attempt to trace such illusions to their physical causes: by Dr. Hibbert."

ness of understanding deserves protection, it should be remembered that too nice an investigation of eccentricities and imperfections may lead to oppression and injustice.

SECTION III.

Of the Different Species of Insanity.

THE distinction of the different kinds of insanity is a matter of no less delicacy than its definition, for the several varieties pass into each other more frequently and more imperceptibly than insanity passes into health. It may be divided into *Mania*, *Melancholy*, *Monomania*, *Demency*, and *Idiocy*, which appear to mark the several species of this disorder with sufficient precision for legal purposes.

In *mania* or *madness*, there is sometimes a false perception or imagination of things present that are not; but this is not a constant, nor even a frequent attendant of the disease. The false judgment is of relations long before laid up in the memory. It very often turns upon one single subject; but more commonly the mind rambles from one subject to another with an equally false judgment concerning the most part of them; and as at the same time there is commonly a false association, this increases the confusion of ideas, and therefore the false judgment. What for the most part more especially distinguishes the disease, is a hurry of mind, in pursuing any thing like a train of thought, and in running from one train of thought to another. Maniacal persons are in general very irascible: but what more particularly produces their angry emotions is, that their false judgments lead to some action which is always pushed with impetuosity and violence; when this is interrupted or restrained, they break out into violent anger and furious violence against every person near them, and upon every thing that stands in the way of their impetuous will. The false judgment often turns upon a mistaken opinion of some injury supposed to have been formerly received, or now supposed to be intended: and it is remarkable, that such an opinion is often with respect to their former dearest friends and re-

lations: and therefore their resentment and anger are particularly directed towards these. And although this should not be the case, they commonly soon lose that respect and regard which they formerly had for their friends and relations. With all these circumstances, it will be readily perceived, that the disease must be attended very constantly with that incoherent and absurd speech we call raving. Further, with the circumstances mentioned, there is commonly joined an unusual force in all voluntary motions, and an insensibility or resistance of the force of all impressions, and particularly a resistance of the powers of sleep, of cold, and even of hunger: though indeed, in many instances, a voracious appetite takes place (*†*).

Dr. Haslam, however, denies that maniacs possess any exemption from the effects of severe cold; and states that those who were permitted to go about, were always to be found as near to the fire as they could get in the winter season (*v*).

Dr. Cullen observes—"That it appears to him, that the whole of the above circumstances and symptoms point out a considerable and unusual excess in the excitement of the brain, especially with respect to the animal functions; and it appears at the same time to be manifestly in some measure unequal, as it very often takes place with respect to these functions alone, while at the same time the vital and natural are commonly very little changed from their ordinary healthy state."

How this excess of excitement is produced, it may be difficult to explain. The effects of violent emotions or passions of the mind have more frequently occurred as the remote causes of mania; and it is sufficiently probable, that such violent emotions, as they do often immediately produce a temporary increase of excitement, so they may, upon some occasions of their permanent inherence or frequent repetition, produce a more considerable and more permanent excitement, that is, a mania. With respect to those causes of mania which arise in consequence of a melancholia which had previously long subsisted; whether we consider that melancholia as a partial insanity, or as a long persisting attachment to one train of thinking, it will be readily perceived,

(*†*) See Dr. Cullen's Works, edited 522.

by Dr. Thompson, vol. 2, pp. 521— (*v*) Haslam on Madness, p. 84

that, in either case, such an increase of excitement may take place in so considerable a degree, and in so large a portion of the brain, as may give occasion to a complete mania (*).

Melancholy has been commonly considered as a partial insanity, and as such it has been defined; but doubts are entertained whether this be altogether proper. By a partial insanity, is understood, a false and mistaken judgment upon one particular subject and what relates to it, whilst, on every other subject, the person affected judges as the generality of other men do. Such cases have certainly occurred; but, it is believed, few in which the partial insanity is strictly limited. In many cases of general insanity there is one subject of anger or fear, upon which the false judgment more particularly turns, or which is at least more frequently than any other the prevailing object of delirium; and though, from the inconsistency which this principal object of delirium must produce, there is, therefore, also a great deal of insanity with regard to most other objects; yet this last is in very different degrees, both in different persons, and in the same person at different times. Thus, persons considered as generally insane, will, at times, and in some cases, pretty constantly judge properly enough of present circumstances and incidental occurrences; though, when these objects engaging attention are not presented, the operations of imagination may readily bring back a general confusion, or recall the particular object of the delirium. From these considerations, Dr. Cullen concluded, that the limits between general and partial insanity cannot always be so exactly assigned, as to determine when the partial affection is to be considered as giving a peculiar species of disease different from a more general insanity.

The disease named *Melancholy*, is very often a partial insanity only. But as, in many instances, though the false imagination or judgment seems to be with respect to one subject only, yet it seldom happens that this does not produce much inconsistency in the other intellectual operations. And as, between a very general and a very partial insanity, there are all the possible intermediate degrees, so it will be often

(* Dr. Cullen's Works, edited by Dr. Thompson, vol. 2, pp. 522, 523.

difficult, or perhaps improper, to distinguish melancholy by the character of partial insanity alone. It must be chiefly distinguished by its occurring in persons of a melancholic temperament, by its being always attended with some seemingly groundless, but very anxious fear (*w*).

Melancholy depends very much upon the general temperament of the body, and is a disease of mature age, and rarely affects young and athletic persons. It is, also, generally characterised by a peculiar appearance, by a striking cast of countenance, as the complexion is either yellow, brown, or blackish. This is to be ascribed to a sluggishness and torpor of the cutaneous system, and, in consequence, the impressions of cold and heat are slightly noticed, and sometimes not heeded. The physiognomy is wrinkled and languid, yet sometimes the muscles of the face become convulsively tense, and the countenance is full of fire (*x*).

Pain is said by some recovered patients to have preceded the attack—sometimes fixed, but more commonly wandering, and the suffering by this is extreme. Great apprehension, which indeed is a characteristic of this form, ensues, and plunges the sufferer into the most gloomy state of mind, accompanied by indifference as to his personal comfort, or urging him forcibly to self-destruction, or to the murder of others. The state of reverie and of delusive ideas gradually becomes more fixed, and the thoughts are concentrated on one mournful topic, until finally he is, as it were, inanimate, motionless, and speechless. A fixed position of the body is a very common attendant. In one instance, that occurred to Dr. Rush, the patient sat with his body bent forward for three years without moving, except when compelled by force, or the calls of nature. In another, the sufferer occupied a spot in a ward, an entry, or in the hospital-yard, where he appeared more like a statue than a man. Such was the torpor of his nervous system, that a degree of cold so intense as to produce inflammation and gangrene upon his face and limbs, did not move him from the stand he had taken in the open air (*y*).

(*w*) Id. pp. 531-2.

(*y*) Rush, p. 216; Beck's Elements

(*x*) See Hill's Treatise on Insanity, of Medical Jurisprudence, p. 232.

The pulse is extremely vacillating, and generally is slow and feeble; yet, with all this, has a labouring feel, not accompanied with a bold throb, but as though difficulty attended every exertion. A sort of ticking movement is sometimes observed, which is often intermitting, giving from one hundred to one hundred and thirty strokes in a minute.

Watchfulness is also common in this form of disease, and sleep, when it is present, is often broken by nocturnal visions or frightful dreams.

On points not relating to the subject or passion which characterises the delirium, they reason and act rightly, and often with great force and subtlety; but the morbid impression once referred to or excited, all is merged in this. And it is equally astonishing and melancholy how vivid this remains through the lapse of a long period of years. A young clergyman, two days previous to the appointed period of his marriage, was engaged in snipe shooting with a friend; accidentally he received part of the charge of a gun in his forehead; he instantly fell, and did not recover for some days, so as to be deemed out of danger, but at the end of this period it was perceived that he was deranged. The interesting event that was to have taken place became the leading object of thought, and all his ideas seemed to stop at this. "All his conversation was literally confined to the business of the wedding: out of this circle he never deviated, but dwelt upon every thing relating to it with minuteness, never retreating or advancing one step farther for half a century, being ideally still a young, active, expecting, and happy bridegroom, chiding the tardiness of time, although it brought him, at the age of eighty, gently to the grave (x).

There are very few melancholics whose delirium is not exasperated every two days: many have a strongly marked remission in the evening and after meals; others are exasperated at the beginning of the day, or at evening (a).

A general remark may also be added in this place with respect to the age most liable to insanity. This is often useful in the formation of an opinion. Infancy seems to be nearly

(x) Hill, p. 421; Beck's Elements of Medical Jurisprudence, by Dunlop, p. 233. (a) Haslam on Madness, p. 80.

Esquirol draws a faithful picture of demency (*f*). Persons are in this state, he says, because exterior objects make too weak an impression upon them, which is owing either to the sensitive organs becoming weakened, or the organs which transmit the sensations having lost their energy; or, finally, because the brain itself has not sufficient power to receive and retain the impression which is transmitted to it; whence it necessarily results, that the sensations are feeble, obscure, and incomplete. Therefore, the patient can neither form a correct idea of objects, nor compare, associate, or abstract ideas; he is not susceptible of sufficient attention, the organ of thought being deprived of that tone which is necessary to the integrity of its functions.

There is a marked difference between demency and imbecility or idiocy. The connate imbecile never had his mental faculties fully developed, and, therefore, never attains the ordinary standard of adult intelligence. True demency implies a previous possession and exercise of the mental faculties; but one or more of those faculties may, by accident, disease, or age, have become simply deteriorated. The conversation and manners of the latter preserve some traits of the character of the original man; those of the latter always retain the impress of childhood. The connate idiot never possessed any intellectual endowments: there is neither sensation, memory, nor judgment. He displays mere animal instincts, and his internal and external conformation indicate the vices of cerebral organization. The depravity of the mental faculties, which characterises demency, is very apt to be confounded with permanent mental alienation, imbecility, or absolute idiocy: in consequence of which, many cases have been pronounced irremediable, which might, by judicious treatment, have been restored to reason (*g*). Demency often degenerates into complete idiotism. In this state remedies are useless; but such patients are rarely reduced to so low an ebb of human existence as to be quite insensible of all former habits (*h*).

(*f*) Dict. des Scien. Medic. art. (*g*) Dr. Burrows' Commentaries
 Démence. There is an analysis of on Insanity, pp. 484-5.
 this article in the Medico-Chirurg. (*h*) Ibid. p. 502.
 Rev. 1 Vol. pp. 246—263.

Dementia is often the consequence of mania or melancholy, and is somewhat allied to that decrepitude of mind which frequently appears in old age. It may also originate from external injury, or internal disease. The understanding and memory are either totally, or, to a very great extent, impaired in this form of disease; yet, on a few points, the latter seems sometimes to be in a perfect state. Habit, however, has a great influence on their conduct, and gives it an appearance of regularity which should not be mistaken for reasoning. They hate, love, or fear particular individuals uniformly; and kindness or attention will seldom, if ever, give them confidence in those they dislike.

Patients of this description are usually calm and quiet, though occasionally short periods of fury supervene. They sleep much, enjoy a good appetite, and are apt, if neglected, to become slovenly and dirty in their appearance. Esquirol mentions a case, which will give a general idea of this class in its usual form. The patient was a female, aged seventy, who, after having passed several years in a state of furious mania, at last fell into dementia. "The hallucination of this individual corresponds with her advanced age, and the long duration of the complaint. She preserves a few ideas, which still savour of pride. She believes herself the daughter of Louis XVI., but otherwise there is no coherence—no memory of recent transactions; no hopes or fears, desires or aversions. She is calm, peaceable, sleeps well, eats without voracity, and appears perfectly happy (*j*)."

The ideas, although few and isolated, sometimes pass in rapid or alternate succession, and this gives rise to incessant babbling, unwearied declamation, and continual activity, without object or design. Occasionally they assume a menacing air, without any real anger, and this is soon succeeded by immoderate laughter (*k*).

The appearance is generally peculiar; the countenance is pale, the eyes are dull and moist, the pupils dilated, and the look is motionless and without expression. There is a

(*j*) *Medico-Chirurg. Rev.* 1 Vol. (*k*) *Foderè, Traité du Delire*, Vol. p. 250; *Beck's Elements of Medical Jurisprudence*, 1, p. 413. p. 234.

variety as to emaciation or fatness; some are extremely thin, while others are corpulent (*l*).

Senile insanity is a species of mental aberration peculiar to old age. It develops itself in those who may never before have been insane, nor possess hereditary predisposition. It comes on, perhaps, when the reflections attending a well-spent life, and every earthly comfort, might otherwise insure calm repose for the short remnant of existence. Hence this affection is the more distressing to the patient's family, since it is the disappointment of a promise well deserved. In this singular affection the system is influenced by an extraordinary excitation, prompting the revival of youthful passions and follies, when the powers of fruition have long ceased.

The whole moral and intellectual character of the patient is changed; the pious become impious, the content and happy discontented and miserable, the prudent and economical imprudent and ridiculously profuse, the liberal penurious, the sober drunken, &c. Persons in whom the sexual passion has been long dormant, suddenly become lascivious and obscene, and abandon themselves to all sorts of vices. In fact, the reverence which age and the conduct suited to it always command, is converted into shame and pity at the perversion of those moral and social qualities, which, perhaps, have hitherto adorned the decline of the patient's days, and endeared him to his family and friends (*m*).

Idiocy is a congenital disorder, consisting not in a perversion, but in a defect of the intellectual powers. It is sometimes induced in after life, and something allied to it frequently appears in extreme old age, when the vigour of the mind decreases, and the rational as well as the bodily powers totter under exertion. Mania not unfrequently subsides into this deplorable, and, it may be said, hopeless state (*n*). Idiots are commonly inoffensive, but to this general rule exceptions not unfrequently occur (*o*); and where restraint is required on the score of safety, it is to prevent them from

(*l*) See Beck's *El. of Medical Jurisprudence*, by Dunlop, p. 234.

(*m*) Dr. Burrows' *Commentaries on Insanity*, p. 409.

(*n*) See Smith's *Elements of Forensic Medicine*, p. 426, 2nd edit.

(*o*) See Paris and Fonbl. *Med. Jurisp.*, Vol. 1, p. 311.

becoming involved in circumstances of accidental danger, from which their slender portion of judgment and experience might be inadequate to protect them. The phenomena by which this complaint is distinguished are very striking; a vague unsteady wandering eye, which is seldom fixed for any length of time upon any one object; a stupid expression of countenance in which no sign of intelligence is portrayed; a gaping mouth from which the saliva flows constantly; a perpetual rolling and tossing of the head, no memory, no language, no reason. The speech is imperfect, and the extent of this deficiency may, in general, be considered as a good indication of the degree of fatuity; for it is necessary to state, that all idiots are not of the same degree of intellectual deficiency, some possess more memory than others, and display a talent for imitation; they will whistle tunes correctly, and repeat passages from books which they have been taught by ear, but they are incapable of comprehending what they repeat.

Idiocy or fatuity is seldom curable, except when it arises from debilitating causes, and in such cases, exercise, sea-bathing, bark, change of air, and nutritious aliment, are the remedies to be employed for its removal (o).

SECTION IV.

Of the Causes and Symptoms of Insanity.

A SHORT sketch of the causes of insanity may be introduced in this place. They are usually divided into physical and moral, or bodily and mental. Insanity is essentially a bodily disease, and the moral causes operate in producing it, as they do in producing other complaints. The following may be enumerated as remote causes; repeated intoxication—injuries to the head—fever—suppressed discharges and secretions—excessive evacuations—mercury largely and injudiciously administered—paralytic affections—influence

(o) Male's Elements of Medical Jurisprudence, p. 235, 2nd edit.

of particular seasons—hereditary predisposition—sedentary habits—excess in pleasure—factitious passions—mistaken views of religion—parturition—errors in education—intense application to a particular study or object of investigation—and misfortune. On age, a remark has already been made; and it may be added, as to sex, that, upon a comprehensive comparison, there is found to be no other disproportion among the insane, than among the sane population in general (*p*).

Dr. Gooch concludes (*q*), that there is no ground for the reasons which have led to the belief in the moral nature of insanity; if we take into the account the influence of physical causes in its production, as injuries of the head, parturition, drunkenness, the sun's heat, and the influence of medicinal remedies in abating or removing it, can we avoid taking it from the solitary and singular station which it holds as a moral affection, and replacing it among those in which an unnatural state of mind attends on bodily disease?

The *moral* causes include those emotions which are conceived to originate from the mind itself, and which, from their excess, tend to distort the natural feelings; or, from their repeated accessions, and over-strained indulgence, at length overthrow the barriers of reason and established opinion: such are the gusts of violent passion, and the protracted indulgence of grief: the terror impressed by erroneous views of religion; the degradation of pride; disappointment in love; and sudden fright.

Every impression on the sensorium, through the external senses, and every passion in excess, may become a moral cause of insanity. Thus all, however opposite, act as exciting causes, and will produce this result; joy and grief, anger and pain, love and hatred, courage and fear, temperance and ebriety, repletion and inanition, application and indolence, may have the same effect. Vices also, which occasion changes in the physical constitution, act as remote moral causes, and induce mental derangement.

(*p*) Haslam on Madness, pp. 208,
210.

(*q*) On the Diseases peculiar to
Women, p. 188.

All impressions that affect the feelings are conveyed to the sensorium, and operate according to the degree of constitutional susceptibility, and the nature and force of the impression. The action of the heart is correspondent with this impression, and reacts on the brain and nervous system. Hence, there are two impressions: the one primitive, affecting the sensorium; the other consecutive, but simultaneously affecting the heart. Thus the nervous and vascular systems are both implicated; and in this manner moral impressions become causes of insanity. The moral cause, therefore, is always the remote cause; the physical, the proximate, or that state of the cerebral functions which immediately precedes the peculiar action denominated maniacal (*r*).

A frequent cause of madness is suffering the mind to dwell too long on one particular train of thought, whether the subject be real or imaginary. The ideal lucubrations, the dangerous and unprofitable musings with which many, particularly young persons, allow their minds to be amused, and stray in the regions of fancy, called castle building or day dreaming, weaken the mind, and, abstracting it from real and useful objects, absorb its energies in fanciful and futile speculations, which often lead to insanity. Every powerful idea, whether pleasurable or not, too frequently presented to the mind, tends to weaken the judgment and to destroy the healthy functions of the brain. That diseased state of this organ, which lays the foundation of mania, strongly predisposes to anger; but this passion seldom terminates in permanent insanity, unless there be a strong predisposition to the complaint (*s*).

It is related, that in the year 1720, ever memorable for the iniquitous South Sea scheme, Dr. Hale had more patients committed to his care, whose heads were turned by the immense riches which fortune had suddenly thrown in their way, than of those, who had been completely ruined by that

(*r*) Dr. Burrows' Commentaries on Insanity, p. 9.

(*s*) See Male's Elements of Forensic Medicine, 2nd edit. pp. 210, 211.

abominable bubble. Such is the force of insatiable avarice in destroying the rational faculties (*t*).

Hard and continued study, or over exercise of the intellectual organs, is another not uncommon functional cause of cerebral disorder, and of delirium or insanity; which, considering the relation of the mind to the brain, it is not difficult to understand. If the brain did not require repose, mental exertion would never fatigue, and sleep would not be necessary. But as it is, the mind cannot remain constantly active; and sleep is to the brain, what rest or absence of motion is to the muscles; and, just as the muscles are injured by excessive or continued activity, is the brain injured by excessive or continued mental exertion (*u*).

The following lines of the poet, who was a physician, claim our attention upon this part of the subject.

'Tis the great art of life to manage well
The restless mind. For ever on pursuit
Of knowledge bent, it starves the grosser powers;
Quite unemployed, against its own repose
It turns its fatal edge; and sharper pangs
Than what the body knows embitter life.
Chiefly where Solitude, sad nurse of care,
To sickly musing gives the pensive mind,
There madness enters; and the dim-ey'd fiend,
Sour Melancholy, night and day provokes
Her own eternal wound. The sun grows pale;
A mournful visionary light o'erspreads
The cheerful face of nature; earth becomes
A dreary desert, and heaven frowns above.
Then various shapes of curs'd illusion rise;
Whate'er the wretched fears, creating Fear
Forms out of nothing, and with monsters teems
Unknown in hell. The prostrate soul beneath
A load of huge imagination heaves;
And all the horrors that the guilty feel,
With anxious flutterings wake the guiltless breast.

Such phantoms pride in solitary scenes,
Or fear, or delicate self love creates.
From other cares absolv'd, the busy mind

(*t*) Dr. Mead's Works, pp. 489, rangement, by Dr. Combe, p. 203.
490, ed. 1762. In the above opinion Pinel concurs.

(*u*) Observations on Mental De-

Finds in yourself a theme to pore upon;
It finds you miserable, or makes you so.
For while yourself you anxiously explore,
Timorous self love, with sick'ning fancy's aid,
Presents the danger that you dread the most,
And ever galls you in your tender part.
Hence, some for love, and some for jealousy,
For grim religion some, and some for pride,
Have lost their reason; some, for fear of want,
Want all their lives; and others every day,
For fear of dying, suffer worse than death.

Dr. Armstrong on Health, Book 4, v. 84—118.

The approaches of insanity have been as variously described by different authors, as the characters by which the malady itself is to be distinguished; and the precursory symptoms of mania are said to be extremely indefinite and variable. Dr. Haslam remarks, that—"On the approach of mania, they first become uneasy, are incapable of confining their attention, and neglect any employment to which they have been accustomed; they get but little sleep, they are loquacious, and disposed to harangue, and decide promptly and positively upon every subject that may be started. Soon after, they are divested of all restraint in the declaration of their opinions of those with whom they are acquainted. Their friendships are expressed with fervency and extravagance; their enmities with intolerance and disgust. They now become impatient of contradiction, and scorn reproof. For supposed injuries, they are inclined to quarrel and fight with those about them. They have all the appearance of persons inebriated, and those who are unacquainted with the symptoms of approaching mania, generally suppose them to be in a state of intoxication. At length, suspicion creeps in upon the mind, they are aware of plots which had never been contrived, and detect motives that were never entertained. At last, the succession of ideas is too rapid to be examined; the mind becomes crowded with thoughts, and confusion ensues.

Those under the influence of the depressing passions, will exhibit a different train of symptoms. The countenance wears an anxious and gloomy aspect, and they are little disposed to speak. They retire from the company of

those with whom they have formerly associated, seclude themselves in obscure places, or lie in bed the greatest part of their time. Frequently they will keep their eyes fixed on some object for hours together, or continue them an equal time "bent on vacuity." They next become fearful, and conceive a thousand fancies; often recur to some immoral act which they have committed, or imagine themselves guilty of crimes which they never perpetrated; believe that God has abandoned them, and, with trembling, await his punishment. Frequently they become desperate, and endeavour by their own hands to terminate an existence, which appears to be an afflicting and hateful incumbrance. Madmen do not always continue in the same furious or depressed states; the maniacal paroxysm abates of its violence, and some beams of hope occasionally cheer the despondency of the melancholic patients (*v*).

The same author says—"The attack is almost imperceptible; some months usually elapse before it becomes the subject of particular notice, and fond relatives are frequently deceived by the hope, that it is only an abatement of excessive vivacity, conducing to a prudent reserve and steadiness of character. A degree of apparent thoughtfulness and inactivity precedes, together with a diminution of the ordinary curiosity concerning that which is passing before them; and they therefore neglect those objects and pursuits which formerly proved sources of delight and instruction. The sensibility appears to be considerably blunted; they do not bear the same affection towards their parents and relations; they become unfeeling to kindness, and careless of reproof. To their companions they shew a cold civility, but take no interest whatever in their concerns. If they read a book, they are unable to give any account of its contents: sometimes, with steadfast eyes; they will dwell for an hour on one page, and then turn over a number in a few minutes. It is very difficult to persuade them to write, which most readily develops their state of mind: much time is consumed, and little produced. The subject is repeatedly begun, but they seldom advance beyond a sentence or two: the orthography be-

(*v*) Haslam on Madness, pp. 41—44, 2nd edit.

comes puzzling, and by endeavouring to adjust the spelling, the subject vanishes. As their apathy increases, they are negligent of their dress, and inattentive to personal cleanliness. Frequently they seem to experience transient impulses of passion, but these have no source in sentiment; the tears which trickle down at one time, are as unmeaning as the loud laugh which succeeds them; and it often happens that a momentary gust of anger, with its attendant invectives, ceases before the threat can be concluded (*y*).

Dr. Willis observes, "There are two states of derangement, both of which may in their progress pass into delirium, and again subside into derangement, and both by neglect and improper treatment may end in insanity; so that derangement, delirium, and insanity, are to be regarded as different degrees of mental disorder."

One state of derangement is characterised by an unrestrained behaviour, by an irritability which urges on the patient in pursuit of something real or imaginary to the ruin of himself, and the annoyance of his friends, and ultimately leads him, opposed in his disordered wishes, to acts of extreme violence. The other state is marked by an unusual lowness, sometimes amounting to despair, a loathing of life and every thing connected with it, accompanied too often by an uncontrollable effort to rescue himself, by his own hand, from his real or imaginary distresses.

In *delirium*, the mind is actively employed upon past impressions, upon objects and former scenes, which rapidly pass in succession before the mind, resembling, in that case, a person talking in his sleep; there is also a considerable disturbance in the general constitution, great restlessness, great want of sleep, and a total unconsciousness of surrounding objects. In *insanity*, there may be little or no disturbance apparently in the general constitution, the mind is occupied upon some fixed *assumed idea*, to the truth of which it will pertinaciously adhere, in opposition to the plainest evidence of its falsity; and the individual is always acting upon that false impression. In insanity also, the

(w) Haslam on Madness, pp. 65, 66.

mind is awake to objects which are present. Taking insanity, therefore, and delirium, as the two points, derangement of mind is placed somewhere between them. It will be evident from this definition, that delirium is distinct from insanity; neither can there be any difficulty in distinguishing delirium from mental derangement; because an unconsciousness of surrounding objects, together with much mental and bodily disturbance, are the characteristic symptoms of the former. But the greatest caution is sometimes necessary in distinguishing mental derangement from insanity. The characteristic symptoms of insanity are, a firm belief in an *assumed idea*, upon which the patient is always acting, without any apparent bodily disease. In mental derangement there is also a firm belief in an assumed idea, upon which the patient is continually acting, but with this difference, that it is always accompanied with bodily disease. This amounts, sometimes, almost to as much as attends delirium; at other times it is apparently so trifling as scarcely to be discovered, even by those who are most conversant with the disorder. No case, therefore, ought to be abandoned in a hurry as decidedly incurable (*x*).

When the body is healthy and the mind sane, our beliefs, emotions, and actions are produced by mental processes, more or less complete in different individuals, but still in all by mental processes. We believe such a proposition because we have some evidence for it, good or bad; we experience angry or sorrowful emotions, because something irritating or depressing has occurred to our minds; we inflict punishment upon another from a vindictive emotion excited by a real injury; but in madness, these beliefs, emotions, and actions, seem no longer to be the result of mental processes, but to be under the influence of a peculiar bodily state. Dr. Gooch says (*y*), "he has conversed with those who have recovered from derangement on the subject of their delusions, and have asked them what could have led them so firmly to believe such absurdities or impossibilities, what real or imaginary reasons they had; and they have

(*x*) Dr. F. Willis on Mental Derangement, pp. 40—45.

(*y*) On the Diseases peculiar to Women, pp. 193, 194.

told him that they had no reasons at all, that there was the thought in their mind, accompanied by the most undoubting confidence of its truth; but how it came there they knew as little as how it went away. Persons on the verge of melancholia will often declare that they are wretched, they know not why; that they have every thing to make them happy, and yet they feel no interest in life, a distaste for all their ordinary pursuits and pleasures, a wretchedness for which they can give no reason to themselves. In these extraordinary cases in which persons have committed murder on those who had never offended them, and towards whom they felt no antipathy, it seems that they were sometimes urged by some strange impulse totally different to the sense of injury and thirst for revenge, which impels the same man to commit such acts."

The higher degrees of insanity are in general so distinctly defined in their characters, as to leave no room for doubt in deciding upon the nature of the affection. But it is otherwise in regard to many of the lower modifications; and great discretion is often required, in judging whether the conduct of an individual, in particular instances, is to be considered as indicative of insanity. This arises from the principle, which must never be lost sight of, that, in such cases, we are not to decide simply from the facts themselves, but by their relation to other circumstances, and to the previous habits and character of the individual. There are many peculiarities and eccentricities of character which do not constitute insanity; and the same peculiarities may afford reason for suspecting insanity in one person and not in another;—namely, when, in the former, they have appeared suddenly, and are much opposed to his previous uniform character; while, to the latter, they have been long known to be habitual and natural. Thus, acts of thoughtless prodigality and extravagance may, in one person, be considered entirely in accordance with his uniform character; while the same acts, committed by a person formerly distinguished by sedate and prudent conduct, may give good reason for suspecting insanity, and in fact constitute a form in which the affection very often appears. In ordinary cases of insanity,

a man's conduct is to be tried by a comparison with the average conduct of other men; but, in many of the cases now referred to, he must be compared with his former self (*).

A propensity to self-destruction, like any other peculiar delusion, is but a symptom of deranged intellect, and can only be viewed as a feature of melancholia. But, from the frequency of suicide, and its important effects on society, and its connection with the subject of this work, it claims a few observations. Suicide is committed under very opposite impulses; and, under certain circumstances, a doubt may naturally arise, whether it be not sometimes perpetrated by a sane mind. The art with which the means are often prepared, and the time occupied in planning them, seem to mark it as an act of deliberate volition; but the acts of an insane mind are involuntary, and not voluntary; therefore, the question must always revert to, what was the real condition of the mind when suicide was committed?

The propensity to suicide is sometimes innate or hereditary, and the act is done without any other apparent or assignable cause. Sometimes it is premeditated, resulting from a moral cause too great for the mind to sustain; sometimes it is the effect of a sudden and violent impression, where no time is left for reflection; sometimes it is incited when the spirits are depressed or agitated by some unlucky association of thoughts, and a favourable opportunity presents; sometimes, to elude disgrace or merited criminal punishment; and sometimes, although physical pain is always supported with more resignation than moral agony, yet suicide has been deliberately committed to escape extreme bodily suffering (a).

The contemplation of suicide resembles the sole delusion of the monomaniac, which entirely engrosses the mental and moral faculties. It may, however, be broken into by presenting new objects which powerfully divert the mind. Thus, a man, mentioned by Pinel, had left his house in the night, with the determined resolution of drowning himself,

(*) Inquiries concerning the Intellectual Powers, by Abercrombie, pp. 329, 330.

(a) Commentaries on Insanity, by Dr. Burrows, p. 413. See *post*, pp. 57, 58.

when he was attacked by robbers. He did his best to escape them, and, having done so, returned home, the resolution of suicide being entirely dissipated. Whenever the morbid thought is for a short space arrested by a fresh object, that is the moment to seize for appropriate reasoning on the fallacy of the delusion, or the wickedness of the design. Occupation should be devised, to which the patient must be led by gentle and almost imperceptible endeavours. What occupation or diversion is preferable, should be regulated by the patient's natural tastes or habits, which must be studied, and by other circumstances (*b*). The selection of suitable occupations and amusements must depend on the ingenuity of the physician and those about him.

SECTION V.

Of Lucid Intervals.

INSANITY is often subject to intermissions, during which the patient appears as well as previous to the attack, except that, not being engaged in his usual occupations, and being sensible of the existing tendency to disease, he shews less of the regular interest which he used to take in surrounding objects, and a degree of shyness towards those who address him. This temporary return of reason is termed a *lucid interval*, which it frequently becomes necessary to consider in legal proceedings (*c*).

The term is, with great appearance of probability, supposed by Dr. Haslam to be connected with, and originate from, the antient theory on the subject of *lunacy*. The patient became insane, as was supposed, at particular changes of the moon; and the inference was natural, that, in the in-

(*b*) Commentaries on Insanity, by Dr. Burrows, p. 455.

(*c*) See *post*, pp. 260, 266, 289—296. 446.

tervening spaces of time, he would be rational(*d*). This, however, is an opinion long since abandoned. Observers have repeatedly noticed, that the excess of the paroxysms has no connection with the phenomenon in question; and our author expressly states, that he kept an exact register for more than two years, but without finding, in any instance, that the aberrations of the human intellect corresponded with, or were influenced by, the vicissitudes of the moon. Esquirol states, that, in respect to lunar influence, he cannot confirm the long prevalent opinion. The insane, he adds, are certainly more agitated about the full moon; but so are they about day-break every morning. Hence he conceives the *light* to be the cause of the increased excitement at both those periods. Light, he asserts, frightens some lunatics, pleases others, but agitates all(*e*). By a lucid interval is to be understood, not a remission of the complaint, but a temporary and total cessation of it, and complete restoration to the perfect enjoyment of reason upon every subject upon which the mind was previously cognizant. The determination as to the existence of a lucid interval, requires attentive observation, and long and repeated examination, by a person acquainted with the subject of the patient's insanity(*f*).

D'Aguesseau, one of the greatest names in French jurisprudence, thus defines a lucid interval:—"It must not be a superficial tranquillity, a shadow of repose; but, on the contrary, a profound tranquillity, a real repose; it must be not a mere ray of reason, which only makes its absence more apparent when it is gone, not a flash of lightning, which pierces through the darkness only to render it more gloomy and dismal, not a glimmering which unites the night to the day; but a perfect light, a lively and continued lustre, a full and entire day, interposed between the two separate nights, of the fury which precedes and follows it; and,

(*d*) Haslam on Madness, p. 214. lam on Madness, p. 46; and Willis

(*e*) Medico-Chirurg. Review, Vol. i. on Mental Derangement, p. 151; Dr. Reid's Essays on Hypochondriasis, p. 251.

(*f*) Males' Elements of Forensic Medicine, p. 227; and see Dr. Has-

to use another image, it is not a deceitful and faithless stillness, which follows or forebodes a storm, but a sure and steadfast tranquillity for a time, a real calm, a perfect serenity; in fine, without looking for so many metaphors to represent our ideas, it must be not a mere diminution, a remission of the complaint, but a kind of temporary cure, an intermission so clearly marked, as in every respect to resemble the restoration of health:—so much for its *nature*. And, as it is impossible to judge in a moment of the quality of an interval, it is requisite that there should be a sufficient length of time, for giving a perfect assurance of the temporary re-establishment of reason, which it is not possible to define in general, and which depends upon the different kinds of fury; but it is certain there must be a time, and a considerable time;—so much for its *duration* (g).

To determine the existence of a lucid interval in insanity, the testimony of a physician is sometimes required in Courts of law. The complete remission of madness is only to be decided by reiterated and attentive observation. Every action, and even gesture, of the patient, should be sedulously watched; and he should be drawn into conversations at different times, that may insensibly lead him to develop the false impressions under which he labours. He should also be employed occasionally in business, or offices connected with or likely to renew his wrong associations. If these trials produce no recurrence of insanity, he may, with full assurance, be regarded as legally *compos mentis* during such period, even though he should relapse a short time after into his former malady (h).

Dr. Haslam defines a *lucid interval* to be a complete recovery of the patient's intellects, ascertained by repeated examinations of his conversation, and by constant observation of his conduct, for a time sufficient to enable the superintendent to form a correct judgment. If the person who is to examine the state of the patient's mind be unacquainted

(g) 2 Pothier on Obligations, by Evans, pp. 668, 669.

(h) Beck's Elements of Medical Jurisprudence, p. 246.

with his peculiar opinions, he may be easily deceived, because, wanting this information, he will have no clew to direct his inquiries, and madmen do not always, nor immediately, intrude their incoherent notions; they have sometimes such a high degree of control over their minds, that when they have any particular purpose to carry, they will affect to renounce those opinions which shall have been judged inconsistent; and it is well known that they have often dissembled their resentment, until a favourable opportunity has occurred of gratifying their revenge (*i*).

Dr. Haslam observes (*k*), that, to those unaccustomed to insane people, a few coherent sentences, or rational answers, would indicate a lucid interval, because they discovered no madness; but he, who is in possession of the peculiar turn of the patient's thoughts, might lead him to disclose them, or, by a continuance of the conversation, they would spontaneously break forth. A beautiful illustration of this is contained in the *Rasselas* of Dr. Johnson, where the astronomer is admired as a person of sound intellect and great acquirements, by Imlac, who is himself a philosopher, and a man of the world. His intercourse with the astronomer is frequent; and he always finds in his society information and delight. At length he receives Imlac into the most unbounded confidence, and imparts to him the momentous secret. "Hear, Imlac, what thou wilt not without difficulty credit. I have possessed for five years the regulation of weather, and the distribution of the seasons; the sun has listened to my dictates, and passed from tropic to tropic by my direction; the clouds, at my call, have poured their waters, and the Nile has overflowed at my command; I have restrained the rage of the dog-star, and mitigated the fervors of the crab. The winds alone, of all the elemental powers, have hitherto refused my authority, and multitudes have perished by equinoctial tempests, which I found myself unable to prohibit or restrain. I have administered this great office with exact justice, and made to the different nations of the earth an impartial dividend of rain and

(*i*) Haslam on Madness, pp. 46 and 52.

(*k*) *Id.* p. 47.

sunshine. What must have been the misery of half the globe, if I had limited the clouds to particular regions, or confined the sun to either side of the equator (l)?"

It is stated as a remarkable fact, that disorders of the body will sometimes have the effect of locking up as it were and concealing from view the mental energies for a long series of years; and that, in several instances, just prior to the period of the total extinction of the living principle, the soul seems to have come out of its hiding place, and to cast a parting glance at the surrounding scene. It is related, that a respectable Quaker, who had been deprived of his faculties for years, by a stroke of palsy, and reduced to a state of drivelling idiocy, was restored to the full possession of his rational powers for some days previous to his death, and summoned his astonished family around him, delivered to each of them his parting advice and benediction, and then calmly resigned himself to a peaceful death (m).

SECTION VI.

Of the Treatment of the Insane.

IT is now known that insanity is as curable as any disease to which mankind are subject; that it arises from deranged bodily functions—not mental affections; and that by kindness and proper medicine, there is often less difficulty in removing this malady than many others, of which juster notions have long been entertained by the faculty (n).

This, however, does not appear to be a new discovery, whatever the practice may have been; for a physician, who wrote upon this subject many years ago, observed, that "we have, therefore, as men, the pleasure to find, that madness

(l) *Rasselas*, Chap. xli.

(n) Sir A. Halliday's Letter to the

(m) *London Encyclopædia*, Vol. 14, Magistrates of Middlesex, in the year p. 179. 1826, p. 15.

is, contrary to the opinion of some unthinking persons, as manageable as many other distempers, which are equally dreadful and obstinate, and yet are not looked upon as incurable; and that such unhappy objects ought by no means to be abandoned, much less shut up in loathsome prisons as criminals, or nuisances to society." And he adds—"We are likewise, as physicians, taught a very useful lesson, *viz.* that, although madness is frequently taken for one species of disorder, nevertheless, when thoroughly examined, it discovers as much variety with respect to its causes and circumstances as any distemper whatever; madness, therefore, like most other morbid cases, rejects all general methods (o)."

Dr. Burrows observes, that few popular errors have been more prejudicial, either to the interests of science or humanity, than that insanity is commonly incurable, and consequently, that all remedies are useless. This was not the conviction of the antients; and happily the experience of the present age clearly demonstrates, that a very large proportion of the insane recover the perfect use of their understandings (p).

And the same author adds—"Derogatory as the confession is to human nature, yet it cannot, nor ought to be concealed, that another cause often operating and always detracting from that degree of success which might otherwise attend the treatment of this malady, and which rarely applies to other cases, is the indifference, nay often the disinclination, of interested relations of lunatics to their recovery (q).

To shew that these things are not the offspring of imagination, but founded on facts, it will be sufficient to enumerate some instances of bad feeling which are recorded on the part of those who were bound by the nearest ties to have pursued a course of kindness towards their unfortunate relatives. A witness examined by the Committee of the House of Commons stated, that he knew one instance of a person of very respectable family, who became insane soon

(o) Dr. Battie on Madness, 4to ed. 507.

1758, pp. 93, 94.

(q) Id. p. 510.

(p) Commentaries on Insanity, p.

after giving birth to a son, which cases are generally supposed easy of recovery, as being merely a temporary irritation; she was packed up in a back garret, where she was coarsely fed and clothed, while her husband enjoyed every luxury that money could purchase in the house below, till the son came of age and had her released. In another case, a family kept a brother for seven years in confinement, without any means of recovery, for the sake of his property, though they were all in opulent circumstances. He stated an instance of a son very evidently taking measures to prevent the recovery of his father; and several instances of people in opulence taking measures to prevent the recovery of their own brothers. He had seen evident proofs of vexation and disappointment in a wife, on the unexpected recovery of her husband; the same in a husband, on the unexpected recovery of his wife; and in a mother, on the unexpected recovery of a son (r).

With respect to the means hitherto employed for the cure of this great calamity, it is often stated that but little has been attempted. It is to be lamented, that, in general, madhouses have been considered as prisons, (some of them unhappily worse than prisons), for the safe custody of patients, rather than as hospitals for the treatment of their maniacal disorder. It is the opinion of some, that more is to be expected from the judicious management of lunatics than from medicine. But as the diseased state of the mind often proceeds from corporal irritation, much may be expected from the judicious and well-timed administration of medicine, aided by exercise, employment, suitable occupation, and amusement of the mind, removing at the same time all causes of mental and corporal excitement. The moral treatment of the insane, "the medicine of the mind," is of great importance; and the idle and unemployed state in which they are generally forced to eke out their existence, must materially tend to protract the disease. They are often, however, incapable of bodily or mental exertion; but, during the intervals of tranquillity and reason, every innocent recreation and employment should be introduced suitable to

(r) First Report on the State of Madhouses, ordered by the House of Commons to be printed, 25th May, 1815, p. 124.

their former habits, their ability, and inclination; the importance of this has been acknowledged, and it has formed part of the plan of cure acted upon in some of our most respectable private asylums. At an establishment in Ireland, many of the patients have been taught to spin, with profit to the institution, and benefit to their health (s).

It requires but little knowledge of human nature to be convinced, that in many cases, when all motives to exertion and means of occupation have been withheld, and all desire of improvement extinguished, the faculties will soon languish and become paralysed for want of proper objects on which they can be exercised; and the man will soon sink into the condition of the brute. It is abundantly proved by the evidence before the committees of the two houses of Parliament, that these wretched outcasts of humanity have, in many instances, been too hastily consigned to neglect and oblivion, and, owing in many cases to mistaken notions respecting the nature of their malady, those means of cure have been neglected which the exertions of benevolent and persevering individuals have, in many instances, proved might be successfully applied.

Dr. Haslam published a tract (t), to demonstrate that in every case of insanity, and in all stages of the disorder, medical skill or moral management may be highly advantageous; and contribute either to the cure of the disease, or to the comfort and happiness of the lunatic; that the state of violence may be subdued, or at least moderated by medical assistance, and the tranquillity which succeeds may be occupied by the establishment of habits which conduce to regularity of conduct; and pointed out some of the circumstances attending insane persons, which by proper management might lead to salutary changes in their moral treatment, and thereby produce an amelioration of their condition.

The same author observes (u), to every man possessing experience of this disorder, it is a well known fact, that, in

(s) Males' Elements of Forensic Management of Insane Persons, 8vo. Medicine, pp. 233, 234, 2nd ed. 1817.

(t) Considerations on the Moral (u) Id. p. 11.

the passive state, many may be usefully, and to themselves pleasingly, employed, although they labour under a lamentable degree of mental derangement. Some of these persons it is, perhaps, impossible to cure; but they may be much amended, and certainly enabled to partake of greater comforts than they have hitherto been permitted to enjoy. Every thing which can tend to accumulate and diffuse human happiness should be anxiously sought and cultivated with care.

In many instances an intercourse with the world has dispelled those hallucinations which a protracted confinement, in all probability, would have added to and confirmed. In its passive state, insanity has been often known, if the expression be allowable, to wear off, by permitting the patient to enjoy his liberty, and return to his usual occupation and industrious habits; indeed, it might be naturally expected, that bodily labour in the open air, with moderate employment of mind, directed to some useful object, would more contribute to health and rationality, than immuring a person so circumstanced within the walls of a madhouse, provided his derangement be of a mild and inoffensive character. In this view of the subject a pauper has considerably the advantage of a man of rank and fortune. The former being an incumbrance to the parish during the time he is secluded, the parochial officers are disposed to afford him a trial by way of probation, rather than continue him in confinement at a considerable expense (*g*).

According to the cultivation of the human intellect, different pursuits engage the attention and administer enjoyment. There is, perhaps, something in natural structure, and consequent tendency, which excites a relish for particular employments and diversions; but infinitely more is conferred by education and the regular habitudes of thought and moral discipline. That amusement, under proper restrictions, may essentially contribute to benefit persons labouring under mental derangement, there can be no doubt; and some experience has been already collected on this subject; it is equally well known, where the mind has no access

to intelligence, that indifference, stupidity, and idiotism successively ensue.

In Dr. Latham's hints respecting the general management and employment of insane persons, are the following remarks:—"Reflect but an instant upon the situation in which a man must find himself, when, upon the least dawn of returning reason, he sees himself surrounded by objects under all the different gradations of mental misery; and it will at once be conceded, that any thing, however trivial, upon which his faculties could then be exercised, might contribute in an incalculable degree towards his comfort, and consequently towards his speedier recovery. Consider, too, the influence which the employment of the body possesses also over the mind, and it will readily be acknowledged, that something ought to be devised, by which the bodily strength of the patient might be made subservient towards its comfort and direction, at this most critical period of its weak and irregular condition. When the mind seems to be emerging from that abyss of misery in which it had been plunged, is the precise period when some pleasurable object should be presented to the mind, instead of those which are terrifying, and when its occupation should become amusing to it, and its pursuits rational. And this must be effected by finding an easy and proper employment for the body." He recommended a gallery and an open court in which exercises and innocent diversions might be allowed, under the superintendence of attendants; and suggested, that, for labour, a garden consisting of a few acres would supply the means of an almost endless variety; for it might be so planned and appropriated as to admit of every variety of horticultural labour and amusement. The sawing of stone, the manufacture of osier work and twine, and a variety of other safe and useful occupations would soon present themselves; in many of which the female patients might also be employed, as well as in mending and washing, and getting up the linen of the whole establishment (*w*). Another physician observed—"One

(*w*) First Report on Madhouses, ordered by the House of Commons to be printed, 25th May, 1815, pp. 128, 129.

thing at least is certain, that, in the management of such maladies, tenderness is better than torture; kindness more effectual than constraint. Blows and the strait-waistcoat are often, it is to be feared, too hastily employed. It takes less trouble to fetter by means of cords, than by the assiduities of sympathy or affection. Nothing has a more favorable and controlling influence over one who is disposed to or actually affected with melancholy or mania, than an exhibition of friendship or philanthropy; excepting indeed in such cases, and in that state of the disease, in which the mind has been hardened and almost brutalized by having already been the subject of coarse and humiliating treatment. Where a constitutional inclination towards insanity exists, there is in general to be observed a more than ordinary susceptibility to resentment at any act that offers itself in the shape of an injury or an insult. Hence, it will not appear surprising, that so soon as an unfortunate victim has been inclosed within the awful barriers of either the public or the minor and more clandestine Bethlehems, the destiny of his reason should, in a large proportion of cases, be irretrievably fixed. The idea that he is supposed to be insane, is almost of itself sufficient to make him so; and when such a mode of management is used with men, as ought not to be, although it too generally is, applied even to brutes, can we wonder if it should often, in a person of more than ordinary irritability, produce, or at any rate accelerate, the last and incurable form of that disease, to which at first perhaps there was only a delusive resemblance or merely an incipient approximation?"

Tasso, the celebrated poet, was once instigated by the violence of an amorous impulse to embrace a beautiful woman in the presence of her brother, who, happening to be a man of rank and power, punished this poetic license by looking up the offender in a receptacle for lunatics. It is said, that by this confinement he was made mad, who was before only too impetuous or indiscreet (x).

A heavy responsibility presses upon those who preside or

(x) *Essays on Hypochondriasis*, by Dr. Reid, pp. 303—305, 2nd edit.

officiate in the asylums of lunacy. Little is it known how much injustice is committed, and how much useless and wantonly inflicted misery is endured in those infirmaries for disordered, or rather cemeteries for deceased, intellect. Instead of trampling upon, we ought to cherish, and by the most delicate and anxious care strive to nurse into a clearer and a brighter flame the still glimmering embers of a nearly extinguished mind.

It is by no means the object of these remarks to depreciate the value of institutions, which, under a judicious and merciful superintendence, might be made essentially conducive to the protection of lunatics themselves, as well as to that of others, who would else be continually exposed to their violence and caprice. But it is to be feared, that many have been condemned to a state of insulation from all rational and sympathizing intercourse, before the necessity has occurred for so severe a lot. Diseased members have been amputated from the trunk of society, before they have become so incurable or unsound as absolutely to require separation. Many of the dépôts for the captivity of intellectual invalids may be regarded only as nurseries for and manufactories of madness; magazines or reservoirs of lunacy, from which is issued, from time to time, a sufficient supply for perpetuating and extending this formidable disease—a disease which is not to be remedied by stripes or strait-waistcoats, by imprisonment or impoverishment, but by an unwearied tenderness, and by an unceasing and anxious superintendence (*y*).

That the moral means which the good sense and humanity of the moderns have in many instances so happily devised and applied, must be useful in many, nay in most cases, is indisputable, but they ought not to be wholly relied on, but considered as adjuncts only to the medical means to be employed for effecting a cure. It is to be lamented that the moral remedies are not of readier access, and rendered applicable to every situation where insane persons are placed.

It is conceived that the attacks of insanity might, in many

(*y*) Essays on Hypochondriasis, by Dr. Reid, 306—310, 2nd edit.

cases, be altogether prevented, or at least its effects mitigated by the proper government of the passions and desires, by regularity of conduct, and by a judicious employment of the mind in the pursuit of rational and worthy objects; this may not be within the power of all, but might undoubtedly be more generally adopted than it is.

Among some of the qualities which constitute a well regulated mind, may be mentioned the cultivation of a habit of steady and continuous attention; or of properly directing the mind to any subject which is before it, so as fully to contemplate its elements and relations; a careful regulation and control of the succession of our thoughts, a faculty very much under the influence of cultivation, and on which depends the important habit of regular and connected thinking. The cultivation of an active inquiring state of mind, which seeks for information from every source that comes within its reach, whether in reading, conversation, or personal observation. The habit of correct association—that is, connecting facts in the mind according to their true relations, and to the manner in which they tend to illustrate each other, which is one of the principal means of improving the memory. Nearly allied to this, is the habit of reflection, or of tracing carefully the relations of facts, and the conclusions and principles which arise out of them. A careful selection of the subjects to which the mind ought to be directed, which must vary according to the situations in life of different individuals. A due regulation and proper control of the imagination; by restricting its range to objects which harmonize with truth, and are adapted to the real state of things with which the individual is or may be connected. The cultivation of calm and correct judgment, applicable alike to the formation of opinions and the regulation of conduct, founded upon the habit of directing the attention, distinctly and steadily, to all the facts and considerations bearing upon a subject; by contemplating them in their true relations, and assigning to each the degree of importance of which it is worthy; which is opposed to the influence of prejudice and passion—to the formation of sophistical opinions—to party spirit—and to every propensity which leads

to the adoption of principles on any other ground than calm and candid examination, guided by a sincere desire to discover the truth. A sound state of the moral feelings may be lastly mentioned as highly conducive to a well regulated understanding (*s*).

The gaudy gloss of fortune only strikes
 The vulgar eye: the suffrage of the wise,
 The praise that's worth ambition, is attain'd
 By sense alone, and dignity of mind.
 Virtue, the strength and beauty of the soul,
 Is the best gift of heaven; a happiness
 That even above the smiles and frowns of Fate
 Exalts great Nature's favourites; a wealth
 That ne'er encumbers, nor can be transferr'd.
 Riches are oft by guilt and baseness earned;
 Or dealt by chance to shield a lucky knave,
 Or throw a cruel sunshine on a fool.

Dr. Armstrong on Health, edited by Dr. Aikin, Book 4, v. 280—292.

The great objects to be aimed at in the management of the insane are, in the first place, that the invalids be separately and properly classed, both in respect of their ages, sexes, conditions in life, and kind or degree of their disorder. Secondly, free ventilation, so insured as to guard against undue exposure to the inclemencies of the weather. Thirdly, a rigid system of cleanliness; and lastly, such a judicious regulation both of mental and bodily exercise, as shall excite without fatigue, and exhilarate without exhaustion. A combination of tenderness with firmness on the part of the keepers is all along supposed; and in respect of superior and general superintendence, none ought to meddle with the mad who have not discretion and genius, and, it might be added, humanity into the bargain (*a*).

It should be stated, that, according to the evidence of some of the physicians conversant with this subject, who were examined before the committee of the House of Lords, there has been of late years a considerable improvement in the medical and moral treatment of the insane (*b*), and that

(*s*) See Inquiry concerning the Intellectual Powers, by Abercrombie, pp. 421—441, 3rd edit. (*a*) Quarterly Review, 15 Vol. p. 412. See *post*, pp. 483, 484.
 (*b*) Minutes of Evidence before

the proportion of cured is greater now than formerly, in consequence of the abolition of the excessive use of coercion (c).

The objects of legislative enactments on this great question ought at least to comprise four particulars: in the first place, the most effectual provisions to prevent the operation of wrong motives towards procuring the confinement of individuals on the ground of insanity, when no actual insanity exists. In the second place, provisions should be made to insure the confinement of such individuals as are really insane, and who cannot continue at large without endangering the security of others. Thirdly, every care should be taken to cause those who are confined to be placed in such situations, and under such regulations, as experience has shewn to be most conducive to recovery, when that event is probable, and to comfort, when the case is incurable; and fourthly, a special endeavour should be made on the part of the legislature to secure to paupers such advantages as are suited to their rank and condition (d).

The provisions of the statutes lately passed (e) seem calculated to effect many of the above objects, whether or not they will be attained must depend principally upon the activity, vigilance, and judgment of those to whom the superintending power is given (f), in executing their duties as visitors, and in confiding the care of the insane to persons of medical science, who possess not only a knowledge of insanity, but also humanity, and a desire to alleviate the sufferings of those committed to their charge.

Committee of the House of Lords on mons, 1827, pp. 59, 86.

the bill to regulate the treatment of (d) Quarterly Review, 15 Vol. p. 415.

insane persons, May, 1828, pp. 61,

73, 74, 86, 88.

(e) Minutes of Evidence before

Committee of the House of Com-

(e) See Appendix, pp. 532—621.

(f) See *post*, pp. 484, 485.





PRACTICAL TREATISE

ON

The Law concerning Lunatics,*fc. fc. fc.*

CHAPTER I.

OF THE LEGAL TERMS RESPECTING PERSONS UNDER
MENTAL DISABILITIES.

THE terms used in the statute law of England, to include persons under mental disabilities, have been various.

The general term which has commonly been applied to such persons, both by the common and statute law, is, "*non compos mentis*," which, according to Lord *Coke*, is the most legal (*a*).

Compos signifies, one that hath obtained, or is master of his desire or purpose; and in some classical Roman authors (*b*), *compos animi et compos mentis*, mean "one in his senses;" the term "*non compos mentis*" was adopted by the law of England at a remote period to signify a person "out of his senses."

The term *non compos mentis* is used in the statute *de prærogativa regis* (*c*), and also in several subsequent acts of Parliament (*d*); and it was said by Lord *Hardwicke*—

(*a*) Co. Litt. 246. a.

(*d*) 23 Eliz. c. 3; 21 Jac. 1, c.

(*b*) Terent. Adelp. iii. 2, 12; Cic. 16; 4 Geo. 2, c. 10; 26 Geo. 2, 2 Phil. c. 38; Id. in Pison. c. 20, extr. c. 33, s. 12; 1 & 2 Geo. 4, c. 15;

Sallust. in Fragm. Liv. l. 27, c. 5. 4 Geo. 4, c. 76, s. 17; Irish stat. 11

(*c*) 17 Edw. 2, c. 10.

Anne, c. 3; 5 Geo. 2, c. 8.

being *non compos mentis* "of unsound mind," are certain terms in law, and import a total deprivation of sense; but weakness does not carry that idea along with it; but Courts of law understand what is meant by *non compos*, or insane, as they are words of a determinate signification (*d*).

Lord *Coke* makes four classes of such persons—*1st*, idiot, or fool natural, who from his nativity by a perpetual infirmity is *non compos mentis*: *2nd*, a person who was of good and sound memory, and by sickness, grief, or other accident, wholly loses his memory and understanding: *3rd*, a lunatic, *lunaticus*, who has sometimes his understanding and sometimes not, *qui gaudet lucidis intervallis*, and therefore he is called *non compos mentis* so long as he has not understanding: and *4th*, a person who by his own vicious act for a time deprives himself of his memory and understanding, as he that is drunken; but such a person has no privilege by this voluntary contracted madness (*e*). Yet, if a person by the unskilfulness of his physician, or by the contrivance of his enemies, eat or drink such a thing as causes temporary or permanent phrensy, this puts him in the same condition in reference to crimes as any other phrensy, and equally excuses him; and also, if, by one or more such practices, an habitual and fixed phrensy be caused, though this madness was contracted by the vice and will of the party, yet it puts the party in the same condition in relation to crimes, as if it had been contracted involuntarily at first (*f*).

The word idiot is derived from the Greek word *ιδιοϛ* *privatus*, and signified a private man, who has not any public office. Among the Latins, *idiota* is taken for illiterate, or foolish (*g*), and in Cicero and other authors signifies commonly an unlearned and illiterate person. With the English jurists, however, idiot is a legal term, signifying a person who has been without understanding from his nativity, and whom the law therefore presumes never likely to attain any (*h*).

(*d*) *Ex parte Barnesley*, 3 Atk. 173. See 2 Eq. Cas. Abr. 580.

(*e*) Co. Litt. 247. a.; 4 Rep. 124 b.; 4 Bl. Comm. 25.

(*f*) 1 Hale's P. C. 32.

(*g*) 4 Rep. 128; See Du Cange's Glossary, tit. "*Idiota*."

(*h*) Co. Litt. 246. b., 247. a.; 3 Mod. 44; 4 Rep. 126; 1 Bl. Comm. 302.

Fitzherbert defines an idiot from birth to be a person who cannot count or number twenty pence, nor tell who was his father or mother, nor how old he is, &c., so as it may appear that he hath no understanding of reason what shall be for his profit, or what for his loss: but if he have sufficient understanding to know and understand his letters, and to read by teaching or information of another man, then it seems he is not an idiot (i).

In a recent case in the House of Lords, Lord *Tenterden* is reported to have said, in allusion to the above definition of Fitzherbert, the strict legal definition of an idiot is, that if a man can repeat the letters of the alphabet, or read what is set before him, he cannot be taken to be an idiot. But that was contrary to common sense, for, as to repeating the letters of the alphabet, or reading what is set before him, a child of three years old may do that (k).

Although a person has a weak mind, yet, if he appears to be capable of acquiring by conversation and instruction a competent share of understanding to enable him to govern himself or his estate, and a memory sufficient to retain the knowledge which he may so acquire, he is not considered in law an idiot, or a person of unsound mind (l). Persons born deaf, dumb, and blind, are looked upon by the law as in the same state with idiots (m); for, the senses being the only inlets of knowledge, and these most important inlets being closed, all ideas and associations belonging to them are totally excluded from their minds.

But persons deprived of only one or two senses, and who can express their meaning by writing or signs, are not incapacitated on that account (n). A man deaf and dumb from his birth, is in presumption of law an idiot, and the rather because he has no possibility to understand what is forbidden by law to be done, or under what penalties; but if it can appear that he has the use of understanding, which many of that condition discover by signs to a very great

(i) Fitz. N. B. 583, ed. 1652.

(l) Lord *Ely's* case, 1 Ridg. P. C.

(k) *Ball v. Mannin*, 1 Dow, P. 522. See 2 Eq. Cas. Abr. 581.

•C. new Ser. 392; S. C. 3 Bligh, new Ser. 1.

(m) Co. Litt. 42. b.

(n) *Elliot's* case, Carter, 53.

measure, then he may be tried and suffer judgment and execution, though great caution is to be used therein (o).

A person born deaf and dumb having attained the age of twenty-one years, applied to the Court of Chancery for possession of her real estate, and to have an assignment of her chattel estate; and the Lord Chancellor having put questions to her in writing, to which she gave sensible answers in writing, the same was ordered accordingly (p).

Lunatic is a technical term, coined in ignorant times, and is derived from the Latin word *luna*, in respect of lucid intervals which lunatics are usually in the enjoyment of, *quia lucidis intervallis gaudent*; or in consequence of a notion formerly prevalent, that the moon has an influence upon mental disorders (q). The term signifies, in its legal acceptation, one who has had understanding, but, by disease, grief, or other accident, hath lost the use of his reason. A lunatic is properly one that hath had lucid intervals, sometimes enjoying his senses, and sometimes not (r).

It is singular, that the term "*Lunaticus*," which, though derived from a vulgar error, gives the title to the modern proceeding by commission, and is the only specific description of afflicted persons contained in it, is not to be found in any form of the old writ (s), nor in the statute *de prerogativa regis*.

The words *unsound mind*, and *unsound memory*, have been adopted in several statutes, and sometimes indiscriminately used to signify, not only lunacy, which is a periodical mad-

(o) 1 Hale's P. C. p. 34; see 1 Russ. on Crimes, p. 7, note (f). to Encyc. Britt.; Stew. Phil. Vol. 3, p. 401.

The judicious and humane means adopted in modern times for educating persons born deaf and dumb, have been attended with eminent success, and furnished them with many ways of profitable occupation, and endowed them with many of the privileges and consequent responsibility of rational and moral agents. See the interesting article "Deaf and Dumb," in Vol. 3 of Supplement

(p) *Dickenson v. Blisset*, 1 Dick. 268.

(q) 3 Atk. 174; Hale's P. C. 31. See Du Cange's Glossary, tit. "*Lunaticus*," and an elegant Latin treatise *De imperio solis ac lune in humana corpora, et morbis inde oriundis*, by the late Dr. Mead.

(r) 4 Co. 123; 1 Bl. Comm. 304.

(s) Reg. Brev. 266; see 12 Ves. 450, 2nd ed. note (11).

ness, but also a permanent adventitious insanity as distinguished from idiotcy (*t*).

The term *unsound mind* seems to have been used in those statutes, and by Lord *Hardwicke*, in the same sense as insane; but a greater latitude appears to have been given to the meaning of those words by Lord *Eldon*, who said that they imported that the party *was in some such state* as was contra-distinguished from idiotcy and from lunacy, and yet such as made him a proper subject of a commission to inquire of idiotcy and lunacy (*u*).

And accordingly, if a jury find a party to be of unsound mind, and incapable of managing his affairs, it is held a sufficient finding to support a commission of lunacy.

It is to be lamented, that the original meaning of the term "*unsound mind*" should have been departed from, and that so much latitude and uncertainty should have been given to it as are implied by the words of Lord *Eldon*, last quoted—For if unsound mind does not mean a deprivation of reason, but a degree of weakness, and the Crown can issue commissions to try whether a party be of sufficient understanding to manage himself and his affairs, this is such a vague and uncertain ground for inquiry as will open a door to invade the liberty of the subject and the rights of property.

It was held by Lord *Redesdale* that the words "*non sane memory*" used in the Irish statute, 7 *Geo.* 2, c. 14, include every sort of person of such description, whether idiot or lunatic, or incapable of managing himself or his affairs (*v*).

The terms used in several modern acts of Parliament to signify persons under mental disabilities are—idiot, lunatic, and of unsound mind.

The term *lunatic* only is used in the statutes of 11 *G.* 4 & 1 *W.* 4, cc. 60, 65; but, by the second section of each of those acts, containing rules for the interpretation of certain words employed in them, it is declared, that the word *lunatic* shall extend to any idiot, or person of unsound mind, or incapable of managing his affairs.

(*t*) Lord *Ely's* case, 1 *Ridg. Parl. Cas.* 518; 3 *Atk.* 171; 39 & 40 *Geo.* 3, c. 94; 43 *Geo.* 3, c. 75; 6 *Geo.* 4, c. 74; 7 *Geo.* 4, c. 57, s. 73.

(*u*) *In re* the Earl of *Portsmouth*, 22nd April, 1815; see *post*, c. iv. s. 2.
(*v*) *Carew v. Johnston*, 2 *Sch. & Lef.* 280.

It may be proper to remark in this place, that, in the subsequent part of this work, the term *lunatic* is frequently used in the comprehensive sense given it by those statutes.

The term *partial insanity* imports that a person is insane on one or more particular subjects only, and sane in other respects (*w*).

As the term *imbecility of mind* often occurs in discussions respecting soundness of mind, and is intimately connected with this branch of the subject, the following judicious remarks of Sir *John Nicholl* (*x*) are deserving attention. He observed—"That, in order to arrive at the true meaning of 'imbecility of mind,' we may resort to what the law describes as perfect capacity, which is most correctly found in the form of pleadings used in the Ecclesiastical Courts, in the averment in support of a will, that the testator 'was of sound mind, memory, and understanding—talked and discoursed rationally and sensibly, and was fully capable of any rational act requiring thought, judgment, and reflection.' Here is the legal standard.

"Imbecility and weakness of mind may exist in different degrees between the limits of absolute idiocy on the one hand, and of perfect capacity on the other. When the law uses the terms, 'mind, memory, understanding, thought, judgment, reflection,' it must not be supposed that they are quite synonymous; that each means precisely the same thing. By no means: they are separate faculties, though nearly connected with and graduating into each other; and one or more of these faculties may be defective in a greater or less degree, while the others remain perfect in the individual.

"Locke (*y*), speaking of idiots, says, Those who cannot distinguish, compare, and abstract, would hardly be able to understand and make use of language, or judge, or reason to any tolerable degree; but only a little and imperfectly about things present, and very familiar to their senses.

(*w*) 1 Hale's P. C. 30; *Greenwood's case*, 13 Ves. 89; 3 Br. C. C. 444; *Dew v. Clarke*, 1 Add. 274; S. C. 3 Add. 79; *Heath v. Watts*, Pr. 1798. Del 1800. See ~~post~~ *vii. sect. 6.*
 (*x*) 1 Hagg. Eccl. Rep. 401.
 (*y*) Essay on the Human Understanding, Book 2, ch. 11, sect. 12 & 13.

And indeed, any of the forementioned faculties, if wanting, or out of order, produce suitable effects in men's understandings and knowledge.

“ In fine, the defect in naturals seems to proceed from want of quickness, activity, and motion in the intellectual faculties, whereby they are deprived of reason: whereas madmen, on the other side, seem to suffer by the other extreme, for they do not appear to have lost the faculty of reasoning: but having joined together some ideas very wrongly, they mistake them for truths, and they err as men do that argue right from wrong principles. For, by the violence of their imaginations, having taken their fancies for realities, they make right deductions from them.

“ In confirmation of this doctrine it is found, that different faculties fail in different persons. For example—the memory is sometimes perfect where higher powers of the understanding are greatly defective; when imbecility is original, or, as medical authorities express it, *connate*, the memory is often perfect, especially of trifling and simple circumstances, though the other mental powers remain infantine; or, as the same authorities suppose and express it, ‘ the brain has never developed itself.’ In such an individual the understanding has made little progress with years—it has not matured and ripened in the usual manner: yet, even in such individuals, unless the imbecility be extreme, some improvement will have taken place—some progress in knowledge beyond mere infancy will have been made by the help of memory, by imitation, by habit; such an individual will acquire many ideas, will recollect facts and circumstances and places, and hacknied quotations from books, will conduct himself orderly and mannerly, will make a few rational remarks on familiar and trite subjects, may retain self-dominion, and spend his own little income in providing for his wants, as a boy spends his pocket money, and yet may labour under great infirmity of mind and be very liable to fraud and imposition. The principal marks and features of imbecility are the same which belong to childhood, of course varying in degree in different individuals: frivolous pursuits, fondness for and stress upon trifles, inertness of

mind, paucity of ideas, shyness, timidity, submission to control, acquiescence under influence, and the like. Hence these infantine qualities have acquired for this species of deficiency of understanding the name of 'childishness.' The effect is, that where imbecility exists at all, and in proportion to its degree, it becomes necessary, especially in a case exposed to other adverse presumptions, to ascertain its extent with some accuracy; to see how far the individual was liable to be controlled by influence, to submit to ascendancy, to acquiesce from inertness and confidence in those acts, upon the validity of which the Court has to decide (*n*)."

(*r*) See *post*, ch. iii. vii.

CHAPTER II.

OF THE JURISDICTION RESPECTING IDIOTS, LUNATICS, AND PERSONS OF UNSOUND MIND.



SECTION I.

Of the Prerogative of the Crown.

THE King, as the political father and guardian of his kingdom, has the protection of all his subjects, and of their lands and goods; and he is bound, in a more peculiar manner, to take care of all those who, by reason of their imbecility and want of understanding, are incapable of taking care of themselves; this, in some books, is called a prerogative in the Crown, and in others a *regium munus*, or duty, which the King owes his subjects in return for their subjection and obedience (*a*). It seems more properly a royal trust, committed to the Crown by act of Parliament, for the benefit of the subject.

The prerogatives of the King with respect to the custody of idiots and lunatics are not mentioned by Bracton; but we are informed by Fleta (*b*), that certain persons, called *tutores*, used to have the custody of the lands *idiotarum et stultorum*. It is thought that these tutors, as was natural, were the lords of whom the lands were holden; such unhappy persons being in a sort of perpetual infancy. But this sort of trust, according to Fleta, had been much abused;

(*a*) Staundf. de Pr. Reg. 33; 2 1 Bl. Comm. 303.

Inst. 14; 4 Rep. 126; Bacon's Abr. (b) Fleta, p. 6. See Reeves's Hist. tit. Idiots and Lunatics (C); Dyer 25; of English Law, 2 Vol. 307.

on which account an act had been made in the reign of Edward 1, which is now lost, giving to the King the custody of the persons and inheritances *idiotarum et stultorum*, being such *a nativitate*; with a reservation to the lord of all his lawful claims for wards, reliefs, and the like (c).

In confirmation of the statute before mentioned, it was declared by the statute *de prærogativa regis* (d), that the King shall have the custody of the lands of natural fools, taking the profits of them without waste or destruction, and shall find them their necessaries, of whose fee soever the lands be holden. And after the death of such idiots, he shall render them to the right heirs: so that by such idiots no alienation shall be made, nor shall their heirs be disinherited.

By the statute 32 Hen. 8, c. 46, which established the Court of Wards, it was declared, that the King's wards and their lands should be under the survey and governance of that Court; and, by the 26th section of the same statute, the persons and lands of idiots and natural fools were placed under the management of the Master of the Court of Wards. Upon the abolition of the Court of Wards (e), the care and custody of such persons and their estates reverted to the Crown.

The King, after a person has been found idiot by office, is entitled to the custody of the body of such idiot, and of his lands and goods, during his life, and as well of those lands and other hereditaments which he takes by purchase, as by descent; but the freehold of them remains in the idiot, notwithstanding the right of the Crown to their custody (f). But if an idiot has not the possession of lands or goods, but only a title of entry, or right of action, the King cannot enter nor have the custody of them (g). The King may take the profits of an idiot's estate to his own use, allowing necessaries to him and his family, and making reparations, and may also demise the lands of an idiot, rendering rent (h).

(c) See 2 Inst. 14; 4 Rep. 125 b.

(d) 17 Edw. 2, st. 2, c. 9.

(e) 12 Car. 2, c. 24.

(f) 4 Rep. 126; Staundf. de Pr. 4; Dyer, 26 a.

(g) Staundf. de Pr. Reg. 35; Vin.

Abr. tit. Lunatics, (B. 2.) pl. 1.

(h) Staundf. de Pr. Reg. 35, Moore,

So the King may grant the custody of an idiot, his lands and goods to another (*i*); and such grant may be made without security to account (*k*), and extend, as it seems, to the representatives of the grantee (*l*). The executors of an idiot are not entitled to have an account against the grantee for the profits incurred during the grant from the Crown (*m*).

It is said, however, that since the Revolution, the Crown has always granted the surplus profits of the estate of an idiot to some of his own family (*n*).

Though the King may by *scire facias*, or by information, avoid all acts of an idiot done during his incapacity, yet his right to the meane profits of his lands has relation only to the time of the finding of the office, although, to avoid incumbrances created by an idiot, it shall have relation to the time of his birth (*o*).

From the manner in which Fleta expresses himself, it should seem, that, in his time, there was no provision for the protection of the persons and estates of lunatics similar to that provided for idiots. But by the statute *de prerogativa regis* (*p*), it is enacted, that the King shall provide, when any (that before time hath had his wit and memory) happen to fail of his wit, as there are many having lucid intervals, that their lands and tenements shall be safely kept without waste and destruction, and that they and their household shall live and be maintained competently from the profits of the same; and the residue beyond their reasonable sustentation shall be kept to their use, to be delivered unto them when they recover their right mind: so that such lands and tenements shall in nowise within the time aforesaid be aliened; nor shall the King take any thing to his own use. And if the party die in such estate, then such residue shall be distributed for his soul by the advice of the ordinary.

It must be observed, that the words of the statute *de*

(*i*) 2 Ch. Cas. 70; And. 23.

(*k*) 3 Mod. 23.

(*l*) *Prodgers v. Lady Frazier*, 2 F. N. B. 202.

Ch. Cas. 70; 1 Vern. 9, 137.

(*m*) *In re Roberts*, 3 Atk. 312.

(*n*) 1 Ridg. Parl. Cas. 520.

(*o*) *Tourson's case*, 8 Rep. 170;

(*p*) 17 Edw. 2, st. 2, c. 10.

prærogatiâ regis (which is said (*q*) not to be introductive of a new right, but to be only declaratory of the common law), differ as to the provisions for the care of the property of an idiot and a lunatic. In the one case, the King, having an interest and personal benefit, is said to have the custody of an idiot, his lands &c.; but with respect to lunatics, he is only to act as *parens patriæ*, as the person to take care of those who are incompetent to take care of themselves: the statute expressly providing, with respect to lunatics, that the King shall not take the profits of their lands for his own use; but is bound to find necessaries for them and their household (*r*); but as to what is not in itself profitable, as the presentation to a church, the King takes (*s*).

The statute then proceeds to direct, that, if the party shall die in this condition, the residue shall be distributed for the benefit of his soul, according to the superstition of the times in which the statute was made; which is certainly now (*t*) to be taken as a direction to preserve the residue for those entitled to the personal estate of the lunatic on his death, independent of that statute. In the case of a lunatic, the King is a mere trustee; in the case of an idiot, he has a beneficial interest. In point of form, in the terms of the grant to the committee, the grant of a lunatic's estate is a grant liable to account; and the other is a grant to a certain degree without account; that is, the King is not bound to do more than provide for the maintenance of the idiot, and is entitled by his prerogative to the surplus of his estate (*v*).

The case of a lunatic tenant in fee cannot, it is conceived, be assimilated to that of tenant for life impeachable for waste; as the latter has no property in the timber at all; and therefore waste by him has a different consideration from that waste mentioned in the statute *de prærogatiâ regis*, which only means without destruction; and does not hinder the committee, under the authority of the King, from making use of those opportunities, which the property of

(*q*) 4 Rep. 126-7; 2 Ves. jun. 71.
But see 2 Inst. 14, *contra*.

(*r*) *Holmes's case*, Dyer, 25 b.

(*s*) Com. Dig. Idiot, (C).

(*t*) See statutes 31 Edw. 3, c. 11;
22 & 23 Car. 2, c. 10.

(*v*) *In re Fitzgerald*, 2 Sch. & Lef.
436; 1 Fonbl. Tr. Eq. 56, 57, 3rd edit.

the lunatic would enable him, if in possession of his senses, to use (w). Lord Chancellor *Loughborough* held, that an order for the committee to cut timber in a state of maturity was perfectly right, being for the advantage of the lunatic and of the estate. The timber when mature was the fair fruit of the estate; and, instead of being waste and destruction to cut it, it would have been waste and destruction not to have done so (x).

Copyholds are not within the statute *de prerogativa regis* (y).

With respect to the custody of copyhold lands of an idiot or lunatic, the lord has not any power over such lands except by special custom; in which case, if he appoint a committee, such person has no interest in the lands, but is considered as a bailiff, appointed by the lord to keep possession for the lunatic (z).

In the absence of special custom, it does not distinctly appear, who is entitled to the custody of the copyhold lands of an idiot or lunatic. It is laid down by Lord *Coke*, that the King shall not have the custody of land which an idiot holds by copy, for that is but an estate at will by the common law; and if the King should have the custody of it, a great prejudice would be done to the lord of the manor; but yet it is said, that all alienations made by an idiot of his copyhold after office found shall be avoided by the King (a). It is laid down that the Court of Wards had no power to make orders respecting the copyholds of an idiot copyholder, but that it should be done in the Court of the lord of whom the copyhold is held (b). And it was resolved in

(w) *Ex parte Bromfield*, 1 Ves. Bac. Abr. tit. "Idiots & Lun." (C).
jun. 461; S. C. 3 Bro. C. C. 510.

(x) *Ozenden v. Lord Compton*, 4 Bro. C. C. 234. See *post*, ch. v. s. 10.

(y) 4 Rep. 126; Co. Cop. sect. 55; Bac. Abr. tit. "Idiots & Lun." (C).
Watk. Gilb. Ten. 291, 400.

(z) *Cocks v. Darson*, Hob. 215; *Noy*, 27; *Drury v. Fitch*, Hutton, 17.

(a) *Beverley's case*, 4 Rep. 126 b;

(b) *Dyer*, 303 a.

The rule of the Court of Wards was, that if an idiot had not any goods or lands, except copyholds held of a subject, the King should not have the custody, but the lord of whom the copyhold was holden; but if he had any other, then the copyhold also. *Ibid.* n. (46).

one case (c), that the lord should have the custody of one that was *mutus et surdus*, although no custom was laid, the question being between the *prochein amy* and the lord; and the reason given why the lord should have the custody is, because otherwise he would be prejudiced in his rents and services; which reason extends as well to cases where there is no custom, as where there is, and would be equally applicable to idiots and lunatics, as to one who is *mutus et surdus*.

Provision is now made for the admittance of lunatics to any copyholds to which they may become entitled, and for payment of the fines to the lord of the manor of which such lands are holden (d).

And it is provided (e) that after the lord shall have been paid his fine and costs, it shall be lawful for the lunatic or his committee to enter upon, and take possession of, and hold the copyhold land according to the estate or interest the lunatic shall be lawfully entitled to therein, and the lord of the manor is required to deliver possession thereof accordingly; and if the lord, after payment or tender of the fine and costs, shall refuse to deliver the possession of the copyhold, he is liable to make satisfaction to the persons kept out of possession for the damages they sustain.

The modern acts of Parliament (f), enabling the person intrusted by the King's sign manual with the care and commitment of the custody of the persons and estates of lunatics, to make orders for selling, mortgaging, leasing, or otherwise disposing of their estates, expressly extend to copyholds.

The prerogative of the Crown does not prevent a private person from confining a relation or friend who is mad (g), under the regulations made by several statutes (h). The right of the Crown to control and manage lunatics and their estates commences with the finding of the office, or inquisition of lunacy (i).

(c) *Evers v. Skinner*, Cro. Jac. 105. (g) 2 Roll. Abr. 546; see 17 Geo. 2, c. 5, s. 20.

(d) 1 Will. 4, c. 65, ss. 3, 5, & 6. (h) 14 Geo. 3, c. 49, repealed by

(e) Id. s. 7. 9 Geo. 4, c. 41.

(f) 59 Geo. 3, c. 80, s. 2; 1 Will. 4, cc. 60, 65, s. 2. (i) 8 Rep. 170 b.

SECTION II.

Of the Jurisdiction of the Court of Chancery.

BEFORE the Court of Wards was erected, the jurisdiction, both as to idiots and lunatics, was exercised in the Court of Chancery, and therefore, whilst the former existed, all commissions respecting them were taken out of Chancery and returned there; and after the abolition of the Court of Wards, such jurisdiction reverted to the Court of Chancery (a). In the case of an infant, the Lord Chancellor is acting as the Court of Chancery; not so in lunacy; but under a special separate commission from the Crown, authorizing him to take care of the property, and for the benefit of the lunatic (b). When a person is found an idiot or a lunatic, the King alone has power to grant the custody of the idiot or lunatic and his estates, by sign manual; and, therefore, to save repeated applications to the Crown, it has been the practice for the Crown to intrust such power by warrant under the sign manual, countersigned by the two secretaries of state, to the Lord Chancellor, on his coming into office; by virtue of which warrant, and not as Chancellor, he has the ordering and disposition of the persons and estates of idiots and lunatics; and such warrant confers no jurisdiction, but only a power of administration.

This authority is given to him (as stated in the warrant) in consideration of its being his duty, as Chancellor, to issue the commission on which the inquiry as to the fact of idiotcy, or lunacy, is to be made. This branch of the prerogative may be exercised by any officer the Crown thinks fit; it is ordinarily delivered to a great officer of state, but not necessarily to the keeper of the great seal (c); an instance is mentioned of the Lord High Treasurer having the

(a) *Corporation of Burford v. Lenthall and others*, 2 Atk. 553. (c) 4 Bro. C. C. 233; 2 Shaw & Wilson, 525.

(b) *Ex parte Phillips*, 19 Ves. 122.

warrant (*d*); but if it were granted to any other officer of state, it would not enable such officer to act after the grant made to the committees, but merely to direct such grant.

The warrant confers the right of making grants of the custody of the persons and estates of idiots and lunatics, and empowers the Lord Chancellor, or other person to whom it is given, to prepare and pass such grants, without any further special warrant from the Crown (*e*).

Lord Chancellor *Redesdale*, however, expressed a doubt whether the warrant thus given to the Chancellor, was an authority for passing letters patent, granting to any person, for his own benefit, the surplus profits of the estate of an idiot, and inclined to the opinion that a grant of the lands of an idiot without account cannot be made without the King's special warrant (*f*).

As the King is only entitled to the profits of the estates of a lunatic for the support of him and his family, and is bound to render the surplus to the lunatic when he recovers his understanding, the King cannot grant the lands of a lunatic to another person for his own benefit (*g*). And it seems that no grant of a lunatic's estate can be made by the Chancellor otherwise than during pleasure; for, in contemplation of law, a lunatic is always capable of recovering his understanding (*h*). But though the King's grant of a lunatic's estate without account is void, yet the King, or the Chancellor by authority of the sign manual, may allow such a yearly maintenance to the committee, as amounts to the yearly value of the lunatic's estate (*i*).

No restriction being imposed upon the King by the statute *de prærogativa regis*, or any other statute, as to the persons in whose favour grants to committees are to be made, he may commit the custody of a lunatic and his estates to any person, or number of persons, he pleases, although the relations of the lunatic are usually preferred.

(*d*) 2 Dick. 553.

8 Rep. 170.

(*e*) See 3 P. Wms. 107, note (*a*).

(*h*) *In re Fitzgerald*, 2 Sch. &

(*f*) *Lysaught v. Royse*, 2 Sch. &

Lef. 438.

Lef. 153.

(*i*) *Sheldon v. Fortescue*, 3 P.

(*g*) 4 Rep. 127 b; Moor, 4, pl. 12;

Wms. 110.

The grant, like most other grants from the Crown, is made by letters patent under the great seal (*k*).

The issuing the commission of lunacy is under the direction of the great seal, and the care and custody of the persons and estates of lunatics belong to the Crown, to be provided for upon special application for the purpose. This duty of the Crown was to be performed according to the advice upon which the King might constitutionally act, and it has, therefore, long been the practice, from time to time, to authorize, by the King's sign manual, the person holding the great seal to exercise the discretion of the Crown in providing for the care and custody of the persons and estates of lunatics, which has been usually done by grants to committees. But though the discretion of the Crown has thus been delegated to the person holding the great seal, yet the superintendence of the conduct of the committee, in the management both of the property and of the person, originates in the authority of the Court of Chancery, as the Court from which the commission inquiring of the lunacy issues, and into which the inquisition is returned, and which makes the grant founded on the inquisition, for which grant the sign manual is a general warrant (*l*).

After the custody is granted, the keeper of the great seal acts in matters relative to the lunatic, not under the sign manual, but by virtue of his general power as keeper of the King's conscience; and the orders of the Court of Chancery in matters of lunacy are enforced by attachment, not as being warranted by the sign manual, but by the general power of the Court (*m*).

There are several instances of orders for committing parties to the Fleet for disobeying orders in lunacy (*n*).

(*k*) 1 Coll. on Lun. 97; 2 Bl. 1744; *In re Quick*, Dec. 1806; *In re Comm.* 346. But see statutes 39 & 40 Geo. 3, c. 88, s. 4; 47 Geo. 3, c. 21.

(*l*) *In re Fitzgerald*, 2 Sch. & Lef. 438.

(*m*) *Ex parte Grinstone*, 2 Ambl. 707. See 2 Sch. & Lef. 438; 6 Ves. 783.

(*n*) *In re Lord Wenman*, 20 Jan. 1721; *In re Pargiter*, 18 & 30 July, *Ex parte Jones*, 13 Ves. 237.

As the King is bound in conscience to execute the trust reposed in him by the statute, and cannot do it otherwise than by bailiff, the Chancellor, or person holding the great seal, is the proper authority to direct and control the authority of the person so appointed bailiff (*o*).

Upon every change in the persons having the custody of the great seal, a special authority under the sign manual is granted to the person or persons newly appointed, who have jurisdiction to alter or discharge the orders of their predecessors (*p*). Neither the Master of the Rolls, nor the Vice Chancellor, can sit for the Lord Chancellor, or make any orders in matters of lunacy (*q*).

The powers conferred by the statutes 11 G. 4 & 1 W. 4, cc. 60 and 65, and the acts thereby repealed, with respect to orders to be made for the conveyance and disposition of estates vested in lunatics, are given only to the Lord Chancellor, Lord Keeper, and Lords Commissioners of the Great Seal, *intrusted by the King's sign manual with the care and commitment of the persons and estates of lunatics*; and therefore, the orders to be obtained under the former acts must be made by the persons so intrusted; and it is conceived, that any orders made by the Master of the Rolls, or the Vice Chancellor, under those acts, respecting the estates of lunatics, would be invalid.

As it is impossible for the person holding the Great Seal, with the many important duties he has to perform, to examine and decide personally on the evidence of the numerous matters of fact which arise and must necessarily be determined respecting the care and management of the persons and estates of lunatics; after a party has been found a lunatic under a commission, the Lord Chancellor, on petition, refers such inquiries to one of the Masters in Chancery, who examines the matters referred to him, and then reports the result of such inquiries. The Lord Chancellor, on further application by petition, either confirms such report, or directs such further investigation, or makes such

(*o*) 2 Sch. & Lef. 439.

(*q*) See stat. 53 Geo. 3, c. 24,

(*p*) 4 Bro. C. C. by Eden, 235, in creating the office of Vice Chancellor of England.

other order as he thinks proper, and the nature of the case may require. If any parties interested are dissatisfied with the Master's report, they can carry into the Master's office objections in writing to the draft of the report; and after it has been settled by the Master, the parties objecting can bring the matter before the Lord Chancellor for his decision, by petition (supported by affidavits) setting forth the grounds of their objections to such report.

It is not the practice to except to the Master's reports in lunacy, as in causes in Chancery, but to bring the objections before the Court in a summary way by petition.

The appeal against proceedings touching the awarding or refusing commissions of lunacy, or any orders made in lunacy by the Lord Chancellor, does not lie in the ordinary course to the House of Lords, but immediately to the King in Council (*r*). But it seems to have been the opinion of Lord *Hardwicke*, that if an inquisition of lunacy was found and returned and afterwards traversed, and an erroneous judgment given on a trial in the Court of King's Bench, that a writ of error in Parliament would lie (*s*).

Where the persons of idiots or lunatics are amenable to the Chancellor's jurisdiction, the circumstance of their property being out of the jurisdiction is not material (*t*): nor is the jurisdiction lost merely by their being abroad (*u*); for the jury may be satisfied of the party's state of mind without an inspection; and a person found a lunatic by a competent jurisdiction abroad was considered a lunatic here, for the purpose of conveying as a mortgagee under 4 Geo. 2, c. 10 (*v*).

The existence of a commission in any of the colonies is no reason why a commission should not issue here when the

(*r*) 3 P. Wms. 107 and note (*a*); *Rochfort v. The Earl of Ely*, 1 Br. P. C. 450, Toml. ed.; 2 Ves. jun. 72; 4 Br. C. C. 238, in note; and see 7 Br. P. C. 473, Toml. ed. There is an appeal from an order in lunacy made by Lord *Brougham*, now (April, 1832) pending before the Privy Council. *In re Drax*. See *post*, ch. 5, s. 12.

(*s*) *Hovenden's Suppl. to Ves. jun. Vol. 1, p. 479; 3 Bl. Comm. 49, 427; 1 Cox, 418; but see 1 Vern. 131.*

(*t*) *Ex parte Annandale*, Ambl. 80; 4 Br. C. C. 236.

(*u*) *Ex parte Southcot*, 2 Ves. sen. 401; *S. C.* Ambl. 109.

(*v*) *Ex parte Otto Lewis*, 1 Ves. sen. 298.

lunatic comes to England ; for while the lunatic is here no Court has any authority over him or his property, unless a commission is taken out (*v*).

By two recent statutes (*w*), it is expressly provided, that the powers and authorities given by those acts to the Lord Chancellor of Great Britain, intrusted with the care and commitment of the custody of the persons and estates of persons found idiots, lunatics, or of unsound mind, shall extend to all land and stock wheresoever, within any of the dominions, plantations, and colonies belonging to his Majesty (except Scotland and Ireland).

Neither the lunatic nor his committee can present to a church; for, where the lunatic is seised of an advowson, the Lord Chancellor, by virtue of the general authority delegated to him, presents to the living, whatever the value of it be, usually, however, giving it to a member of the family. This right seems to have been first exercised by Lord *Talbot*, whose example has been followed by all his successors (*x*).

Generally speaking, the English law prevails in Ireland, and it is clear that all statutes made in England before the 10 Hen. 7, were extended to Ireland, and rendered of equal force there by one of *Poyning's laws* (*y*). But, before the union of the two kingdoms, acts of Parliament made in England since the 10 Hen. 7, in which Ireland was not expressly named, did not relate to that country. When that important event took place, in the year 1800 (*z*), and the two countries were incorporated together, it was expressly provided, that all laws in force in Ireland, at the time of the union, should remain as by law established, but subject to be altered by the united Parliament. Since the union, it should seem, that statutes made by the Parliament of the united kingdom extend to Ireland, though not specifically mentioned, unless expressly excluded; in the same manner and for the same reasons that Scotland is bound by English statutes since her union with England.

(*v*) *In re Houston*, 1 Russ. 312.

(*y*) See 4 Inst. 351; 1 Bl. Comm.

(*w*) 11 Geo. 4 & 1 Will. 4, c. 60, 103; Irish stat. 10 Hen. 7, c. 22.

s. 26, and c. 65, s. 39.

(*z*) 39 & 40 Geo. 3, c. 67.

(*x*) 1 Woodd. Lect. p. 409.

By the statutes 11 G. 4 & 1 W. 4, c. 60, s. 27, and c. 65, s. 40, it is provided, that the powers and authorities given by those acts to the Lord Chancellor of Great Britain, intrusted as aforesaid, shall be exercised by the Lord Chancellor of Ireland with respect to all land and stock in Ireland.

An inquisition taken in England under a commission of lunacy issued there, finding a person *non compos*, was held not a sufficient foundation for a grant of lands belonging to the lunatic in Ireland, but that there must be an inquisition and finding under the great seal in Ireland for that purpose (a).

But now, by statute 11 G. 4 & 1 W. 4, c. 65, s. 41 (b), it is provided, that in all cases where any person has been or shall be found lunatic or of unsound mind, and incapable of managing his or her affairs, by any inquisition of lunacy under the great seal of Great Britain, it shall be lawful for the proper officer, by order of the Lord Chancellor of Great Britain intrusted as aforesaid, to transmit a transcript of the record of such inquisition to the Chancery of Ireland, and such transcript shall thereupon be entered of record there; and in case a writ of *supersedeas* of any such commission shall issue, the issue of such writ shall be certified and transmitted and recorded in like manner; and the copies of the record of any such inquisition or *supersedeas* so transmitted and entered of record, shall, if the Lord Chancellor of Ireland shall see fit, be acted upon by him, and be of the same force and validity in Ireland as if such inquisition had been taken on a commission under the great seal of Ireland, and such writ of *supersedeas* had been issued under the great seal of Ireland; and a transcript of a like inquisition on a commission under the great seal of Ireland, and of a writ of *supersedeas* of any such commission, may be certified and transmitted to the Chancery of England, and recorded in like manner, and shall have the same force as if such inquisition and *supersedeas* had been taken and issued under the great seal of Great Britain. Under this statute an order may be obtained, on petition, that the proper officer

(a) *In re Duchess of Chandos*, 1 Sch. & Lef. 301.

(b) Re-enacting the 9 Geo. 4, c. 78, s. 3.

for that purpose, at the Petty Bag office, do transmit a transcript of the inquisition on a commission in the nature of a writ *de lunatico inquirendo* taken in the matter, to the Chancery of Ireland, to be thereupon entered of record, and be as of record, and to be acted upon there in the manner and for the purposes mentioned in that act (c).

If a lunatic die before office found, no inquisition can be taken; for the commissioners and jury may demand inspection, and the property is vested in other persons, so that no right accrues to the King (d).

If an idiot die after office found, but before possession has been taken of his property on behalf of the Crown, it may be seized into the King's hands, for the purpose of being restored to the right heirs (e).

An order does not abate by the death of a *non compos*; and therefore, a reference directed to the Master in his lifetime may, in some cases, be prosecuted, and the report made, after his death.

A reference to inquire who were the next of kin of a lunatic having been directed to the Master, and the lunatic having died before the report was made, a petition was preferred, that the Master might, nevertheless, be ordered to make a report. Lord Chancellor *Thurlow* decided, that the order did not abate by the death of the lunatic; and that any party might prosecute it and take out the report (f). In one case, exceptions taken to the Master's report by the heir-at-law of a lunatic, were decided after the death of the lunatic (g). An order may be made in lunacy, after the death of a *non compos*, on a petition preferred in his lifetime. A reference having been directed to the Master, to inquire what demands were outstanding against a lunatic and his estate, and how they should be discharged, a creditor claimed a debt which the Master disallowed; no report was made under that reference. The creditor preferred a

(c) *In re Lord Creighton*, 29 Oct. 1828.

(d) 4 Rep. 127 a.

(e) *Staundf. Pr. Reg.* 35 (b).

(f) *Ex parte Armstrong*, 3 Bro. C. C. 238.

(g) *In re Roberts*, 3 Atk. 338. It is not now the practice to except to the Master's report in matters in lunacy, but to state any objections to it by petition.

petition, that his claim might be admitted, or put in a course of trial. The lunatic died before the petition came to a hearing; and it was insisted, that no order could be made in lunacy, after the death of a lunatic, except upon the report of a Master in his lifetime.

Lord Chancellor *Erskine* said, the universal course in the case of a petition preferred during the life of the lunatic, is to apply the fund in discharge of the different creditors, unless there is reasonable doubt whether the debt exists; which must be made the subject of consideration at law: but when it is ascertained, that the creditor has a demand, it is paid out of the funds of the lunatic. The petition was ordered to be retained; and what should be ascertained due by the verdict, in an action to be brought by the petitioner, was to be paid out of the lunatic's estate (*h*). But a petition presented after the death of the lunatic, and after the time, therefore, when the administrator was entitled to full possession, will be refused (*i*).

The Chancellor sitting in lunacy not having any direct jurisdiction for deciding the rights of third parties, as well as on account of the difficulty of getting any decision reversed, sometimes directs a bill to be filed, where there are conflicting claims between the real and personal representatives of the lunatic, after his death (*k*).

The Court, in some cases, exercises jurisdiction after the death of the lunatic, and, in one case, compelled a party to execute a conveyance, after the death of the lunatic, by attachment (*l*). But, where there had been a reference to the Master, in the lifetime of the lunatic, to inquire whether it would be proper to sell or mortgage any part of the lunatic's estate, for payment of his debts, the Lord Chancellor refused, after the death of the lunatic, to order the Master to proceed with the inquiries directed by the former order (*m*).

Though the Chancellor has no jurisdiction in lunacy, af-

(*h*) *Ex parte M'Dougal*, 12 Ves. 384.

(*k*) *Ex parte Broomfield*, 1 Ves. jun. 463; *Ex parte Phillips*, 19 Ves. 122.

(*i*) *Garnet's case*, and *Pochin's case*, cited 12 Ves. 385. See *post*, c.

5, s. 12.

(*l*) *Ex parte Roberts*, 3 Atk. 308; Amb. 707.

(*m*) *In re Holmes*, 19 Aug. 1831.

ter the death of the lunatic, to try the question of heirship, yet, under particular circumstances, possession of his estates was ordered to be given to the parties reported by the Master to be heirs-at-law; but without prejudice to any other person. And another party claiming to be heir to the lunatic, was permitted by the Court, on petition, after the possession of the estates had been given up to the parties reported to be heirs, to inspect deeds and documents remaining in the Master's office, which, it seems, may be retained till a proper investigation has taken place (n).

But, where the title deeds of an estate belonging to a deceased lunatic had been lodged in Court, pursuant to an order, the Court refused to make an order for inspecting them on behalf of the person claiming as heir of the lunatic, until a bill should be filed, and the deeds transferred to the credit of that cause (o).

The control which the Court has over the committee of a lunatic does not determine by his death; but the committee continues liable to account, and to all the consequences of any misconduct on his part, and bound to act in delivering possession of the estates as the Court shall direct (p). And a receiver of the lunatic's estate may be ordered to continue to act, until the arrears of the rents and profits, due at the time of the decease of the lunatic, shall be paid and satisfied (q).

It was held, that the statute 39 & 40 Geo. 3, c. 56, which enabled the Court of Chancery to order money directed to be laid out in the purchase of lands, to be paid to the persons who would be entitled to estates tail therein, applied only to money in the hands of individuals as trustees, or under the control of Courts of equity, and that it did not therefore give any jurisdiction in lunacy (r). It has, however, been held, that, under the statute 7 Geo. 4, c. 45 (s),

(n) *Ex parte Clarke, In re The Duchess of Norfolk*, Jac. Rep. 589.

(o) *In re Fitzgerald*, 2 Sch. & Lef. 442.

(p) *In re Fitzgerald*, 2 Sch. & Lef. 440.

(q) *Ex parte Clarke, In re Duch-*

ess of Norfolk, Jac. Rep. 589.

(r) *Ex parte Verney*, Jac. Rep. 234.

(s) The statute 58 Geo. 3, c. 46, contains similar provisions with respect to Ireland.

which repealed the former act, an order for transfer may be obtained in lunacy. Thus, where the Master had found, by his report, that certain stocks were standing in the names of a deceased lunatic and of another person in the books of the Bank of England; and that the petitioner was entitled, as tenant in tail in equity under a will, to have the same and other funds transferred to him, instead of being laid out in the purchase of lands, to be settled to uses under which he would have been tenant in tail, the Lord Chancellor confirmed the Master's report, and declared, that the petitioner was entitled, as tenant in tail in equity under the will in question, to the lands thereby directed to be purchased, and to the benefit of the provisions of the 7 Geo. 4, c. 45; and ordered such funds to be transferred into the name of the petitioner (*t*).

The office of Secretary of lunatics and idiots is one of antiquity, and such Secretary is a servant to the Lord Chancellor for the time being, and is appointed by parol only, takes no oath of office, and is removable at pleasure (*u*).

It is the duty of the Secretary of lunatics to consider and present all petitions to the Lord Chancellor relating to commissions of lunacy or idiocy, and to all matters arising out of them. Such Secretary takes minutes in Court, on the hearing of such petitions as are set down and required to be heard, and draws up the orders; which orders are signed by the Lord Chancellor, whether made in the first instance, as of course, or afterwards, upon the hearing. Such Secretary also files all affidavits relating to such proceedings, makes and delivers copies thereof, and enters the petitions answered by the Lord Chancellor, and the orders made by his Lordship, in books kept for the purpose (*v*).

The Secretary attends the Lord Chancellor in the Court

(*t*) *In re Emmett*, 27 June, 1827.

(*v*) See Report of Commissioners

appointed to make a survey of the different Courts in England and Wales, as to the Court of Chancery; ordered by the House of Commons to be printed, 20th February, 1815, p. 69.

for examining into the duties, &c. of the officers, &c., of the several Courts of Justice in England and Wales, as to the Court of Chancery; ordered by the House of Commons to be printed, 6th June, 1816, p. 133.

of Chancery, in Parliament, and at Court. The duties of the Lunatic office are performed by the Secretary, assisted by a Deputy Secretary and clerks, entirely paid by the principal Secretary. This officer receives no salary, or other emolument than the fees mentioned in the appendix (w). An annual allowance was formerly made to him through the Hanaper office for stationery, but this has been withdrawn.

The hours of attendance at the office of Secretary of Lunatics in Southampton Buildings are from nine in the morning till four in the afternoon, and from six till eight in the evening.

It is the duty of the Clerk of the custodies of idiots and lunatics, to make out commissions of idiocy and lunacy, and to do other acts in relation to such commissions; the particulars whereof may be collected from the statement of the proceedings upon which his fees are received. The duties are performed by one person, who considers himself both deputy and under clerk; as deputy, he is paid by his principal altogether; as under clerk, he is paid by certain gratuities, which he has been in the practice of receiving for his own use. The principal has no salary. The office hours are from ten in the morning till two in the afternoon, and from five till eight in the evening. The holidays kept, are Christmas-day and the two following days, Good Friday, and the Monday and Tuesday in Easter and Whitsun weeks (x).

The regular Commissioners of lunatics in London are five in number, and are appointed by the Lord Chancellor, who signifies such appointment to the Secretary of Lunatics, and directs him to insert their names in the list of regular Commissioners.

When a commission in the nature of a writ *de lunatico inquirendo* has issued, the Commissioners sign a precept to the sheriff for summoning a jury to execute the commission, and they sign also the process for procuring the attendance of the witnesses who are to be examined. At the time and place mentioned in the precept, three of the Commissioners attend and execute the commission, by taking the inquisition

(w) See Appendix.

(x) See last-mentioned Report, pp. 134, 136.

found by the jury, which inquisition they sign, seal, and return to the Lord Chancellor.

They are entitled to receive no salaries or other emoluments beyond the fees mentioned in the Appendix (*y*), which appeared by the report of the Commissioners to have been received for twenty years and upwards (*x*).

The Clerk of the custody of papers in matters of idiots and lunatics in Ireland, is an officer in the nomination of the Lord Chancellor of Ireland, and has usually been the same person who filled the situation of his Lordship's Secretary.

The duties of this office are few, consisting of the custody and preservation of all petitions, affidavits, reports, and accounts, in matters of idiots and lunatics, and the making out and attesting copies of those documents, and of the orders which may have been made on the petitions lodged with him (*a*).

With respect to the jurisdiction in the English colonies, it appears that the several Governors of Dominica (*b*), Antigua (*c*), Nevis (*d*), St. Christopher (*e*), Jamaica (*f*), and the Bahamas (*g*), have express authority given to them by their respective commissions, to make orders and directions for preparing grants for the custody or commitment of lunatics within their jurisdiction.

In Barbadoes (*h*), Tobago (*i*), Grenada (*k*), and Tortola (*l*),

(*y*) See Appendix.

(*e*) Id. p. 69.

(*x*) See last-mentioned Report, pp. 136, 137.

(*f*) First Report of Commissioners of inquiry into the administration of justice in the West Indies; ordered by the House of Commons to be printed, 29th June, 1827, pp. 61, 204.

(*a*) First Report of Commissioners to inquire into duties, &c. of the officers of Justice in the Courts in Ireland; ordered by the House of Commons to be printed, 6th February, 1817, pp. 99, 324.

(*g*) Third Report, &c.; ordered to be printed, 12th June, 1829, pp. 65, 131.

(*b*) See Second Report of the Commissioner of inquiry into the administration of Justice in the West Indies; ordered by the House of Commons to be printed, 18th April, 1826, p. 34.

(*h*) First Report of Commissioners of inquiry, &c., p. 20.

(*i*) Id. p. 128.

(*k*) Ibid.

(*c*) Id. p. 68.

(*l*) Second Report of Commissioners, &c., p. 69.

(*d*) Ibid.

no special authority in lunacy is delegated to the respective Governors, but the jurisdiction is exercised by the Court of Chancery in those places.

In the united colony of Demerara and Essequibo, and colony of Berbice, where the Dutch law prevails, the superior Court has authority to appoint curators over the person and property of idiots, prodigals, and lunatics (*m*).

SECTION III.

Of the Jurisdiction in Scotland.

BY the 18th article of the union of England and Scotland, which was effected in the reign of Queen Anne (*n*), it is ordained, that all the then existing Scotch laws should remain in force, alterable, however, by the united Parliament of Great Britain; so that the municipal or common laws of England are, generally speaking, of no force or validity in Scotland, though, since the union, general statutes passed in England bind and extend to Scotland, even if that country be not particularly mentioned; the usual method when it is intended not to include Scotland, is to add a proviso to that effect (*o*).

The law of Scotland provides curators, not only for minors, but for every person who, either from a total defect of judgment, or, secondly, from a disordered brain, or, thirdly, from the wrong texture or disposition of the organs, is naturally incapable of managing his affairs with discretion.

Of the first class, are fatuous persons, called also idiots in the law of Scotland, who are entirely deprived of the faculty of reason, and have an uniform stupidity and inatten-

(*m*) Second Report of Commissioners of inquiry into the administration of justice in the West Indies and South American colonies; ordered by the House of Commons to be printed, 25th July, 1828; p. 68.

(*n*) 5 & 6 Anne, ch. 8.

(*o*) See 2 Burrow's Rep. 853.

tion in their manner, and childishness in their speech, which generally distinguish them from other men; and this disorder of mind is commonly from birth, and incurable. Furious persons, who may be ranked in the second class, cannot be said to be deprived of judgment, for they are frequently known to reason with acuteness; but an excess of spirits, and an overheated imagination, obstruct the application of their reason to the ordinary purposes of life; and their infirmity is generally brought on by sickness, disappointment, or other external accidents, and frequently interrupted by lucid intervals. Under these may be included madmen, though their madness should not discover itself by acts of fury, but by a certain wildness of behaviour flowing from a disturbed fancy. Lunatics are those who are seized with periodical fits of frenzy. Some doctors distinguish between fatuity and a certain degree of imbecility, which nearly approaches to it (p).

The guardianship of all unprotected persons, by reason of weakness of understanding, by extreme youth, natural infirmity of talent, by nature or disease, was formerly vested in the Crown. The King, as *pater patriæ*, was clothed with authority to do this; and, as a matter of course, where persons, within the age of pupilarity, have neither testamentary tutors appointed to them, nor a tutor at law, served to the office, his Majesty, through his Exchequer, still bestows a gift of tutory on some one to protect the pupil. It was his Majesty's privilege and right to name protectors at pleasure, to persons visited by furiosity or imbecility of intellect, till his right was limited by the statute 1585, c. 18, which enacted, "That the nearest agnates and kinmen of natural fools, idiots, and furious persons, shall be served, received, and presented, according to the disposition of the common law, to their tutory and curatory" (g).

By the common law, in the above passage, is meant the civil law in force in Scotland.

The Barons of the Exchequer in Scotland exercise the

(p) Erskine Inst. by Ivory, 198, (g) See Craig, lib. 2, Dieg. 20, sect. 199; see principles of Law of Scotland, by Wallace, Vol. 1, book 6, tit. 1 Stair's Inst. 52.

King's prerogative in the same manner, nearly, as the Chancellor in England, but neither of them is subject to the laws of the other (*r*).

The regular method pointed out by the law of Scotland for declaring fatuity or furiosity is, by brieves [*writs*] issuing from the Chancery there, directed to the Judge ordinary of the territory, where the person who is said to be fatuous or furious resides, directing such Judge to call an inquest for inquiring, first, into the person's true state; and, secondly, on whom the office of curatory may be conferred. The person concerning whom the inquiry is directed ought to be made a party to the brief, because, if he be truly of sound mind, he has good interest to oppose it; and instances have occurred of such brieves being advocated upon the party's opposition (*s*).

The law of Scotland commits the care of fatuous and furious persons to the next male agnate, of the age of twenty-five years. A father has a natural right to the curatory of his fatuous or furious son: and a husband, as his wife's administrator in law, excludes agnates, in the case of her fatuity (*t*).

When the service is returned to the Chancery in Scotland, a letter of tutory is granted in the King's name, appointing him tutor who is found by the inquest to be the nearest agnate, and a proper person; but the party may be cognosced to be in such a state as to want tutors; and the next agnate, notwithstanding, may decline the tutory, or perhaps the inquest may return that there is none capable of the office: in this case, application must be made to the Exchequer in Scotland for a tutory dative to the idiot or madman (*u*).

In the tutory of idiots, madmen, or other persons incapable, the next agnate may claim preference at any time, and that, even though another was appointed tutor dative in the mean time: because of the probable interest he has in the succession to the estate, which, therefore, he is presumed to take best care of (*v*).

(*r*) 11 & 12 Vol. Dict. of Decisions, p. 4596.

(*s*) Erskine's Inst. by Ivory, 200.

(*t*) Id. 200, 201.

(*u*) 1 M'Douall's Inst. of Laws of Scotland, 166.

(*v*) Id. 166.

The tutor is accountable, and must find caution, for his faithful administration, and give his oath likewise to the same purpose (*w*).

Where the person under curatory has recovered his faculties, the Court will not discharge the curator until he has, in the first instance, accounted with his principal (*x*).

A tutor to an idiot, &c., cannot alienate the heritable subjects of the idiot, or other person under his charge, more than any other tutor can (*y*).

One of the heads of the brief of idiocy is, to inquire at what time the person fell into that condition; so that the deeds granted by him after the time fixed by the inquest as the commencement of his disorder, are void; but though no service of idiocy did proceed, the party himself, on his convalescence, or his representatives, may reduce deeds granted by him during the furiosity. In case of lunacy, where the party has lucid intervals, the deed, according to its complexion, will be presumed to have been granted in the time either of the furiosity or intermission; but otherwise the presumption lies for the deed (*z*).

And a verdict on such an inquiry is a sufficient foundation, without further evidence, for setting aside, not only all such deeds of the fatuous person as were granted after producing the evidence to the inquest, but likewise such as were granted before that, if after the time when, according to the proof, the fatuity began (*a*).

The person alleged to be fatuous and furious ought regularly to be exhibited to the inquest, that they may be the better able, after conferring with him, to form a judgment of his state from their own knowledge; and this holds more especially in the cases of fatuity, and of a distempered brain, which are habitudes not quite so obvious to the senses as furiosity, and, in some cases, hardly to be discovered but by conference. The verdict, therefore, of the inquest, concerning the person's present condition, is grounded on the conviction arising in their breasts from what they have seen;

(*w*) Id. 206.

(*x*) Miller, 15th May, 1810; Fac.

Coll.

(*y*) 1 M'Douall's Inst. 166.

(*z*) Ibid.

(*a*) Erskine's Inst. by Ivory 200,

but that part of it which relates to his past state must, of necessity, rest on the testimony of witnesses.

As fatuous and furious persons are, by their very state, incapable of consent, and consequently of obligation, all deeds granted by them may be declared void, by an action before the Court of Session, at the suit even of their heirs, upon proper evidence by witnesses of their fatuity or furiosity at the time of signing, though they should never have been cognosced idiots, during their lives, by an inquest (b).

Some few instances occur of the Sovereign's giving curators to idiots, where the next agnate has not claimed the office; but such gifts are a deviation from the law, since they pass without any inquiry into the state of the person to whom the curator is appointed; and they are admitted only from necessity, that the affairs of the idiot may not suffer. Hence, the curator of law to an idiot, though he should not serve till after the year in which he might have served, is preferred to the tutor dative as soon as he offers himself (c).

In a late case, the appointment of a curator was resisted, in the name of the party said to be imbecile; and it was argued, that he could not be deprived of his right to conduct his own affairs, unless regularly cognosced by a Jury. The Court, however, having remitted to the Sheriff to receive evidence, and being satisfied, on his report, and after a hearing in presence, of the necessity of a curator, sustained their appointment. On appeal to the House of Lords, the case was remitted to the Court of Session in Scotland, for the opinion of the fifteen Judges, to reconsider the case, particularly as to the power of the Court to proceed without a cognition (d).

The majority of the Judges, held that the Court has power to appoint a curator *bonis*; whose appointment, although in its own nature temporary, must continue, either till evidence of convalescence be adduced, or a tutor at law has been served; and secondly, that the Court has no power to

(b) Erskine's Inst. by Ivory, 202.

(d) *Bryce v. Graham*, 2 Wilson & Shaw, 481.

(c) *Ibid.*

compel any party to sue out a brief of cognition, and therefore they cannot limit the appointment to any definite period. And the Court refused to recall the nomination of the curator (*e*); which judgment, on appeal to the House of Lords, was affirmed without costs (*f*).

Persons, let them be ever so profuse, or liable to be imposed upon, if they have the exercise of reason, can by the law of Scotland effectually oblige themselves, till they be fettered by the methods of law. This is done by interdiction; which may be defined, a legal restraint laid upon those who, either through their profuseness, or the extreme facility of their tempers, are too easily induced to make hurtful conveyances, by which they are disabled from signing any deed without the consent of their curators, who are called *interdictors*. Interdiction is either voluntary or judicial. In voluntary interdiction, the person to be interdicted agrees to the restraint. This sort is generally executed by a writing in the form of an obligation, by which the grantor, sensible of his own unfitness for business, binds himself not to do any act with respect to his estates, without the consent of those persons whom, by the deed, he authorizes to superintend for him, or, in other words, without whose consent he binds himself not to act (*g*).

By the Roman law, there could be no interdiction, without a previous inquiry into the condition of him who was to be laid under it; for it was deemed contrary to the nature of property, that any man should be subjected, even by his own consent, in the disposal of his estate, to the humour or caprice of another, without legal grounds.

Voluntary interdiction, after it is imposed, cannot be recalled at the pleasure of the party interdicted; but may, by process before the Court of Session at his suit, or by the mutual consent of the party and his interdictor (*h*).

Judicial interdiction is imposed by a sentence of the Judge, disabling persons of profuse or facile dispositions from grant-

(*e*) *Bryce v. Graham*, 6 Shaw & Dunlop, Cases in the Court of Session, p. 425.

(*f*) *S. C.* 3 Wilson & Shaw, 323.

(*g*) *Erskine's Inst.* by Ivory, 203. See 3 Wilson & Shaw, 324.

(*h*) See *Erskine's Inst.* by Ivory,

203-4.

ing deeds to their prejudice, without the consent of interdictors.

The cognizance of judicial interdictions belongs to the Court of Session, where sentence proceeds either *first, post causam cognitam*, upon an action brought against the prodigal by his heir, or his next of kin; or, *secondly, ex nobili officio* of the Judge; who, if he perceive, during the pendency of a suit, that either of the litigants is from the facility of his temper subject to imposition, will interdict him, *ex proprio motu*. The sentence of the Court imposing this restraint has no retrospective quality, as a verdict upon a brief of idiocy has. Judicial interdiction cannot be taken off but by the authority of the same Court which imposed it, finding that the party is become sane. And this authority secures all who shall contract with him, though the strongest evidence should be brought, that he still continues profuse, or liable to be imposed upon; for, as it was the sentence of the Court which alone gave force to the restraint, the same authority is sufficient to take it off (*x*).

The law of Scotland, as to excusing persons from punishment who have committed crimes under the influence of insanity, seems, for the most part, like that of England (*y*).

(*x*) See *Erskine's Inst.* by Ivory, 1 Vol. pp. 36 to 44, 2nd ed. The trial of Sir A. G. Kinloch, for murder, 25 Vol. Howell's State Trials, p. 891. See *post*, ch. xii. s. 1.

(*y*) See 1 Hume's Comm. on the Law of Scotland respecting Crimes, p. 891. See *post*, ch. xii. s. 1.

CHAPTER III.

OF EVIDENCE RESPECTING THE EXISTENCE OF INSANITY.

BEFORE any person is deprived of his personal liberty, or power of entering into contracts binding himself or his property, or exonerated from the penal consequences attending acts of a criminal nature, on the ground of insanity, clear and satisfactory evidence must be adduced to prove that the party labours under such alleged incapacity, in order that persons may not be cruelly debarred of their liberty, or power of contracting, or exempted from punishment, on slight and insufficient grounds. The existence of insanity is a fact, which, by the law of England, is not in general decided without the intervention of the verdict of a jury (*a*), whose decision in such cases, as in other questions of fact, ought to be founded on clear and unexceptionable evidence submitted to their consideration. On inquiries upon this subject the same general rules of evidence are to be observed as in other trials. It is the correct practice, where the question turns on the sanity of a party, to give particular acts of madness in evidence, and not general

(*a*) There has been a departure from this principle in some modern acts of Parliament, 1 & 2 Geo. 4, c. 114; 6 Geo. 4, c. 74, and 11 Geo. 4 & 1 Will. 4, c. 60, s. 5, enabling the Lord Chancellor, in certain cases, to appoint a person to convey and transfer lands and stock vested in lunatics as trustees, who have not been found such by inquisition; and in such cases the existence of unsoundness of mind is determined on affidavit only, either by the Lord Chancellor or by a Master in Chancery, to whom the matter is referred. See *post*, ch. viii. s. 3.

In proceedings in the Ecclesiastical Courts, insanity, like other facts, is proved by the examination of witnesses on interrogatories in writing.

evidence that the party is insane (*a*). Reason, being the common gift to man, raises the general presumption that every man is in a state of sanity, and that *insanity* ought to be proved; and in favour of liberty and of that dominion which, by the law of nature, men are entitled to exercise over their own persons and properties, it is a presumption of the law of England, that every person, who has attained the usual age of discretion, is of sound mind until the contrary is proved: and this holds as well in civil as in criminal cases (*b*).

Insanity is in many cases a state of mind not only not easily reducible to any correct definition, but not easily ascertained, being frequently a disorder in those faculties, with the sound state of which mankind in general has made but a very moderate progress. But experience and observation will shew, that insanity may subsist in various degrees, sometimes slight, as partaking rather of disposition or humour, which will not incapacitate a man from managing his own affairs, or making a valid contract. It must be something more than this, something which, if there be any test, affords demonstrative proof of the incapacity of the individual to be trusted with the management of himself and his own concerns. Madness, when not raving, is sometimes an invisible quality, but it discovers itself, it presents its symptoms, it betrays and accuses itself by the most ordinary actions. The habit, the exterior appearance, the conversation, and other actions of a man, may furnish proofs of insanity, on account of their extravagant and unreasonable nature. But, as it is an habitual state or disposition, and generally a permanent affection of the mind, its existence must be proved, not by one instance of unreasonable conduct, but by reiterated acts, and a multiplicity of actions, by the testimony of persons who have been attentive observers of them.

In the general relations of life, a man may be thoughtless, ridiculous, and extravagant; yet such errors will not be sufficient to fix the charge of insanity, which consists either

(*a*) 2 Atk. 340.

(*b*) 1 Hale's P. C. 33.

in false perceptions, or erroneous reasoning on objects distinguished in their true colours. Many individuals of this kind require guardians of their property, as much as persons really insane; but the law of England does not sanction the exercise of any such discretionary power. The difficulty arises when this wild absurd conduct is attended with such inconsistencies as lead to the suspicion that the perceptions or the reason are affected. Under such circumstances individuals are proper subjects for the advice and remonstrance of friends, who may induce them to adopt a more prudent course of conduct, but not for the restraints imposed by law on lunatics.

2. The judicial investigations of insanity are, for the most part, confined to the inquiry whether such a state of incapacity arising from insanity exists, as actually disqualifies the person whose sanity is disputed, from conducting himself with personal safety to himself or others, or from managing and disposing of his own affairs and property.

Weakness of mind and insanity are susceptible of degrees and considerable differences; incapacity may increase and diminish in proportion to these degrees and these differences; but it is impossible to fix them in general, or to mark precisely the frontiers, the almost imperceptible limits, which separate insanity from sanity, or to number the degrees by which reason declines and falls into annihilation. It is necessary to consider such degrees so far only as they afford circumstances of evidence of legal competency or incompetency of mind.

A person's being of weak understanding, is not of itself any objection in law to his disposing of his estates. Courts will not measure the extent of people's understandings or capacities; if a man, therefore, be legally *compos mentis*, be he wise or unwise, he is the disposer of his own property, and his will stands as a reason for his actions; and there is no such thing as an equitable incapacity where there is a legal capacity (c).

The doubtful and uncertain point at which reason disap-

(c) *Osmond v. Fitzroy*, 3 P. Wms. 128; *Willis v. Jernegan*, 2 Atk. 251.

pears, and where incapacity becomes evident and manifest, can be ascertained only by an examination of the particular circumstances of each individual case requiring decision.

From the diversity of views which have been taken of the precise condition of the mind which constitutes insanity, some important conclusions may be deduced—*First*, that all the faculties of the mind are capable of being affected in the maniacal state, though not always equally, or at one and the same time—*Secondly*, that it is hardly possible to express in words the nice distinctions that mark the boundaries of reason and insanity, or to specify the delicate gradations by which weakness of intellect, depression of spirits, violence of temper, and eccentricity of manner, degenerate into actual disease—*Thirdly*, that, in determining the question of sanity or lunacy, the common sense of mankind must ultimately be relied on; and that its decision cannot receive much assistance from metaphysical speculations, although a general knowledge of the faculties of the human mind and their mode of operation, will afford much assistance in leading to correct conclusions respecting insanity.

3. In deciding whether a party is of sound or unsound mind, one of the most important points to be considered, and which should be distinctly ascertained, as far as it can be fixed, is, what is the test and criterion of unsound mind, and where eccentricity or caprice ends, and derangement commences. Derangement assumes a thousand different shapes, as various as the shades of human character. It shews itself in forms very dissimilar both in character and in degree. It exists in all imaginable varieties from the frantic maniac, chained down to the floor, to the person apparently rational on all subjects, and in all transactions save one; and whose disorder, though latently perverting the mind, yet will not be called forth, except under particular circumstances, and will shew itself only occasionally. We have heard of persons at large in Bedlam, acting as servants in the institution, shewing other maniacs, and describing their cases, yet being themselves essentially mad. We have heard of the person who fancied himself Duke of Hexham, yet acted as agent and steward to his own committee. It

has probably happened to most persons who have made a considerable advance in life, to have had personal opportunities of seeing some of these varieties, and the intermediate cases between mere eccentricity and absolute phrensy—maniacs who, though they could talk rationally, and conduct themselves correctly, and reason rightly, nay, with force and ability, on ordinary subjects, yet, on others, were in a complete state of delusion, which delusion no argument or proofs could remove. In common parlance, it is true, some say a person is mad when he does any strange or absurd act; others do not conceive the term madness to be properly applied, unless the person is frantic (c).

4. A *sound mind* is one wholly free from delusion, all the intellectual faculties existing in a certain degree of vigour and harmony; the propensities, affections, and passions being under the subordination of the judgment and the will, the former being the controlling power, with a just perception of the natural connexion or repugnancy of ideas. Weak minds, again, only differ from strong ones in the extent and power of their faculties; but, unless they betray symptoms of a total loss of understanding, or of idiocy, or of delusion, they cannot properly be considered unsound.

An *unsound mind*, on the contrary, is marked by delusion, mingles ideas of imagination with those of reality, those of reflection with those of sensation, and mistakes the one for the other. And such delusion is often accompanied with an apparent insensibility to, or perversion of, those feelings which are peculiarly characteristic of our nature. Some lunatics, for instance, are callous to a just sense of affection, decency, or honour; they hate those without a cause, who were formerly most dear to them; others take delight in cruelty; many are more or less offended at not receiving that attention to which their delusions persuade them they are entitled.

Retention of memory, display of talents, enjoyment in amusing games, and an appearance of rationality on various subjects, are not inconsistent with unsoundness of mind; hence, sometimes arises the difficulty of distinguishing between sanity and insanity. The man of insane mind from

(c) See *Dew v. Clark*, reported by Haggard, p. 5; *S. C.* 3 Add. 87, 88.

disease, having been once *compos mentis*, pertinaciously adheres to some *delusive idea*, in opposition to the plainest evidence of its falsity; and endeavours, by the most ingenious arguments, however fallacious they may be, to support his opinion (*d*).

5. The true criterion, the true test, of the absence or presence of insanity, where there is no frenzy or raving madness, seems to be the absence or presence of what, used in a certain sense of it, may be comprised in a single term, namely, *delusion*. Wherever the patient once conceives something extravagant to exist, which has still no existence whatever but in his own heated imagination; and, wherever, at the same time, having once so conceived, he is incapable of being, or, at least, of being *permanently* reasoned out of that conception—such a patient is said to be under a *delusion*.

Insane delusion consists in the belief of facts which no rational person would have believed. This delusion may sometimes exist on one or two particular subjects, though, generally, there are other concomitant circumstances, such as eccentricity, irritability, violence, suspicion, exaggeration, inconsistency, and other marks and symptoms, which may tend to confirm the existence of delusion, and to establish its insane character.

The absence or presence of delusion, so understood, forms the true and only test, or criterion, of absent or present insanity. In short, delusion in that sense of it, and insanity, seem to be almost, if not altogether, convertible terms; so that a patient under a delusion, so understood, on any subject or subjects, in any degree, is, for that reason essentially mad or insane on such subject or subjects in that degree. On the contrary, in the absence of any such delusion, with whatever extravagances a supposed lunatic may be justly chargeable, and how like soever to a real madman he may either speak or act on some or on all subjects; still, in the absence of any thing in the nature of *delusion*, so understood, the supposed lunatic is not properly or essentially insane (*e*).

(*d*) Willis on Mental Derangements, p. 17.

(*e*) Per Sir J. Nicholl, in *Dew v. Clark*, 3 Add. 90, 91.

In most cases of delusion, the delusion founds itself, originally, on some slight circumstance, the magnifying of which, beyond all reasonable bounds, is nearly or quite as good in proof of its being a delusion, as the taking up some absurd prejudice, which is utterly *unfounded*, or that rests upon *no* basis. If one whose eyesight is *slightly* affected, conceives, and in spite of all argument persists in and acts under a conception that he is *totally blind*, this is as perfectly a delusion on the part of that person, as if nothing at all were the matter with his eyes. If another, the proprietor of a large domain, on the loss of a comparatively *small* portion, is *convinced to himself* that he has been deprived of the whole of it; if he persists in that conviction, in spite both of argument and of evidence to the contrary—not only so, if he suffers that conviction to poison and preclude his enjoyment of the ample portion that still remains to him, during and throughout all the rest of his life—this is as essentially a delusion on the part of such person, as if he was still in possession of every acre of his original estate.

So, if the parent of a child, *really* blameable to a certain extent in some particulars, takes occasion from this to fancy her a “fiend, a monster, an incarnate devil;” if, moreover, he be found through his whole life acting under and upon that conception, such a parent is as much in a state of morbid delusion, and so of insanity in regard to that child, as if the child’s conduct were wholly irreproachable (*f*).

6. When delusion exists in the mind of a person on one or more particular subjects, it is termed in law *partial insanity*. In that sense the term is used by Lord *Hale*, who says, there is a partial insanity of mind, and a total insanity. The former is either in respect to things, *quoad hoc vel illud insanire*; some persons, that have a competent use of reason in respect of some subjects, are yet under a particular *dementia* in respect of some particular discourses, subjects, or applications; or else it is partial in respect of degrees; and this is the condition of very many, especially melancholy persons, who, for the most part, discover their defect in ex-

(*f*) *Per* Sir *J. Nicholl*, in *Dew v. Clark*, 3 Add. 180, 181; and report of *S. C.* by *Hagg.* 27.

cessive fears and griefs, and yet are not wholly destitute of the use of reason; and this partial insanity seems not to excuse them in the committing of any offence for its matter capital; for doubtless, most persons that are felons of themselves, and others, are under a degree of partial insanity when they commit these offences. It is very difficult to define the invisible line that divides perfect and partial insanity; but it must rest upon circumstances, duly to be weighed and considered both by judge and jury; lest, on the one side, there be a kind of inhumanity towards the defects of human nature; or, on the other side, too great an indulgence given to great crimes: and the same learned judge adds, "that the best measure is this—such a person as labouring under melancholy distempers hath yet ordinarily as great understanding, as ordinarily a child of fourteen years hath, is such a person as may be guilty of treason or felony (g)."

The law recognises partial insanity; and, in civil cases, this partial insanity, if existing at the time the act is done, if there be no clear lucid interval, invalidates the act, though not directly connected with the act itself; but, in criminal acts, it does not excuse from responsibility, unless the insanity is proved to be the very cause of the act (h). It is stated in *Hadfield's* case, that there is a wide distinction between civil and criminal cases. If, in the former, a man appears upon the evidence to be *non compos mentis*, the law avoids his act, though it cannot be traced or connected with the morbid imagination which constitutes his disease, and which may be extremely partial in its influence upon conduct; but, to deliver a man from responsibility for crimes, above all, for crimes of great atrocity, this rule does not apply, however well established when property only is concerned; but the relation between the disease and the act should be apparent. And a party ought not to be protected from answering criminally for acts which can justly be ascribed to malignant motives, and not to the dominion of disease.

(g) 1 Hale's P. C. 30.

ported by Hagg. p. 13; S. C. 3 Add

(h) This doctrine is recognised by

93.

Sir J. Nicholl in *Dew v. Clark*, re-

The doctrine of partial insanity is applicable to civil cases generally, although an attempt to shew the contrary was made in a recent case (*i*), and will avail to defeat a will, the direct offspring of that partial insanity, both in the Courts of common law, and in the Ecclesiastical Court (*k*).

In all the cases of lunacy which have filled Westminster Hall with the most complicated considerations, the subjects of them have not only had memory, and a perfect knowledge and recollection of all the relations they stood in towards others, and of the acts and circumstances of their lives, but have, in general, been remarkable for subtilty and acuteness. Defects in their reasonings have seldom been traceable, the disease consisting in the delusive sources of thought; all their deductions within the scope of the malady being founded upon the *immoveable* assumption of matters as *realities*, either without any foundation whatsoever, or so distorted and disfigured by *fancy*, as to be nearly the same thing as its creation. It is true, indeed, that in some, perhaps in many cases, the human mind is stormed in its citadel, and laid prostrate under the stroke of phrensy: these unhappy sufferers, however, are not considered by physicians as maniacs, but to be in a state of *delirium*, as from fever. There, indeed, all the ideas are overwhelmed, for reason is not merely disturbed, but driven wholly from her seat. Such unhappy patients are unconscious, therefore, except at short intervals, even of external objects; or, at least, are wholly incapable of considering their relations. Such persons, and such persons alone, (except idiots), are wholly deprived of their understandings. These cases, however, are not only extremely rare, but never can become the subjects of judicial difficulty. There can be but one judgment concerning them. In other cases, reason is not driven from her seat, but distraction sits down upon it along with her, holds her trembling upon it, and frightens her from her propriety. Such patients are victims to delusions of the most

(*i*) 3 Add. 93.

274; S. C. 3 Add. 79; *Heath v. Watts*,

(*k*) *Greenwood's case*, 13 Ves. 89; Prerog. 1798; Deleg. 1800. See 3 Br. C. C. 444; *Dew v. Clark*, 1 Add. *post*, ch. vii. sect. 6.

alarming description, which so overpower the faculties, and usurp so firmly the place of realities, as not to be dislodged or shaken by the organs of perception and sense; in such cases the images frequently vary, but on the same subject are generally of the same terrific character. Here, too, no judicial difficulties can present themselves; for who could balance upon the judgment to be pronounced in cases of such extreme disease?

Another class, branching out into almost infinite subdivisions, under which, indeed, the former, and every case of insanity may be classed, is, where the delusions are not of that frightful character, but infinitely various, and often extremely circumscribed; yet, where imagination (within the bounds of the malady) still holds the most uncontrollable dominion over reality and fact: and these are the cases which frequently mock the wisdom of the wisest in judicial trials, because, such persons often reason with a subtlety which puts in the shade the ordinary conceptions of mankind; their conclusions are just, and frequently profound; but the premises from which they reason, when within the range of the malady, are uniformly false;—not false from any defect of knowledge or judgment, but because a *delusive image*, the inseparable companion of real insanity, is thrust upon the subjugated understanding, incapable of resistance because unconscious of attack (i).

Extraordinary instances of delusion on particular subjects with apparent general sanity are related. Two cases of this kind were mentioned by Lord *Erskine*, who said, that he examined, during the greater part of a day, an unfortunate gentleman, who had indicted his brother, together with a keeper of a madhouse at Hoxton, for having imprisoned him as a lunatic, whilst, according to his evidence, he was in his perfect senses. Lord *Erskine* said, that he was, unfortunately, not instructed in what the lunacy consisted, although his instructions left him no doubt of the fact; but, not having the clue, the lunatic completely foiled him in every attempt to expose his infirmity, although he left no means unemployed, which long experience dictated, but without the smallest effect. The

(i) *Erskine's* speech in *Hadfield's* trial, 27 Vol. Howell's St. Tr. 1313.

day was wasted, and the prosecutor, by the most affecting history of unmerited suffering, appeared to the judge and jury, and to a humane English audience, as the victim of the most wanton and barbarous oppression; at last Dr. Sims came into Court, who had been prevented from an earlier attendance. From Dr. Sims, the able advocate ascertained that the very man, whom he had been above an hour examining, believed himself to be the Lord and Saviour of mankind; not merely at the time of his confinement, which was alone necessary for his defence, but during the whole time that he had been triumphing over every attempt to surprise him in the concealment of his disease. His Lordship then affected to lament the indecency of his ignorant examination, when the lunatic expressed his forgiveness, and exclaimed, with the utmost gravity and emphasis, in the face of the whole Court, "*I am the Christ.*" and so the cause ended.

Wood's case, before Lord *Mansfield*, and related upon his authority, is still more extraordinary. Wood twice indicted Dr. Munro for false imprisonment in a madhouse, when, as Wood stated, he was sane. On the first trial, though not till after a long cross-examination without success, yet, on the clue being furnished by Dr. Battie, his insanity became apparent. The subject of the delusion was the imagination of corresponding in cherry juice with a princess; that having been imprisoned in a high tower, and being debarred the use of ink, he had no other means of correspondence but by writing his letters in cherry juice, and throwing them into the river which surrounded the tower, where the princess received them in a boat. There existed, of course, no tower, no imprisonment, no writing in cherry juice, no river, no boat; but the whole was the inveterate phantom of a morbid imagination. Wood again indicted Dr. Munro, knowing that he had lost his former cause by speaking of the princess; and such, said Lord *Mansfield*, is the extraordinary subtlety and cunning of madmen, that, when he was cross-examined on the trial in London, as he had successfully been before, in order to expose his madness, all the ingenuity of the bar, and all the authority of the

Court, could not make him say a single syllable upon that topic, which had put an end to the indictment before; although he still had the same indelible impression upon his mind, as he signified to those who were near him; but, conscious that the delusion had occasioned his defeat at Westminster, he obstinately persisted in holding it back (*k*).

“Cases of this kind, (observes Dr. Conolly), are quoted in medical books, to shew the difficulty of proving insanity, but they shew us something more. For, where the difficulty of eliciting a proof of a disordered mind is so great, where the disorder is so limited and so seldom evinced, what possible right can any one have to interfere with, or to imprison any man so afflicted? Assuredly no more right than to imprison a man for being short sighted, or a little lame of one leg. Unless the man, mentioned by Lord *Erskine*, was disposed, in consequence of his belief in the real presence of the Saviour, to inflict injury on any one or on himself, or unless it led him to neglect his affairs and his family, those who confined him were justly indicted for false imprisonment, and ought to have been punished. An unfortunate gentleman fancies that a princess is in love with him—a very harmless fancy in itself; he wanders about the woods, or spends his romantic days on the banks of a river, and meditates on his passion—surely he might spend his time less innocently than this! He carves the name of his beloved on trees; he indites moving letters to her in cherry juice. He fancies himself debarred from seeing the face he adores, and thinks that he is a prisoner in some high tower which overlooks the flood—fancies foolish enough, but certainly not very dangerous! He commits his letter to the guardianship of the river, and bids the waters ‘flow on,’ and, ere they reach the sea, convey his written words to the bower of his mistress. There is nothing very criminal in all this. But the poor man has money, and relations who want it. Instead, therefore, of being allowed to become tired of his fancies, which he would be in time, he is waylaid, forcibly seized, carried off to a private madhouse, and inclosed within some

dismal yard, with none but lunatics for his companions. By some rare accident, an opportunity is given of investigating his real state in a Court of law. Irritated, harassed, vexed, and perhaps of a disposition to shrink from publicity of every kind, every artifice of cultivated and practised minds is exerted to confuse him, and to make him contradict himself; the most dexterous questions, the most artful insinuations are by turns levelled at him. And all in vain; the poor man is simple enough, but shews no madness. At last comes forth some hired wretch who has watched him in his days of idle wandering, observed all his movements, and dogged his path for evidence; and because the suspected man will not abandon his princess, or does not deny the affair of the cherry juice, there arises a sound of triumph among his relatives; learned men felicitate themselves on having discovered what was so difficult to detect; the cause is ended, and the foolish lover is deprived of his property and of his liberty, and sent back to his horrible imprisonment" (1).

7. Persons partially insane are usually, not to say always, in a high degree eccentric in their general conduct. Hence it is, that great general eccentricity, as the common co-incident, being proved, assists materially in the proof of partial insanity, where partial insanity is suspected to exist. For as persons actually insane in some particulars are commonly highly eccentric in many or most; so persons highly eccentric in many or most particulars, are, at least not unfrequently, actually insane in some. People who dwell on the confines of two empires, are likely enough to be found sometimes in the one, and sometimes in the other—and they are the more likely to be so found, when the line of demarcation between the two is under an indefinite and uncertain something, a sort of mist, which renders a transition from the one to the other side of it easy and almost imperceptible—which must always be the case in respect of that actual (though invisible) line of demarcation, (for some such

(1) See an Inquiry concerning the Indications of Insanity by Dr. Conolly, p. 384.

there must needs be), between mere eccentricity, situate on the one side, and downright insanity, being upon the other; in short, it is next to impossible, in such a case, to be constantly touching upon the line, without ever going beyond it (*m*). But eccentricity of character, severity and violence arising from natural temper and passion, do not necessarily prove derangement. In our inquiries upon this subject, it is necessary to be cautious not to confound insanity with mere eccentricity: upon the latter subject the following remarks of Dr Gooch (*n*) deserve particular attention. "In considering insanity as an object of legal medicine, it often becomes a question, and sometimes a puzzling one, whether the peculiarity in the mind of the person who is the subject of investigation does or does not constitute unsoundness of mind? On these occasions it is often said, that the peculiarity is not madness, but eccentricity. To form a proper opinion on this question, it is necessary to have an accurate conception, not only of what we mean by the word *insanity*, but also of what we mean by the word *eccentricity*."

Now, the persons who have passed for eccentric, and whom the author last cited has had opportunities of observing, he divides into three classes.

"*First*, those who differ from the rest of mankind, chiefly in their objects and pursuits. Instead of desiring and aiming at the common objects of human wishes, namely, rising in life, the attainment of a competence, the acquisition of wealth and power, they are contented in these respects to remain stationary, and they dedicate the whole of their time and talent to the cultivation of their mind, and the acquisition of knowledge. This peculiarity of pursuit, unless counteracted by much intercourse with polished society, generates various peculiarities in their appearance, habits, manners, and modes of expression; they are careless, often slovenly in their dress, awkward in their manners, singular, and often pedantic in the topics and language of their conversation. Such persons are called eccentric, but their eccentricity consists only in their pursuits and manners; it is the

(*m*) 3 Add. 182.

(*n*) Account of the Diseases peculiar to Women, 189—192.

simplest and most unquestionable form of eccentricity, and is compatible with the healthiest, happiest, and most vigorous state of mind.

The *second* class consists of persons who differ from the rest of mankind in the singularity of their opinions. With the same materials they draw inferences widely different from those of sensible and competent judges; they are persons of great confidence in their own judgment, defective either in knowledge or in comprehensiveness of mind, and by separating those facts which are favourable to their opinions, by frequent meditation on them, and by keeping out of sight the opposite facts, they at length attain the firmest conviction of their peculiar notions. This process will sometimes carry a man a great way. There is at this time in America, a Captain Symes, who is convinced that the earth is perforated from pole to pole, that the sea flows through, and that the perforation is navigable; and he is said to be planning a voyage to explore it. This form of eccentricity, in a minor degree, is very common; the persons subject to it are often clever and zealous, but they never possess very superior minds; they have zeal for knowledge, without corresponding sagacity; still they are eccentric, not mad, for they arrive at their conclusions through an intellectual process, though a crooked one. It is a law of the human understanding, that a little evidence perpetually presented to the mind will produce as much conviction as a greater quantity presented rarely.

There is still another class of persons who are called eccentric. Those observed by Dr. Gooch have been remarkable for a high opinion of themselves, quite disproportionate to their apparent powers or actual achievements, for rashness of conduct never corrected by experience; some of them have had singularly calm and sweet dispositions; others have been of stormy tempers, subject to violent gusts of passion from trifling provocations; they have had opinions without any intelligible reasons for them, and have most of them had a peculiarly formal and solemn manner. After continuing many years in this state, and passing among their friends for eccentric characters, they have ultimately become

deranged. It need scarcely be observed, that this peculiarity of mind, although constantly mistaken for eccentricity, is, in truth, slumbering undeveloped madness. The signs which ought to create suspicion of this state, are these:—insanity being more or less prevalent in the family; a singularity of manners, opinions, and actions inexplicable by the peculiar pursuits of the individual; enormous self esteem, mischievous schemes obstinately persisted in, and uncorrected by experience.

8. The presumption of law is in favour of sanity: and, therefore, if a person has never been subject to a commission of lunacy, nor has had an unsound state of mind imputed to him by his friends or relations, or even by common fame (*o*), the burthen of proof is cast upon those who impeach his understanding. And where a particular transaction is sought to be avoided on the ground of insanity, the evidence of it ought to apply to that particular period; and the question in such a case is, not whether the party had ever been insane before, but whether he was of sufficient sound mind on the day of the contract in question. On the other hand, as the law presumes the state of a man's mind to continue unchanged until the contrary be made manifest; if a person has ever been subject to a commission, or to any restraint permitted by law, even a domestic restraint, clearly and plainly imposed upon him in consequence of undisputed insanity, the burthen of proof shewing sanity is thrown upon those who seek to establish a lucid interval, or the soundness of his understanding (*p*). But, where there is satisfactory evidence of the sanity of a party at the time of a contract, the antecedent state of his mind, and the causes of it, may be laid totally out of view (*q*).

The observations of Lord *Thurlow* upon the evidence of the competency of a party, after previous derange-

(*o*) The imputation of friends or relations, and the idle rumours of the world, are not entitled to any weight or consideration in inquiries of this nature, but ought to be dismissed from the minds of the judge and jury; who are bound to form their conclusions from impartial evidence of facts, and not to be led astray by any such fertile sources of error and injustice.

(*p*) *White v. Wilson*, 13 Ves. 88; and see Butl. Co. Litt. 246. b., n. (1).

(*q*) 1 Dow, P. C. 177.

ment had been established, claim attention. His Lordship said—"There is an infinite, nay, almost an insurmountable difficulty, in laying down abstract propositions upon a subject which depends upon such a variety of circumstances, as the legal competency of the mind to the act in which it is engaged, if its competency be impeached by positive evidence of an anterior derangement, or affected by circumstances of bodily debility, sufficiently strong to lead to a suspicion of intellectual incapacity. General rules are easily framed, but the application of them creates considerable difficulty in all cases in which the rule is not sufficiently comprehensive to embrace every circumstance which may enter into and materially affect the particular case. There can be no difficulty in saying, that if a mind be possessed of itself, and that, at the period of time, such mind acted, that it ought to act efficiently. But this rule goes very little way; for it is extremely difficult to lay down, with tolerable precision, the rules by which such state of mind can be tried; but the course of procedure for such purpose allows of rules. If derangement be alleged, it is clearly incumbent on the party alleging it to prove such derangement. If such derangement be proved, or be admitted to have existed at any particular period, but a lucid interval be alleged to have prevailed at the period particularly referred to, then the burthen of proof attaches on the party alleging such lucid interval, who must shew sanity and competency at the period when the act was done, and to which the lucid interval refers. And it certainly is of equal importance that the evidence in support of the allegation of a lucid interval, after derangement at any period has been established, should be as strong and as demonstrative of such fact, as where the object of the proof is to establish derangement. The evidence in such a case applying to stated intervals, ought to go to the state and habit of the person, and not to the accidental interview of any individual, or to the degree of self possession in any particular act; for, from an act with reference to certain circumstances, and which does not of itself mark the restriction of that mind, which is in general deemed necessary to the disposition and management of affairs, it were ex-

tremely dangerous to draw a conclusion so general, as that the party, who had confessedly before laboured under a mental derangement, was capable of doing acts binding on himself and others" (r). Lord Chancellor *Eldon* is reported to have said, that he could not assent to Lord *Thurlow's* proposition, that where lunacy is once established by clear evidence, the party ought to be restored to as perfect a state of mind as he had before; to be proved by evidence as clear and satisfactory; and supposed the strongest mind reduced by the delirium of a fever, or any other cause, to a very inferior degree of capacity, admitting of making a will of personal estate, to which a boy of the age of fourteen is competent, the conclusion is not just, that, as that person is not what he had been, he should not be allowed to make a will of personal estate. There may be frequent instances of men restored to a state of mind inferior to what they possessed before; yet it would not be right to support commissions against them (s). And in cases where the validity of a deed or other instrument is in dispute, the question is not, whether a man has been insane, but, whether he has recovered such a quantum of disposing mind at the time of execution as ought to give it effect (t).

It was contended in a recent case, where there was evidence of a lunatic's having had at least one lucid interval, that it was no objection to the admissibility of the presumption that a lease had been surrendered, that the party entitled to the reversion had been found a lunatic by inquisition; because such finding is not inconsistent with the supposition that the lunatic might have had lucid intervals, and that during one of such lucid intervals such surrender might have been accepted (u).

9. As delay has a tendency to deprive parties claiming under deeds or other instruments of the means of shewing the capacity of the persons who executed them, length of time is an important feature in all cases, in raising a pre-

(r) *Attorney-General v. Parnther*,
3 Bro. C. C. 443. See *post*, ch. vii.
sect. 5.

(t) 5 Dow, P. C. 236.

(u) *Lopdall v. Creagh*, Bligh's Rep.
new series, 1 Vol. p. 266.

(s) *Ex parte Holyland*, 11 Ves. 11.

sumption of sanity, where an attempt is made at a distant period to impeach them on the ground of the mental incapacity of the parties who executed them.

This principle was laid down by Lord Chancellor *Eldon*, that if property has been disposed of twenty or thirty years before, formally, and with the concurrence and assistance of individuals of good character; and if that disposition has not been quarrelled with as speedily as may be, and only challenged when the parties best acquainted with the whole circumstances of the transaction are dead and gone—it is dangerous to set aside that disposition, at the distance of twenty or thirty years, upon a ground so fallible as human memory and testimony as to the state of the person making that disposition at other moments, without at all applying to the moment when he executed the deed sought to be impeached (*v*). And therefore, in a case where, on the one side, there was clear and positive evidence of the sanity of a party who executed deeds; and, on the other, only general evidence to impeach them, which consistently with the positive evidence could not be true, the deeds were sustained. Thus, in support of an action brought in 1808, to reduce certain deeds executed between 1782 and 1799, upon the ground of the insanity of the grantor; parol evidence was given that he was quite deranged from 1781, till his death in 1804; the evidence applying to his insanity generally, and not to the particular moments when the deeds were executed: and this evidence was encountered by parol evidence of his general sanity during the same period; and the latter evidence corroborated by notes or receipts, written by the grantor, having reference to the contents of the deeds, and shewing that he understood their nature and effect; and also by the deeds themselves, which were rational in his circumstances; corroborated also by the circumstances of the deeds being attested by witnesses of unimpeached credit, who considered the grantor sane, and of his having been, in 1784, served heir, and infest in the subjects conveyed by the deeds, and having sold part of the lands, and mortgaged the remainder; such transactions

(*v*) 5 Dow, Parl. Cas. 236, 237.

having proceeded on the supposition of his sanity, and remaining unchallenged until after the death of the grantor, when an action was brought to set aside the deeds. The Court of Session in Scotland reduced the deeds; but, on appeal to the House of Lords, that decision was reversed, and the deeds were held to be valid (*w*). It obviously becomes much more difficult to ascertain the party's capacity after his death, when the matter is to be determined by the opinions of witnesses, whose faculties and degrees of understanding differ among themselves; and who can no otherwise represent a state of the case for the opinion of others, than by relating instances of conduct and conversations, which, when stripped of the many circumstances that must necessarily attend them, give but a very imperfect idea of the true state of the fact. Where the persons who have prepared deeds and are the attesting witnesses to their execution, are dead, when process is commenced for setting such deeds aside, it will be assumed, in the absence of evidence to the contrary, that they would have sworn that the party was of sane mind when the deeds were executed, and will afford a strong presumption in favour of the sanity of the grantor, although it be attempted to disprove it by general parol testimony of incompetency at other times (*x*).

Considerable difficulties frequently arise in estimating the testimony of witnesses in these cases, for it often happens, where witnesses are describing the condition of a person at a former period; that those on one side describe the person as being as mad as possible, and those on the other side represent the person as having the strongest and soundest intellect (*y*). A remarkable instance of such conflict of evidence in a case of this nature is reported. On a trial at bar on an issue out of Chancery, *devisavit vel non*, the three subscribing witnesses to the testator's will, and the two surviving ones to a codicil made four years subsequent to the will, and a dozen servants of the testator, all unanimously swore him to be utterly incapable of making a will, or transacting any other business at the time of signing the supposed

(*w*) *Towart v. Sellars*, 5 Dow, (y) 5 Dow, P. C. 242. See *post*, P. C. 231.

ch. vii. s. 1.

(*x*) 5 Dow, P. C. 245.

will and codicil, or at any intermediate time: and, to encounter that evidence several of the nobility and principal gentry of the county where the testator resided, who frequently and familiarly conversed with him during that whole period, and some on the day whereon the will was made; and also two eminent physicians, who occasionally attended him, and who all strongly deposed to his entire sanity, and more than ordinary intellectual vigour, were called as witnesses; and, the attorney who drew and witnessed the codicil, whose testimony had, previously to his death, been perpetuated in Chancery, spoke very circumstantially to the very sound understanding of the testator, and his prudent and cautious conduct in directing the contents of his codicil. The latter evidence prevailed, and the validity of the will and codicil was established, and the three subscribing witnesses to the will were afterwards convicted of perjury (x).

10. Where the evidence in such cases is contradictory, it will be tried by the test of collateral circumstances, as to which there can be no doubt, in order to ascertain how far it is consistent with those circumstances (a). This principle was mainly relied upon by the Court in a recent case, where a bill had been filed by an heir-at-law, stating that the testator was incapable of managing his affairs or of disposing of his property by will or otherwise, on account of his defective and weak understanding; and praying that the alleged will and codicil might be declared to have been obtained by fraud and undue influence, and delivered up to be cancelled.

The Master of the Rolls directed an issue *devisavit vel non* (b), and the jury on the trial of the issue found a verdict in favour of the will. There had been an application to the Master of the Rolls for a new trial (c), which was refused; and, on appeal to the Lord Chancellor, it appeared by the judgment, that the general incompetency of the testator was principally in question. A large number of witnesses had been examined, whose evidence extended over

(x) *Lowe v. Jolliffe*, 1 Sir W. Bl. Rep. 365.

(b) *Tatham v. Wright*, Reg. Lib. B. 1828, fol. 2422.

(a) *Per Lord Redesdale*, 5 Dow, P. C. 244.

(c) 8th November, 1830.

various periods of the testator's life, and up to his decease. The testimony of those witnesses was very conflicting; some of them considering the intellectual capacity of the testator not above that of a child, and others representing him as a man possessed of a retentive memory, of ordinary capacity, and as perfectly competent to manage his affairs. In this conflict of evidence, the Court was principally influenced in their determination by certain collateral facts in the case, which consisted of three classes: the first consisted of the testator's correspondence with various persons; the second, of his acts and conduct on several occasions; and the third, of the circumstances attending the preparation and execution of his will. The letters were said to have been written under the influence, and by the dictation of the devisee; but this assertion remained without any proof. In the absence of such proof, the Court would not presume fraud or undue influence; and there was one circumstance which directly negatived such a presumption; this was, that some of the letters were written to the devisee at a time when the testator was far away from him. Then, with respect to the acts performed by the testator, he had executed twenty-three deeds between 1782, and 1819, and some of these were of a very important kind, one of them being a mortgage of his estate for a large sum of money, and others of a nature in which the interests of other parties were involved, and who would hardly have been content to deal with him if there had been any suspicion that he was not competent to the management of his affairs. The deeds were some of them prepared, and most of them attested by respectable solicitors, and by other indifferent persons; and their attention would naturally have been drawn to the circumstances of the testator's state of mind. It could not, therefore, be expected that such solicitors would rashly shipwreck their clients' interests by dealing with a man who could not be bound by his acts. The will of the testator was prepared by a gentleman of great skill in his profession, and who had at that time retired from practice, though he had formerly been the testator's solicitor. He had before made three other wills for him, the instructions for which were given by the testator,

and some of them were in his own hand-writing. That gentleman had not been cross-examined on the trial, though, if there had been any suspicion that he had been a party to collusion of any kind, he might have been questioned as to his conduct. Considering the weight and bearing of these three heads of collateral evidence upon the case, the Court was of opinion that a new trial ought not to be granted (*d*).

11. The notion is prevalent, that whoever commits suicide is under the influence of insanity: it being supposed impossible for a person in his senses to do an act so repugnant to reason and nature (*e*); but this notion is rejected by other legal writers, and treated as a vulgar error (*f*).

The excuse of insanity ought not to be strained to that length, to which it is sometimes carried by the coroner's juries, namely, that the very act of suicide is an evidence of insanity; as if every man who acted contrary to reason had therefore no reason at all. For the same argument would prove every other criminal *non compos*, as well as the self-murderer. But, on account of the forfeiture incurred by a *felo de se*, very slight evidence of derangement at the time will warrant the jury in finding that fact (*g*).

Lord Chancellor *Redesdale* expressed an opinion, that insanity is not to be inferred from the mere act of suicide. It was not inferred by law but must be proved (*h*). But Lord *Eldon* admitted, that it was fair to consider whether, at the time of a contract, the party did not intend to commit the act of suicide; and if it were proved, that he was, at the moment, under the influence of that morbid feeling, it might be a circumstance of considerable weight in leading to the inference of insanity (*i*).

It was held, by Sir *John Nicholl*, in the Ecclesiastical Court, that where there was no evidence of insanity at the

(*d*) *Wright v. Tatham*, before Lord Chancellor *Brougham*, assisted by Lord *Lynnhurst* and Chief Justice *Tindal*, 10 June, 1831.

(*e*) *Rez v. Saloway*, 3 Mod. 100.

(*f*) 1 Hawk. P. C. c. 27, s. 3;

Comb. 2, 3.

(*g*) 1 East's P. C. 389, 390. See 1 Coll. on Lun. 494, note.

(*h*) 1 Dow, Parl. Cas. 187.

(*i*) Id. 148.

time of giving instructions for a will, the commission of suicide three days afterwards did not invalidate it, by raising an inference of previous derangement (*k*).

It cannot with truth be contended, that, in all cases, the mere act of self slaughter should be received as complete evidence of madness. There are instances, no doubt, in which this act has been committed by persons in possession of their reason, and who are consequently considered both by the law, and by mankind in general, as highly criminal (*l*).

For this reason, however, it appears to be manifest, that where there are no circumstances to compel an opposite conclusion, the presumption of law, which is always in favour of innocence, must be for the insanity of any self murderer. That this legal presumption is coincident with the fact, in nine cases at least out of ten, probably will not be disputed; but the truth is, that it may be assumed as absolutely certain, in all cases where it can be made out, that there was no reasonable or intelligible motive for suicide. To act in a matter of great and irrevocable importance without any reasonable or intelligible motive at all, is as direct and unequivocal a symptom of insanity, as any that can be suggested; and if a man would be seized and tied for a madman, who, without any apparent motive, should strike or revile a mere stranger, there is evidently much more reason for holding this opinion, if he aim a mortal blow, without provocation, at himself. If a man is condemned to die, and is to suffer a painful and ignominious death to-morrow, it is easy to conceive, that he might terminate his existence to-night, without any suspicion of insanity. If a man is tortured by an excruciating and incurable disease, his conduct might receive the same solution; and even in cases of a less aggravated description, where a man kills himself because he is plunged from affluence into beggary, because he has incurred indelible disgrace, or has sustained some irreparable injury in his affections, some may be inclined to presume, that he acted rationally, though criminally, and put an end to his life, because he was deliberately of opinion, that these

(*k*) *Burrows v. Burrows*, 1 Hagg. Eccl. Rep. 109. (*l*) 4 Bl. Comm. 189.

evils were more intolerable than the pain, or the consequences of a voluntary death.

12. It seems that evidence, for the purpose of shewing that insanity had prevailed in some other members of the family of the party whose sanity is questioned, is not admissible.

This point arose in a case in the House of Lords, on an appeal from the Court of Session in Scotland, where the validity of a marriage was disputed, on the ground of the insanity of the party at the time it was contracted, when it was attempted on the part of the appellant, in aid of his case of constitutional insanity of the party, to go into evidence of the insanity of some of his relations by his mother's side: but this was resisted by the Commissioners, and also upon review by the Court of Session. One ground of appeal was, that the appellant ought to have been allowed the further proof of the party's insanity, by shewing that it was constitutional in his mother's family, because it was clearly a relevant fact.

Lord Chancellor *Eldon* said, the first question was, whether the party was of sound mind at the time when he entered into the contract? If not, the contract certainly could not be valid; his opinion, however, was, that the party was of perfectly sufficient soundness of mind to form a valid contract; and that would dispense with the consideration of the other very delicate point, whether the evidence to shew hereditary insanity in the blood ought to have been received in a case of this nature (*m*).

In the case last cited, Sir *Samuel Romilly* is reported to have stated in argument, that, on a trial in the Common Pleas, the heir-at-law offered to prove hereditary insanity against a testator, but that such proof was rejected (*n*).

Admitting insanity to be, in many instances, an hereditary disease, yet, considering the number of other causes by which it is produced, and which can in many cases be satisfactorily ascertained, it would not be just to infer, without other clear evidence, because the ancestor or other relative of a party had been so affected, that the descendant is so also.

(*m*) *M'Adam v. Walker and Others*, 1 Dow, P. C. 148. (*n*) *Id.* 174.

If such facts were admissible in evidence, the inquisition finding the ancestor of unsound mind, although founded on imbecility arising from old age and an incapacity to manage his affairs merely, or from some accidental cause quite independent of constitutional predisposition, might be adduced in evidence on a trial respecting the sanity of his descendant, whilst the grounds, upon which the former verdict was founded, would not appear, and an unjust prejudice might be thus created. It is submitted that the legal course is to confine the evidence to the actions and state of mind of the party whose sanity is questioned.

13. The English constitution has with much care provided protection for persons who are represented to be of unsound mind; and has been extremely cautious to prevent the power of the Crown, or of individuals (*o*), to interfere with such persons, from being assumed in any case where it is not required for the safety of the public and of individuals; because it is difficult to exert such power without depriving the subject of that liberty, and power of dealing with his property, which ought to be unrestricted, unless the necessity for restraint be clearly proved.

It has, in the first place, made it necessary, before a commission of lunacy is issued, that a petition should be presented to the person who is delegated to exercise this authority of the Crown, and imposed on such person the duty of considering whether there is ground for an inquiry or not. It does not allow that individual to declare, that the person is of unsound mind; it calls on him to look through the case which is brought before him, to decide whether or not there is ground for further inquiry: if he finds that there is, the matter then goes to a jury of the country (*p*). Lord Chancellor *Eldon* laid it down as unquestionable, that the Crown has not, in England, the power of taking upon itself the care of any individuals, either as to their persons or their property, on the ground that they are of unsound mind, without the verdict of a jury (*q*).

(*o*) See statute 9 Geo. 4, c. 41, which repealed the stat. 14 Geo. 3, c. 49.

(*p*) See note, *ante*, p. 35.

(*q*) 2 *Wilson & Shaw*, 517.

But it frequently happens, that persons are in a state in which it is absolutely necessary to throw around them protection, before the opinion of a jury has been obtained upon the question, whether they are, or are not, of unsound mind, and unable to take care of themselves. The Lord Chancellor, therefore, in such cases, upon receiving information making it his duty to interpose, interferes temporarily, for the purpose of taking care of such individuals, until it can be ascertained, upon the acknowledged authority of the verdict of a jury, what is the real state of their minds, and how they are to be permanently treated, with respect to the management of their affairs (*r*).

14. Before a commission of lunacy issues, the duty of that person who has the authority to issue it, requires him to have evidence that the subject of the commission is of unsound mind, and incapable of managing his affairs; and, for that purpose, the evidence of medical men is generally produced. If the question is brought into controversy, the policy of the law determines, that the judgment on which the commission is issued, is not conclusive against either the property, the person, or any right the subject of it. The person issuing the commission ought at least to have a strong belief that his judgment, should it be called in question, will be affirmed (*s*). But the person exercising this authority is not bound to issue a commission of lunacy whenever the fact of lunacy is established, the object of such a proceeding being the welfare of the party—by granting it, a cure might in many cases be prevented. The true point for the consideration of the person intrusted with that authority is, whether it is really necessary for the benefit of the lunatic, with reference to his mental health and his property, that a commission should issue. Upon this ground, an application for a commission of lunacy against a lady, who was unquestionably a lunatic, under the care of her husband, who opposed the application, was refused; as it appeared that there was not any thing in his conduct with reference to the care of either her pro-

(*r*) 2 Wilson & Shaw, 515, 520.
Sec ch. iv. s. 6.

(*s*) *Sherwood v. Sanderson*, 19
Ves. 236.

party or her person, which rendered such a proceeding necessary (*t*).

The Lord Chancellor, in many cases where the application for a commission is opposed, or the lunacy of the party is not apparent, will, before a commission is granted, make an order for delivery of office copies of the affidavits filed, to two physicians of his own nomination, for their perusal, and for their afterwards visiting and having access to the supposed lunatic for the purpose of examination, and for ascertaining the actual state of his mind, and for their afterwards certifying to the Lord Chancellor in writing the result of such examination, and their opinions on the state of mind of the supposed lunatic, and the grounds upon which they form such opinions (*u*).

It is not a proper mode of proceeding, merely to state facts, in a case where the sanity of a party is in question, to medical men, and take their opinion upon these facts, and then leave it to the Court to judge upon those facts and opinions, without any personal examination of the party by the medical men (*v*). However valuable the testimony of such men may be in questions of insanity, when speaking from personal knowledge and careful observation of the individual, nothing can be more fallacious than to try judicially the condition of any person by a comparison of his alleged symptoms with those which are stated by medical authorities to be usually the concomitants of insanity, or to submit the opinions of medical men, taken upon cases laid before them, with a description of symptoms, as evidence to a Court of justice.

It is often proper to look to the state of the bodily health, not as in itself evidence of mental derangement, but with a view to ascertain what effect it has had on the state of mind of the party (*w*).

It was held in one case, where a party gave rational an-

(*t*) *Ex parte Tomlinson*, and *Ex In re Michell*, 9 Aug. 1828. There are numerous instances of similar orders.

(*u*) *In re Galloway*, 9 Aug. 1827; *In re Clement*, 14 Aug. 1828; *Ex parte Tomlinson*, 1 Ves. & Bea. 59; (*v*) 1 Dow, P. C. 179.
(*w*) *Ibid*.

swers respecting the situation and value of his estates, that the inability to answer the most common question touching figures was not a foundation for granting a commission (x). Lord Chancellor *Eldon*, however, said, that the want of power to comprehend the most simple proposition of figures, as that two and two make four, may be more or less evidence of unsoundness of mind; but still its weight and character are to be estimated with reference to age, situation, and all the other circumstances by which it may be affected; and that he did not find it easy to comprehend what some of his predecessors intended, when they intimated that the incapacity proved by the want of power to comprehend the most simple proposition of figures, is not evidence of an unsound mind (y).

In order to obtain an estimate of the capacity of individuals supposed to be affected by idiocy, or imbecility of mind, the person exercising his judgment upon this question ought particularly to ascertain the power of the individual's attention; since his knowledge of objects, and his memory of them, will depend on the duration of his attention: it will also be indispensably necessary to investigate his comprehension of numbers; for, without a capacity sufficient for understanding something of the first simple rules of arithmetic, it seems impossible to comprehend the nature and value of property, which is represented by numbers of pounds, shillings, and pence. Cases of imbecility of mind, produced in adults, and in those of advanced age, by paralytic or epileptic attacks, and from various affections of the brain, require the same accurate investigation to determine on the competency of such persons to be intrusted with the management of themselves and their affairs.

15. An inquisition of lunacy may be given in evidence on the trial of a person charged by an indictment, for the purpose of shewing that the prisoner was insane when he committed the offence (x). Such inquisitions are *prima facie* evidence

(x) Lord *Donegal's* case, 2 Vez. sen. 407. (z) *Rex v. Bowler*, O. B. June, 1812, before *Le Blanc, J.*, and Lord

(y) *Sherwood v. Sanderson*, 19 C. J. *Gibbs*. See *post*, ch. xii. s. 1. Vez. 286.

against third persons, who were strangers to the proceeding. Thus, in a case, where an inquisition of lunacy was offered as evidence to affect the rights of third persons, and objected to as *res inter alios acta*, Lord Hardwicke overruled the objection, and said, that inquisitions of lunacy, and likewise other inquisitions, as *post mortem*, &c., are always admitted to be read, but are not conclusive (a). And in an action upon a bond against the executors of the obligor, an inquisition of lunacy has been admitted under the plea of *non est factum*, for the purpose of shewing that the obligor had been a lunatic from a certain time, as found by the inquisition (b). So, where a defendant in a suit in equity resisted the specific performance of an agreement, on the ground of insanity, and in support of that allegation an inquisition was produced, by which the defendant was found a lunatic from a period long antecedent to the contract, but with lucid intervals; such inquisition having been taken in the absence of the plaintiff, was held not conclusive upon him, but *primâ facie* evidence of the lunacy; and that it was competent to third parties to dispute the fact, and to maintain, that, notwithstanding the inquisition, the subject of it was of sound mind at any period of time over which the inquisition extended (c).

So, where the validity of the marriage of a party, who has been found by inquisition to be of unsound mind, is disputed in the Ecclesiastical Court, the finding of the jury is a circumstance and a part of the evidence in support of the unsoundness of mind at the time of the marriage, but no more; for that Court must be satisfied by evidence of its own (d).

In a case where the validity of a marriage was disputed after the death of the party, on the ground of insanity, and a writ *de lunatico inquirendo* had been executed six months after the marriage, and the verdict of a most respectable jury, before whom the party had been produced and examined in person, had found him incapable for two years antecedent to the marriage, and no attempt had been made to impeach such verdict in Chancery; the inquisition so tak-

(a) *Sergeson v. Sealey*, 2 Atk. 412. (c) *Hall v. Warren*, 9 Ves. 609.

(b) *Faulder v. Silk*, 3 Campb. (d) 1 Hagg. Eccl. Rep. 356.

en was held strong confirmation of the other evidence of insanity (e).

A commission of idiocy, and inquisition returned thereon, finding the party not to be of unsound mind, was held not conclusive evidence of his sanity. But the commission, inquisition, and return, together with a fine, *præcipe*, and caption of a fine and warrant of attorney, were held to be conclusive evidence of the capacity of a party to make a warrant of attorney and suffer a recovery, in a case where the issue upon his sanity was joined after his death, and the warrant of attorney and caption thereof appeared to have been made and acknowledged before the Chief Justice at the same time that the caption of the fine was acknowledged before him; and the tenant to the *præcipe* in the recovery was made by fine (f).

16. There was a difference of opinion as to the admissibility of a coroner's inquest finding a party a lunatic, for the purpose of defeating his will. Upon a trial at bar of an issue from the Court of Chancery, *devisavit vel non*, to overthrow the will, the defendant insisted that the testator was *non compos* at the time of making it, which was the 29th, having shot himself on the 31st. Among other circumstances, the coroner's inquest, which found him lunatic, was offered to be read. The Court was divided upon the point; two of the Judges deeming it to be inadmissible, because the parties were not the same, the one being a civil, and the other a criminal proceeding (g).

Lord Coke is of opinion that an inquisition of *felo de se* taken before the coroner *super visum corporis* is not traversable, and is conclusive upon the executors or administrators of the deceased (h); but the reasons suggested by Staunford (i), whom he quotes, are very unsatisfactory. Lord Hale is of a different opinion, conceiving it to be a great hardship that an inquisition, which is no more than an in-

(e) *Browning v. Reane*, 2 Phill. 69. See 1 Stark. on Ev. 257; 1 Phill. on

(f) *Hume v. Burton*, 1 Ridg. P. Ev. 318.

C. 204.

(h) 3 Inst. 55.

(g) *Jones v. White*, 1 Str. 68.

(i) Staunf. P. C. 183.

quest of office, taken behind the backs of the executors or administrators of the deceased, should be conclusive (*k*).

It seems, indeed, to be now fully established that such an inquisition may be removed into the King's Bench by *certiorari*, and traversed by the executors or administrators of the deceased (*l*). But it is agreed, that no inquisition can be traversed, to make a man *felo de se*, who is found not to be so; and, therefore, if an inquisition find that the party was *non compos mentis* at the time he did the act, neither the King nor his grantee can traverse it (*m*); although, if the verdict be obtained by indirect practices of the coroner, a *melius inquirendum* may be obtained before special commissioners, who can proceed upon the testimony of witnesses only, and not *super visum corporis* (*n*). And though the coroner return to the King's Bench an inquisition finding a *felo de se non compos*, yet he is not obliged to return the depositions, unless there be something depending before the Court to make it necessary (*o*).

17. The capacity of a party to do one act, is not conclusive as to his capacity to do another, if his capacity as to the other be triable by a different jurisdiction, whether the two acts make one and the same assurance, or are done at one and the same time or not. No two acts can be supposed to be more intimately connected with each other, both in unity of time and of assurance, than a will of both real and personal estates, written upon one and the same piece of paper or parchment, and subscribed by one and the same signature; and yet it is clear law, that though the probate of such a will is conclusive evidence of the sanity of the testator to make such will of personalty (*p*), yet it is by no means conclusive evidence of his capacity to dispose of his real estate (*q*).

(*k*) 1 Hale's P. C. 416, 417.

2 Hawk. P. C. 54, fol. ed.; *Rex v.*

(*l*) 3 Keb. 564, 604; 2 Lev. 152;

Bunney, 1 Salk. 190; 1 Wms. Saund.

1 Vent. 239; Sir T. Jones, 198; 7

303, n. (1). See *Jervis on the Office and Duties of Coroners*, 283, 284.

Mod. 16; 3 Keb. 489; Br. Traverse,

(*o*) *Case of the Coroner of Westminster*, 2 Str. 1073.

229; 1 East, P. C. 389; 1 Wms.

Saund. 363; *Rex v. Ripley*, Skinn.

(*p*) *Partridge's case*, 2 Salk. 552.

45; *S. C.* 2 Show. 199.

(*m*) *Anon.* 1 Vent. 239, 278.

(*q*) 1 Ridg. Parl. Cas. 277.

(*n*) *Rex v. Hethersal*, 3 Mod. 80;

In a case of ejectment against a devisee, where the question turned upon the sanity of the testator at the time of making the will, it was held that an executor who took a pecuniary interest under the will was a competent witness to support it; because the verdict in that case would only have the effect of establishing the will as to the real property. It would not be any evidence in the Ecclesiastical Court, upon a question whether it were a good will as to the personalty; nor would the probate granted to the executor have been any evidence of the sanity of the testator on the trial of the ejectment. In any proceeding to establish the will as to personalty, the ejectment would be treated as *res inter alios acta* (r).

A verdict in an action of ejectment, for the purpose of trying the validity of a will as to realty, is not admissible in a suit respecting the same will in the Ecclesiastical Court (s).

There seems to be only one instance in which the capacity of an agent to do one act is conclusive as to his capacity to do another, and that is the case of a fine and a deed leading the uses of such fine (t).

By a recent statute (u), every certificate upon which any order shall be given for the confinement of any person in a licensed house, kept for the reception of insane persons, must (amongst other things) be signed by two medical practitioners, who shall have separately visited and personally examined the patient to whom it relates. But such a certificate is not legal evidence of the insanity of the person described in it.

18. Though, in general, the opinion of an individual is no evidence in questions of science, yet persons skilled in a particular art or science may be called to state what their sentiments are respecting any point within the scope of their particular inquiries. On a trial where the defence was insanity, it is reported that the Judges were of opinion, although they

(r) *Doe d. Wood v. Teage*, 5 Barn. Pugh, Id. 265.
& Cress. 335; S.C. 8 Dowl. & Ryl. (t) 12 Rep. 124. See post, ch. vi. 63. sect. 1.

(s) *Grindall v. Grindall*, 3 Hagg. (u) 9 Geo. 4, c. 41, s. 29. See Eccl. Rep. 259; *Price v. Clark* & post, ch. ix. sect. 1.

did not come to any formal resolution, that a witness of medical skill might be asked, whether, in his judgment, certain appearances were symptoms of insanity, and whether particular acts, proved to have been committed by the prisoner, were likely to produce a paroxysm of that disorder in a person subject to it; and that, by such questions, the effect of the testimony in favour of the prisoner might be got at in an unexceptionable manner. But several of the Judges are said to have doubted whether a witness could regularly be asked his opinion on the very point which the jury are to decide, namely, whether, from the other testimony given in the case, the act as to which the prisoner was charged was, in his opinion, an act of insanity (*v*).

But, in a recent case, where the prisoner's defence was insanity, a medical man who had heard the trial, was allowed to be asked whether the facts proved shewed symptoms of insanity. The prisoner was indicted under 9 Geo. 4, c. 31, for cutting and maiming his daughter, with intent to murder, maim, and do her some grievous bodily harm. The fact of cutting was clearly proved, and the case for the prosecution disclosed facts and symptoms of insanity arising from religious fanaticism; and it was shewn, that the prisoner had always exhibited the greatest affection for his daughter, until recently before the act, when he had taken up the opinion that he was ordered by the Holy Ghost to shed human blood as the only means of salvation. It was proposed to call a physician, who had heard the whole evidence, to give his opinion as to the insanity of the prisoner. Mr. Justice *Park* doubted whether this could be legally done; but, after referring to the case last cited, allowed the physician to be asked whether the facts and appearances proved shewed symptoms of insanity. And the prisoner was acquitted on the ground of insanity at the time the act was committed (*w*).

19. The evidence of medical men is often required in cases before Courts of judicature; and however painful it is to be obliged to reveal those secrets, which are confidentially com-

(*v*) *Rex v. Wright*, 1 Russ. & Ryl. (w) *Rex v. Searle*, 2 Moody & Malkin, N. P. Cases, 75.

municated to them, it has been ruled that the confessions of a patient to his physician are not within the protection afforded by the law to confidential communications; and though a medical man would be justly deemed dishonorable, who voluntarily violates confidence reposed in him, he cannot withhold facts, when called upon in a Court of justice (*x*). The forensic duty required of a medical man (*y*), in all cases of insanity, must be to prove or disprove its existence in an individual to whom it may be imputed, or in whom it may be suspected to be feigned. No illustrations can be requisite, to shew why either of these may be the case. The annals of equity furnish many instances of attempts to wrest property from the possessor, or to remove a person from situations to which a greedy eye has been cast by others, on the score of mental incapacity for administration; and criminals have often attempted to elude the penalty of the law by setting up, or allowing to be set up, the plea of insanity. Instances are on record, where the person himself has disavowed the plea, when urged on his behalf by his friends (*x*). The resistance of hunger, cold, and sleep, affords perhaps the best test for distinguishing cases of real insanity from cases where the disease is only feigned, and appearances of it put on to answer particular purposes; at least, where this power of resistance is present, there is good reason to conclude that the affection is not feigned. Where lunacy is feigned, it may be impossible to determine that it is so, without watching the patient for some time, when he does not know that he is watched, and by night as well as by day; by which he will almost infallibly be detected.

(*x*) Peake on Evidence, p. 188; 1 Starkie on Evidence, 105.

(*y*) The duties of medical men, when consulted concerning the state of a patient's mind, are well pointed out by Dr Conolly, in the tenth chapter of his work, intitled, "An Inquiry concerning the Indications of Insanity."

(*z*) See Lord *Ferrers's* trial, 19 Vol. Howell's St. Tr. 947; *Bellingham's*

case, Annl. Register, 54 Vol. p. 304.

There is no disease more easily feigned or more difficult of detection than insanity; and many great men of ancient times simulated it, in order to elude the danger which impended over them, as Ulysses, Solon, and Brutus (the expeller of the Tarquins); to whom may be added King David, (1 Saml. ch. 21, v. 13).

It has been questioned, whether medical evidence to prove insanity be not inferior to that of other people, who may have had opportunities of observing the individual, where the same opportunities have not been in the power of the practitioner. A writer on this subject observes, that it is to be presumed that no member of the medical profession would directly state an individual to be insane, without being able, satisfactorily to his own reason and conscientious feelings, to exhibit, from his conversation, his actions, or his writings, unequivocal proofs of his derangement (a).

The question irresistibly presents itself—Can no one do this satisfactorily but a medical man? And the author just quoted very shortly adds, “that patient inquiry, daily communication with deranged persons, and attentive observation of their habits, confer the means of judging on medical practitioners. And it must be agreed, that men professionally conversant with these maladies will be better judges of their existence, than those who have derived their ideas in some abstract way, as by reading, or from popular and ill defined notions about madness, melancholy, &c.” The popular bias on this score finds its way into our Courts; and juries, who, though of the intelligent classes, are never of the medical order, would be constantly deciding upon the most inconsistent grounds, were professional opinion in these cases to be overlooked (b).

The following question having been put to Dr. Latham, before the committee of the House of Lords—“Is not the consulting two medical men a considerable means of ascertaining the fact, whether the person is insane or not?” He replied—“It may, or it may not be so. There is great difficulty sometimes in ascertaining the fact, whether a person is insane or not. You judge, in the first place, from the conversation that you may have with the lunatic; then, you perhaps may think it necessary to get him into something like a correspondence by letter; you may even then be foiled, and then you are to judge of his general conduct; and it is very seldom, but that, by one or other of those modes,

(a) Haalam's Medical Jurisprudence, as it relates to Insanity, p. 5. (b) Dr. Smith's Principles of Forensic Medicine, p. 428, 2nd ed.

any medical man may make up his mind as to the state in which he is, whether he be sane or insane. But it may sometimes even happen, that none of those three modes will answer the purpose; and then we are obliged to have recourse to the inquiry, whether there be any particular subject, upon which the person is insane or not; and if we get that sort of key note, it is almost impossible that any person can escape us" (c).

Of all evidence in Courts of justice, that of professional men ought to be given with the greatest care, and received with the utmost caution. Plain facts are level to ordinary understandings, and very simple logic is sufficient to ascertain their relative connexions and separate value; but opinions drawn from recondite branches of human knowledge, and grounded on inquiries with which few comparatively are acquainted, must be regarded as of little weight, unless well strengthened by reasoning that admits of no misconstruction, and supported by authority that cannot be controverted. In every case where the balance hangs in equipoise, and doubt hovers on the beam, no man possessed of the common feelings of humanity would endeavour to draw upon his imagination or his science, to supply the lack of direct and positive information. A man of extensive knowledge will deliver his testimony to *facts* in very plain and explicit terms; but when called upon for his *opinion*, in a matter where that opinion is certain of having considerable influence on the fate of others, he will be extremely tender, slow, and circumspect (d).

"The medical man's evidence, (it is observed by Dr. Haslam), in order to impress and satisfy the tribunal before which his testimony is given, should not merely pronounce the party to be insane, but ought to adduce sufficient reasons, as the foundation of his opinion. For this purpose it behoves him to have investigated accurately the collateral circumstances. It should be inquired if the

(c) Minutes of Evidence before the Committee of the House of Lords, 1828, p. 97. (d) Smith's Analysis of Medical Evidence, 197.

party had experienced an attack at any former period of his life. If insanity had prevailed in the family. If any of those circumstances, which are generally acknowledged to be causes of this disease had occurred—as injuries of the head, mercurial preparations largely or injudiciously administered, attacks of paralysis, suppression of customary evacuations &c. It should likewise be ascertained if previous depression of mind had prevailed, resulting from grief, anxiety or disappointment; and it should not be neglected to collect any written documents, as insane persons will very often commit to writing their feelings and opinions, although they may suppress them in discourse.

“There appear, however, sufficient criteria to discriminate crime from insanity, although it must be confessed, and such has been the opinion of distinguished legal authority (*d*), that they have often seemed to be intimately blended; yet there is a partition which divides them, and it is by such well-defined interposition that they are to be separated: for madness, clear and unequivocal insanity, must be established by the medical evidence. It is not eccentricity, habitual gusts of passion, ungovernable impetuosity of temper, nor the phrensy of intoxication, but a radical perversion of intellect, sufficient to convince the jury that the party was bereft of the reason of an ordinary man.

“Notwithstanding the medical evidence may be incapable, *totidem verbis*, to give a clear definition of madness, so as to be suited to the conception of all persons, and to comprehend the various shapes of this disease, on account of the various notions affixed by different persons

(*d*) The Hon. *Charles Yorke*, when Solicitor-General, is reported to have said, “In some sense, every crime proceeds from insanity. All cruelty, all brutality, all revenge, all injustice is *insanity*. There were philosophers in ancient times, who held this opinion as a strict maxim of their sect; and the opinion is right in philosophy, but dangerous in judicature. It may have a useful and a noble influence to regulate the conduct of men, to control their impotent passions, to teach them that virtue is the perfection of reason, as reason itself is the perfection of human nature; but not to extenuate crimes, nor to excuse those punishments which the law adjudges to be their due.” *How. St. Tr.* 19 Vol. 954.

to the abstract terms he may employ; yet it is always in his power to state such perversions of thought, such projects, and such conduct, contradistinguished from that which all men hold to be rational, as shall leave no doubt on the minds of those who are to appreciate his evidence, that insanity exists: and if the person be really insane, it must be from the ignorance or neglect of the medical practitioner if he do not satisfactorily establish his derangement, provided his opportunities of visiting and conversing with the patient have been sufficient" (e).

It certainly is extremely proper, that the inquiries suggested by the author last quoted should be made, but as insanity is not a necessary consequence of all or any of the circumstances which he has mentioned, we must be cautious not to infer its presence from them alone, but extend our inquiries to their actual effect on, and the present state of, the party supposed to be affected with derangement.

(e) See Haslam's Medical Jurisprudence, 48 to 51.

CHAPTER IV.

OF THE COMMISSION OF LUNACY.



SECTION I.

To whom, and in what Manner, Authority is given to inquire whether Persons are Lunatics.

BY the common law, the King's officers, his sheriff, coroner, and escheator, were bound, *virtute officii*, to make inquiry concerning any matter which gave the King a title to the possession of lands, tenements, goods, or chattels—a most important trust during the existence of military tenures, when escheats and forfeitures were frequent; and when, upon the death of each of the King's tenants, it became necessary to inquire of what lands he died seised, who was his heir, &c., in order that the Crown might exercise its right of marriage and other privileges. On special occasions writs were directed to them to make the inquiry; and commissioners were sometimes appointed for the same purpose. When idiots and lunatics came within the jurisdiction of the Crown, the King's title was found in like manner by these officers, assisted, as in other cases, by a jury of the county, whose verdict was called an inquisition, or inquest of office (*a*). The escheator was an ancient officer, so called, because his office is properly to look to escheats, wardships, and other casualties belonging to the

(*a*) 1 Coll. on Lun. 107; Gilb. Exch. 109.

Crown. In ancient times there were but two escheators in England, the one on this side of Trent, and the other beyond Trent; at which time they had sub-escheators. But, in the reign of Edward the Second, the offices were divided, and several escheators made in every county for life, and so continued until the reign of Edward the Third. And by the statute of 14 Edw. 3, c. 8, it is enacted, that there should be as many escheators assigned as when King Edward the Third came to the Crown, and that was one in every county; and that no escheator should tarry in his office above a year: and by another statute he was to be in office but once in three years. The Lord Treasurer named him (b).

In consequence of the oppressive conduct of escheators, sheriffs, and other King's officers, in seizing into the King's hands the freehold of the subject, who thereupon, to his intolerable vexation and delay, was driven to seek a remedy by petition to the King, several statutes were passed for protecting the subject against such grievances. The statute 3 Edw. 1, c. 24, provides, that no escheator, sheriff, or other bailiff of the King shall, by colour of his office, without special warrant, disseise any man of his freehold; and if any do, the disseisee may cause the King to amend the same by office, or he may sue out a writ of *novel disseisin*, and the officer, if attainted, shall pay double damages to the plaintiff, and be also grievously amerced unto the King. This act is considered to provide that no seizure shall be made into the King's hands before office found (c). By an act of the 29th of Edw. 1, it is provided, that where the escheator shall have seised lands into the King's hands, and afterwards it be found upon inquest of office by virtue of a writ issuing out of Chancery, that the King has no title to the same, the escheator shall be directed, by another writ, to return such lands, together with the intermediate profits.

By statute 34 Edw. 3, c. 13, it is provided, that every escheator shall take his inquests of office of good people and lawful, which be sufficiently inherited, and of good fame, and of the same county where the inquiry shall be;

(b) Co. Litt. 13. b. The old statutes relating to Escheators are collected in Rastall, tit. Escheators.
 (c) 2 Inst. 206.

and that the inquests so taken be indented betwixt the escheators and the jurors; and if it be otherwise done, that such inquests be holden for void; and that they be taken in good towns, openly and not privily.

By statute 36 Edw. 3, c. 13, it is provided, that where the escheator commit waste on the lands seized into the King's hands, he shall pay treble damages; and, if any person claim such lands, the escheator shall send the inquest into Chancery within a month after the lands are seized, and a writ delivered to him to certify the cause of his seizure into Chancery; and there the claimant shall be heard without delay, to traverse the office, or otherwise shew his right; and the inquests must be taken openly and by indenture. And if the escheator act contrary to that statute, he is to be imprisoned two years, and ransomed at the King's will (*d*).

By statute 8 Hen. 6, c. 16, it is provided, that no escheator or commissioner shall take an inquest, but of people returned and impanelled by the sheriff of the county, within which he is escheator or commissioner, under a penalty of 40*l.*; nor shall any lands or tenements which have been seized into the King's hands upon inquests before escheators or commissioners, be in anywise let or granted to farm by the Chancellor or Treasurer of England, or any other officer, until such inquest and verdict be fully returned into Chancery or the Exchequer; but all such lands or tenements shall remain in the hands of the King until the inquests and verdicts be returned, and for one month after such return; and if the parties aggrieved thereby come into Chancery (*e*) and offer to traverse the same, and to farm the lands or tenements so seized, the said lands or tenements may be committed to them, until the issue of the traverse, if they shew good evidence, proving their traverse to be true according to the statute 36 Edw. 3, c. 13, and find sufficient surety to pursue the traverse with effect, and to account with the King for the yearly value of the lands,

(*d*) Brook, Abr. tit. Office devant Escheator, pl. 10.

King, the commission must issue out of Chancery, 5 Rep. 52 a; 12 East,

(*e*) This was because, where an office was necessary to entitle the

111.

if the traverse shall be found in his favour; and any letters patent of the lands or tenements made to the contrary to any other person, or let to farm within the said month after the return, shall be void; and the escheators or commissioners are to return the inquests into Chancery, or the Exchequer, within a month after they have been taken, under a penalty of 20*l*.

By statute 18 Hen. 6, c. 6, it is provided, that no letters patent shall be made to any person of any lands or tenements, before inquisition of the King's title therein be returned in Chancery or the Exchequer, if the King's title in the same be not found of record; nor within a month after such return, excepting to those tendering their traverses under the 8 Hen. 6, c. 16; and if any letters patent be made to the contrary, they shall be void (*f*).

By stat. 18 Hen. 6, c. 7, it is enacted, that if any escheator take an office before him, and return not the same into Chancery or the Exchequer, within a month after taking the same, he shall, besides the forfeiture of 40*l*., also pay to the King as much as he is damaged by reason of the not returning such office: and the Chancellor of England is directed to call to his assistance the Treasurer in letting such farms, and for due execution of the statute, 8 Hen. 6, c. 16. It was held, that the two last-mentioned statutes extend to the case of an escheat upon the death of the tenant last seised without heirs, where no immediate tenure of the Crown was found by the inquest; and, as the Crown could not grant to a stranger in such a case without office, neither can a plaintiff in ejectment recover upon the demise of the Crown (*g*).

By the act of the 23 Hen. 6, c. 16, it is provided, that

(*f*) The object of the Legislature plainly was, according to the words of the acts, that in all cases in which the King's title did not appear upon record, the possession should be open to whoever could claim against the King till the final decision of the right; and the authorities correspond with this object. Staunf. de Pr. Reg. 54 a; March. 84; Brooke, Office de Escheator, pl. 56. See 12 East, 112.

(*g*) *Doe d. Hayne, v. The King and Redfern*, 12 East, 96.

every escheator shall take his inquest of office within a month after delivery of the writs, and that all inquisitions shall be taken in good towns and open places; and no escheator shall take, either privily or openly, for the execution of such a writ, in one county, above 6*s.* 8*d.* or 13*s.* 4*d.*, or more, if his labour and costs require it, so as not to exceed 40*s.*, under a penalty of 40*l.* And if any man traverse an office taken before an escheator or commissioner, and have a *scire facias* thereof against any patentee, no protection shall be allowed or allowable.

By the statute of the 12 Edw. 4, c. 9, it is provided, that escheators shall have 20*l.* land in fee in the same county, and shall not make a deputy or farmer, who is not a sufficient man, under a penalty of 40*l.* This statute not to extend to corporations having the power by charter to appoint escheators.

By the statute of 1 Hen. 8, c. 9, it is provided, that if any escheator or commissioner shall return, into any of the King's Courts, any inquisitions or offices concerning lands, tenements, or other hereditaments, not found nor presented by the oaths of twelve men, and indented, and by them sealed, that then the same escheator or commissioner forfeit, for every such office or inquisition so returned, 100*l.* to the parties grieved by any such inquisition or office. And that no escheator or commissioner, nor man, do sit, by virtue of any commission, to inquire of lands, except he have lands, tenements, or hereditaments of the yearly value of forty marks, above all charges, upon pain of 20*l.* And, that every escheator and commissioner shall sit in open and convenient places, according to the statutes theretofore made; and suffer every person to give evidence openly in their presence, under a penalty of 40*l.* And every juryman shall have lands or tenements of the yearly value of 40*s.*, within the same shire where the inquiry shall be made, under a penalty of 100*s.* And the jury, sworn before any escheator or commissioner, shall receive the counter-panel of the office or inquisition by them presented, indented, and sealed; and the same shall be delivered by the escheator or commissioner, and permitted to rest in the possession of the first

person sworn on the said jury, to the intent that the escheator or commissioner may not change or embezzle the offices or inquisitions, under a penalty of 20*s.*, to be paid by each of the persons so sworn. And when the jury are ready to give their verdict or presentment, and offer to present the same, the escheator or commissioners, or part of them, shall receive such verdict without delay, under a penalty of 100*l.*, and deliver the counter-panel of the indenture to the jury, under a penalty of 100*l.* And, if the clerk of the petit-bag of the Court of Chancery, or his deputy, or other officer there, will not receive the office or inquisition, and put it on the file to remain of record, within three days after it has been received by or offered to him, he shall forfeit for every such default 40*l.*: and the commissioners or escheator shall be discharged of the penalty of 40*l.* for not returning the same, imposed by statute 8 Hen. 6, c. 7, provided he return it within a month after the first month, as the cause may require. And the clerk of the petit-bag, for the time being, shall certify, or cause to be certified, the transcript of every office or inquisition, taken before any commissioners or escheators, to the King's Exchequer, the next term following the receipt thereof, upon pain of forfeiture, for every such default, of 100*s.*

By c. 10, s. 3, of the same statute, it is provided, that after office found before any escheator or commissioner, put into Chancery or Exchequer, if any person tendering a traverse to the same office, and desiring to farm the lands, and finding security, and producing evidence to the Chancellor, according to the statute 8 Hen. 6, c. 16, shall come into Chancery within three months after the office so put into Chancery or the Exchequer, he shall be by the Chancellor thereto admitted; and that then all other grants (within the three months) shall be void.

The ancient mode of proceeding, when the King was informed that a person who had lands was an idiot or lunatic, in order to ascertain the existence of the fact of idiocy or lunacy, was, on a petition to the Lord Chancellor, suggesting idiocy or lunacy in a particular person of competent age, and verified by affidavits of facts, to issue a writ to the

sheriff or escheator of the county where his residence was, to try by a jury, and personal examination of the party, whether that suggestion was true or not (*f*). The writs were returnable into the Court of Chancery; the forms of them are various.

The first form of the writ, to the escheator, suggesting that the party "*Fatuus et idiota existit: ita quod regimini sui ipsius, terrarum, tenementorum, bonorum, et catallorum suorum non sufficit,*" directed the inquiry, "*Si A. fatuus et idiota sit, sicut prædictum est, necne; et si sit, tunc utrum a nativitate sua, aut ab alio tempore; et si ab alio tempore, tunc a quo tempore; qualiter et quomodo; et si lucidis gaudeat intervallis; * * * * et quis propinquior hæres ejus sit, et cujus ætatis.*"

Another form of the writ to the escheator, reciting, "*Quia A. idiota, et adeo impotens ac mentis suæ non compos existit, quod regimini sui ipsius, terrarum, vel aliorum bonorum, non sufficit,*" directed an inquiry—" *Si idiota sit, et mentis suæ non compos, sicut prædictum est, necne.*"

By another form, the inquiry is whether "*Idiota et fatuus a nativitate sua, an — alio tempore.*"

According to another form, the sheriff is ordered to inquire, whether, &c., "*A nativitatis suæ tempore semper hactenus purus idiota extiterit * * * * an per infortunium vel alio modo in hujusmodi infirmitatem postea incidit; * * * * et si per infortunium vel alio modo, tunc per quod infortunium, et qualiter, et quomodo, et cujus ætatis fuerit.*"

By another form the sheriff is to inquire whether "*a primævâ ætate sua fatuus extiterit.*"

In the writ intitled "*De idiotâ coram consilio,*" the description is, "*Idiota est et non sanæ mentis existit*" (*g*).

It is to be observed, that the language of the writ, supposing a commencement and cause of the calamity unconnected with birth, does not correspond with the description of an idiot generally received, and adopted by Lord Coke (*h*).

(*f*) F. N. B. 581, ed. 1652; 2 Vol. p. 232, ed. 1794.

(*g*) See Reg. Brev. 266.

(*h*) See 12 Ves. 450, 2nd ed. n. 11.

Although a man was found idiot before the escheator or the sheriff, taken by their examination, and that had been returned into Chancery, yet he who was so found idiot might, in person or by his friends, come into the Court of Chancery, or before the Chancellor and the King's council (i), and shew the matter, and pray that he might be examined before them, whether he were idiot or not; or he might sue forth a writ out of Chancery to certain persons, to bring him who was so found idiot before the King and his council at Westminster, to be there examined; and if he was brought thither and examined, and found to be no idiot, then the inquisition found before the escheator or sheriff, and also the examination which the sheriff had made and returned thereupon, and the office, became void, without any other traverse (j). The same rule applied to an inquisition of lunacy, though the consequences are different (k).

Lord Chancellor *Hardwicke* said, "he could not find one writ directed to the escheator to inquire of lunacy. The escheator was an officer for the Crown revenue, and in case of lunacy, where no profits go to the Crown, the writ was never directed to the escheator" (l). This does not however appear to be correct; for, under the first form of the writ to the escheator inserted above, if the party had been found *fatuus et idiota* from a certain period of time, in consequence of an ascertained cause, and in the enjoyment of lucid intervals, the Crown could have derived no profits under the statute *de prærogativa regis* (m).

When persons *non compos mentis* became distinguished into the two classes of idiots and lunatics, distinct commissions in the nature of the old writs were framed for each of them, one *de idiotâ inquirendo*, and the other *de lunatico inquirendo*.

(i) It is said that the words "*coram rege in concilio*," have been considered to mean the Court of Chancery. *Ex parte Southcot*, Ambl. 112.

(j) See F. N. B. p. 583, ed. 1652; 2 Vol. p. 233, ed. 1794; Staundf. de Pr. Reg. 36.

(k) *In re Heli*, 3 Atk. 635.

(l) *Ex parte Southcot*, Ambl. 111.

(m) 17 Edw. 2, c. 10. See *ante*, pp. 10, 11; West's Symb. Part 1, s. 370; Vin. Abr. tit. *Lunatic*, (E. 2); 2 Ves. sen. 405.

Rights accruing to the Crown by forfeiture and other means were inquirable either by writ or by commission, the latter is more large and general, and has in practice been adopted in preference to the former (n).

Commissions in the nature of the ancient writs are made by letters patent under the Great Seal, directed to five persons as Commissioners, who, any three or more of them, are to inquire, upon the oaths of good and lawful men of the county, as well within liberties as without, by whom the truth of the matter may be better known, whether the party against whom the commission has issued be an idiot and without understanding from his nativity, or (according to the commission) a lunatic, or in the enjoyment of lucid intervals, so that he is not sufficient for the government of himself, his manors, messuages, lands, tenements, goods, and chattels; and if so, from what time, after what manner, and how; and whether, whilst in the same state of mind, he hath alienated any lands or tenements; and if so, what lands and tenements, to what person or persons, where, when, after what manner, and how; and what lands and tenements, goods, and chattels then remain to him; and of what person or persons, as well the lands and tenements so alienated as the lands and tenements by him retained, are held; and by what service, after what manner, and how, and how much they are worth by the year in all issues, and who is his nearer heir, and of what age (o). The Commissioners, three or more of them, are further commanded, at certain days and places, which they shall appoint for the purpose, diligently to make inquisition in the premises, and to send the same without delay, distinctly and plainly made, under their seals, and the seals of those persons by whom it shall be made, into the Court of Chancery, together with the letters patent. And the sheriff is directed at certain days and places, which the

(n) *Ex parte Southcot*, Amb. 111; 2 Ves. sen. 405.

(o) These words, *and of what age*, are said in practice to be referred to the age of the heir. That doubtful construction is the more questionable,

as another form of the writ, by very clear expression, applies that inquiry to the person who is the subject of the commission. 12 Ves. 451, 2nd ed., n. (11).

Commissioners shall make known to him, to cause so many and such good and lawful men of his bailiwick, as well within liberties as without, as the Commissioners shall direct, to come before the Commissioners, any three or more of them, by whom the truth of the matters in the premises may be better known and inquired into (*n*). The commission of lunacy, like all other commissions which pass under the Great Seal, issues from the common law side of the Court of Chancery (*o*).

In case of the death or incapacity of the Commissioners before the commission has been executed, it will be superseded, and a new one directed to issue (*p*).

The Lord Chancellor, on issuing the commission, can, if he thinks proper, order the sheriff to return a special jury of gentlemen of the neighbourhood of the residence of the supposed lunatic (*q*). It is understood, that, without an or-

(*n*) See the form of the commission in the Appendix.

A bill is now in progress through Parliament (which will be found in the Appendix in case it be passed during the present session), whereby, after reciting that great expense and inconvenience had been experienced from the practice of directing commissions in the nature of writs *de lunatico inquirendo*, to three or more persons, therein named as Commissioners; and that doubts had arisen whether such commissions could be directed to one such Commissioner only; it is declared that the Lord Chancellor or the Lord Keeper, or Commissioners of the Great Seal of Great Britain, or other the person or persons for the time being intrusted by the King's sign manual with the care and commitment of the custody of the persons and estates of persons found idiot, lunatic, or of unsound mind, (in case he or they shall deem it advisable), to cause any commis-

sion, in the nature of a writ *de lunatico inquirendo*, to be directed or addressed to any one or more person or persons, who shall make inquisition thereon, and return the same into the High Court of Chancery, and who for that purpose shall have the same power to issue precepts to the sheriff to summon a jury, and to compel the attendance of witnesses, and the production or attendance of the alleged lunatic, and all other the powers hitherto possessed by the three or more Commissioners in such commissions named; and such inquisition shall be good and valid to all intents and purposes, as if the said commission in the nature of a writ *de lunatico inquirendo* had been directed or addressed to, and the said inquisition returned by, three or more Commissioners as heretofore.

(*o*) 4 Inst. 80, 81.

(*p*) *In re Parker*, 24 Oct. 1828.

(*q*) *In re Barnesley*, 1 March, 1743.

der for the purpose, the jurors are usually selected from the class of persons who serve on special juries.

The direction in a commission of lunacy to inquire 'who is next heir,' seems to be given, in order that the Crown may know to whom the property ought to be delivered when the necessity of its superintending care has ceased. The inquisition indeed is not conclusive; the person so found to have been heir may not be the heir; the finding of the jury may be wrong; but *prima facie* he is to be taken as heir (r).

It has not been the practice in England, for thirty years past, to make particular inquiries before the commissioners and jury respecting the heir-at-law, or the property of the lunatic; but those facts, as well as who are the next of kin of the lunatic, are subsequently ascertained and reported by the Master to whom the matter of the lunacy is referred after the inquisition has been returned. The jury generally return their ignorance of those facts as well as of the lands which the lunatic has aliened.

It will be proper in this place to point out some other methods provided by the law of England for determining the insanity of a party.

In case a person, who, if of sound mind, would be entitled to take advantage of the insolvent act, shall become of unsound mind when in prison; the gaoler of the prison is directed to require one or more justice or justices of the peace for the place wherein the prisoner shall be, to attend at the prison, and inquire into the state of mind of such prisoner; and thereupon, and in case any such justices shall receive information by other means, that any prisoner is of unsound mind, such justice or justices shall go to the prison, and by his or their own view, and by examination on oath of such persons as he or they shall think fit to examine, and shall inquire into the state of mind of such prisoner; and if it shall appear upon such inquiry, that such prisoner is of unsound mind, such justices shall make a record of the fact, and certify the same to the Insolvent Debtors' Court; and the creditors are bound by the certificate (s).

(r) *In re Fitzgerald*, 2 Sch. & Lef. Cooke's Practice of the Insolvent Debtors' Court, p. 145.

(s) 7 Geo. 4, c. 57, s. 73. See

Where land is vested in a lunatic upon trust, or by way of mortgage, or stock is standing in the name of a lunatic as a trustee, the Lord Chancellor, or other person intrusted by the King's sign manual with the care of lunatics, may appoint before inquisition a person to convey or transfer such land or stock in the place of such lunatic (f).

The practice, in such cases, upon a petition being presented for a conveyance or transfer, is, for the Lord Chancellor to refer the matter to a Master in Chancery, to inquire whether the party is a trustee, and of unsound mind; evidence of which must be laid before the Master, who makes a report, upon which the order to be obtained is founded (g).

By statute 9 Geo. 4, c. 40, s. 38, upon its being made known to any justice of the peace of any county, that a poor person chargeable to any place within such county is deemed to be insane, one justice may require the overseers of the parish to bring such insane person before two justices, who, if satisfied upon view and examination of such poor person, or from other proof, that such poor person is insane, shall make inquiry into the place of last legal settlement of such poor person, and may cause such person to be sent to the lunatic asylum for the county, or to some public hospital or house licensed for the reception of insane persons.

It remains to observe, that in actions, or in the trial of issues directed by the Court of Chancery, where the question turns upon the sanity of a party at the time a particular instrument was executed, and in criminal cases, it is the province of the jury, assisted by the direction of the Judge, to determine whether the party was insane or not.

The capacity of parties, appearing before Judges or Commissioners for the purpose of levying fines or suffering recoveries, is determined by such Judges or Commissioners, on their inspection and examination of the parties (h).

(f) 11 Geo. 4 & 1 Wm. 4, c. 60, chap. viii. s. 3.

a. 5.

(g) See *post*, chap. vi. s. 1.

(h) See *ante*, p. 35, note; *post*,

SECTION II.

Of the Circumstances under which the Commission of Lunacy may be issued.

THE object, in issuing a commission of idiocy or lunacy, is to ascertain whether the party shall be allowed to exercise acts of dominion over his property, or whether his person and estate shall be taken into the custody of the Crown, for the benefit and safety of the lunatic, and his estate.

Commissions were at first confined to cases of idiocy and lunacy; but, in progress of time, this part of the prerogative was enlarged and extended to one who is *non compos mentis*; but here it stopt; and that at least, the Court of Chancery insisted, must be found, to entitle any one to prosecute a commission—the finding of the jury, that one is incapable of managing his affairs, is not sufficient, but they must expressly find the party to be of *unsound mind* (*w*).

Lord Chancellor *Hardwicke* observed, that though he was desirous of maintaining the prerogative of the Crown in its just and proper limits, yet, at the same time, he must take care not to make a precedent of extending the authority of the Crown, so as to restrain the liberty of the subject, and his power over his own person and estate, further than the law would allow. And notwithstanding what had been said of the change of the law, his Lordship thought the prerogative of the Crown and the rule of law still the same, and could not be altered but by act of Parliament; for it was only the form of returns which had been changed by the Court (*x*).

Lord *Eldon* remarked, that it seemed to have been a very long time, before those who had the administration of justice in this department thought themselves at liberty to is-

(*w*) Lord *Donegal's* case, 2 Ves. sen. 408.

(*x*) *Ex parte Barnesley*, 3 Atk. 171.

sue a commission, when the person was represented as not being idiot or lunatic, but of *unsound mind*, importing by those words the notion that the party *was in some such state as was contradistinguished from idiocy and from lunacy, and yet such as made* him a proper subject of a commission to inquire of idiocy or lunacy. From the moment that was established, it appears however to have been also settled, that whatever may be the degree of weakness or imbecility of the party, whatever may be the degree of incapacity of the party to manage his own affairs—if the finding of the jury is only that the party was of extreme imbecility of mind, and they would not infer from that that he is of *unsound mind*, they have not established a case upon which the Chancellor can make a grant constituting a committee either of the person or of the estate. All the cases decide that mere imbecility will not do, and that incapacity to manage affairs will not do, unless such imbecility and such incapacity amount to evidence that the party is of *unsound mind, and the jury find him to be so (y)*.

It seems that the Court did not, in Lord *Hardwicke's* time, grant a commission of lunacy in cases in which it has been since granted. And that of late years the question has not been, in many cases, whether the party is absolutely insane; but the Court has thought itself authorized (though many difficult and delicate cases with regard to the liberty of the subject occur upon that,) to issue the commission, provided it is made out, that the party is unable to act with any proper and provident management, liable to be robbed by any one, under that imbecility of mind, not strictly insanity, but as to the mischief calling for as much protection as actual insanity (*x*).

There are numerous instances of commissions, the objects of which were clearly persons not lunatic in the strict sense, the disorder of mind arising from causes that could not possibly admit lucid intervals, old age for instance; a glimmering

(y) *Per Lord Eldon, In re The Earl of Portsmouth*, 22 April, 1815. (x) *Ridgway v. Darwin*, 8 Ves. 65.

only of understanding left: a state produced by no sudden cause, but by the gradual effect of time upon the mind (e).

In one case, the party was not insane; but his mind by years and attention to business was worn out. Epileptic fits may produce a mind in the same state at a much earlier period. Such cases have been thought proper subjects of the writ in the nature of a writ *de lunatico inquirendo*. In another case the commission stood upon the same principle. The party, when he could be kept sober, was a very sensible man, but in a constant state of intoxication he was perfectly incapable, and in a continual state of insanity (f).

Lord Chancellor *Erskine* thought there ought to be an act of Parliament, not from any defect in the jurisdiction, but on the immense moment that the Lord Chancellor should not assume an authority which did not belong to him by the ancient jurisdiction, as that might press sorely on the liberty of the subject; but, on the other hand, agreed with Lord *Eldon*, that such persons, as above all others are entitled to protection, ought not to go unprotected. He put the case of a man having passed a great and illustrious life, and his faculties decaying by the course of nature, so that he might not be fit to govern either himself or his affairs; and said, it is unseemly, that he should be put upon the footing of a lunatic, and that a commission should issue in *the ordinary course*, which might affect the families of such persons in other times (g). And his Lordship asked, why should not a man be entitled to protection in this second state of infancy, as well as the first? And added, the whole prerogative is this: "That it falls to the King to take care of those who cannot take care of themselves" (i).

It has been said, that, to support a commission in the na-

(e) 12 Ves. 447.

(f) 8 Ves. 66. But see *Cory v. Cory*, 1 Ves. sen. 19.

(g) Such is the perishable fabric even of the finest genius, that Lord *Somers*, the Duke of *Marlborough*,

and Lord *Manfield*, might, at the close of their lives, have been made the subject of such a commission. See 2 Mad. Ch. 732.

(i) *Ex parte Cranmer*, 12 Ves. 449.

ture of a writ *de lunatico inquirendo*, it is sufficient that the party is incapable of managing his own affairs (*k*).

If a man loses his speech by an apoplectic fit, though he shew signs of sense, it is said a commission may be granted against him (*l*).

There may be such weakness of mind as may render a man incapable of governing himself from violence of passion, and from vice and extravagances, and yet not sufficient under the rule of law and the constitution of this country, to warrant the issuing of a commission against him (*m*).

In a case where a person had been found a lunatic for the period of ten years past, and who subsequently, and up to a late period, had been, with the knowledge of all persons, who had either any interest in, or feeling about, the management of his affairs, doing all the acts the most sane man was intrusted to do; and with regard to his occupations, amusements, mode of life, and every circumstance belonging to the question of sanity, he had for ten years been permitted to act at his own discretion; and it was then averred, that so long as a particular topic (about a forged will) was not resorted to, for the purpose of inducing him to dissipate his fortune, his family permitted him to act without restraint. Lord Chancellor *Eldon* observed, "there certainly may be persons, proper objects of this commission, and understood to be so for many years, to whose case, either from true affection or mistaken tenderness, the proper process may not have been applied. There may be persons insane upon particular points, who, if those points are not touched upon, not only act discreetly in their own affairs, but even as trustees for others." His Lordship added, that he did not doubt the fairness of the motives of the parties, but said, it is of the last consequence, that the officer intrusted with this jurisdiction should be very careful, before he established the lunacy of a person ten years ago, who had during that time been permitted to act as if sane, and to deal with a

(*k*) *Gibson v. Jeyes*, 6 Ves. 273.

(*l*) Com. Dig. Idiot, (B).

(*m*) *Ex parte Barnesley*, 3 Atk.

173.

great variety of persons, all of whom were entangled in the consequences (n).

Where a petition was presented, praying for a commission of lunacy to try whether or not the grandfather of the petitioner was in a state of mind sufficiently sound to enable him to attend to the management of his own affairs—Lord Chancellor *Eldon* observed, “that it was not an application against the party as a lunatic, in the generally understood sense of that word, but as a person who, from the effect of old age upon his faculties, required something more of providence to be thrown around him for the protection of himself and his property, than his own mind furnished him with. It was necessary that the Court should be satisfied, upon the clearest evidence, that the party was unable to manage his affairs, before it would interfere.” His Lordship did not issue a commission, but directed all the affidavits to be laid before two eminent physicians, whom he named, with a request that they would report their opinion of the party’s state of mind, not in regard to lunacy or idiocy, but as to his power of protecting himself and his property. On a subsequent day, his Lordship said, that it was impossible for him, under the representation of the physicians, to grant the commission which had been applied for; but as he thought the application was not an improper one, the petition was dismissed without costs (o).

It seems, that a commission of lunacy may issue against an infant (p); but as the Court of Chancery has power over infant wards of Court and their estates, such a proceeding seems unnecessary during the minority of the ward, except under particular circumstances, when the more ample powers given in lunacy may be required for managing their es-

(n) *Ex parte Hall*, 7 Ves. 260.

(o) *In re Langley*, 2nd and 13th August, 1822.

(p) *Hals’s case*, 30 Nov. 1743, cited 2 Ves. sen. 403. On reference to the Order Book in the lunatic office, it appears that the mother of

the lunatic had been appointed his guardian; and on issuing the commission Lord *Hardwicke* made an order that the infant should not be married without the leave of the Court.

tates. In a recent case, a commission of lunacy was granted against an infant of the age of twenty years, where it appeared by the affidavits in support of the commission, that the party had been of very weak intellect from her birth, and that there was no ground to expect that she would ever be of sound mind, or capable of governing herself, or managing her own affairs (q).

A person found a lunatic in Jamaica, where his property was situated, having come to England, accompanied by one of his committees, a commission of lunacy was issued against him here. The petition for the commission was presented by an illegitimate sister of the lunatic and her husband. The insanity of the individual was not denied; but it was stated, as an answer to the application, that a commission of lunacy had issued, and was then in force against him in Jamaica, where his property was situated, and where till lately he had resided; that three persons had been appointed his committees in that island; that he had been brought over to this country for the sake of his health; that one of his committees had accompanied him, in order to take care of his welfare and comfort; that, under these circumstances, a commission in England was not necessary for the protection of the lunatic and his property, and therefore ought not to be granted. Lord Chancellor *Eldon* held, that the commission then existing in Jamaica was no reason why a commission should not issue here. On the contrary, it was evidence of the absolute necessity that there should be somebody authorized to deal with the person and estate of the lunatic. While the lunatic was here, no Court would have any authority over him or his property, unless a commission was taken out (r).

A commission of lunacy may be taken out against a person who has an estate in England, although he is resident in another country (s).

It has been before stated (t), that the Lord Chancellor has

(q) *In re Flint*, 18 Aug. 1831. 401; *S. C. Ambl.* 109. See *post*, sect.

(r) *In re Houstoun*, 1 Russ. 312. 4.

(s) *Ex parte Southcot*, 2 Ves. sen. (t) *Ante*, p. 61.

a discretion in granting or refusing a commission of lunacy, although the party may be of unsound mind; and Lord Chancellor *Lyndhurst* refused to grant a commission against a gentleman under the care of his wife, on the ground that it did not appear to be a case of such pressing urgency as to require such a proceeding for the comfort and protection of the supposed lunatic, and might be attended with injurious effects to him (t).

If any person, appearing insane, shall endeavour by intrusion to gain admittance into the King's usual places of residence, and there be reason to apprehend danger to the King's person, the Lord Chancellor may direct a commission to issue; and if the jury find him insane, his Lordship may order his confinement during such time as there shall be reason to apprehend danger to the person of his Majesty (u).

It is in many cases very difficult to draw the line between such weakness, which is the proper object of relief in the Court of Chancery, and such as amounts to insanity: however, the denying a commission does not exclude from relief against any deeds or wills, which may be improperly obtained from a person of weak mind (v).

SECTION III.

Upon whose Application the Commission of Lunacy may be directed to issue.

IT has been said, that as the Crown has an interest in respect of persons *non compos mentis*, a commission may

(t) *In re Clement*, 28 April, 1839. died.

A commission was granted by Lord Brougham in July, 1831. The party

was found a lunatic, and has since

(u) 39 & 40 Geo. 3, c. 94, s. 4.

See Appendix.

(v) 2 Ves. sen. 409.

be directed to issue upon information by the Attorney-General (w).

In one case, a commission of lunacy was granted against a person confined in prison, on the application of the Solicitor of his Majesty's Treasury (x).

Commissions, however, are usually directed upon petitions preferred by private individuals standing in a near relation to the supposed lunatic, accompanied with affidavits setting forth so many instances of weak or incoherent conduct or language, as raise a strong presumption that the party is incapable, through insanity or mental derangement, of conducting himself rationally, or managing his own affairs.

A husband may prefer a petition for a commission against his wife, and *vice versa*. A father or mother against a child, and *vice versa*. Brothers, sisters, uncles, aunts, nephews, nieces, cousins, may prefer petitions for commissions against each other. An executor under a will may prefer a petition for a commission against a legatee under the same will. A trustee under a deed may prefer a petition against his *cestui que trust*. Creditors may prefer a petition for a commission against their debtor (y).

A commission has also been issued on the petition of the tenant of the supposed lunatic, where there was no doubt that the party was in a state that made him the proper subject of the commission; although it was opposed by his mother under whose care he was residing; and it was alleged that the tenant, being in arrear for rent, had taken such a step with the view of gaining time. Lord Chancellor *Eldon* observed, that he could not, upon the motives attributed to the petitioner, refrain from giving the lunatic the protection of a commission, as there was no doubt that he was an object of it, being in actual custody, and clearly in such a state that he was incapable of managing his own person or property. His Lordship said, that he did not enter into the motives, the fact being made out that the party required the protection of a commission; and ordered the commission to issue (z).

(w) See 1 Coll. on Lun. 125.

(y) 1 Coll. on Lun. 377.

(x) *In re M^rLean*, 23rd January,
1806.

(z) *Ex parte Ogle*, 15 Ves. 112.

A petition for a commission of lunacy was presented by persons who were strangers to the family of the alleged lunatic. The application was supported by an affidavit, which, besides clearly establishing his lunacy, alleged, that he was not properly treated by the persons in whose care he was. It was opposed on behalf of his nearest relations, his brothers and sisters, with whom he lived, and whose conduct towards him had been the subject of flagrant misrepresentations in newspapers and other publications circulated in the neighbourhood where they resided. There was no reason to suppose that the petitioners for the commission had any concern with these publications. Lord Chancellor *Eldon* was of opinion, that, even upon the statements made by the respondents, a commission ought to issue; and that the costs occasioned by the opposition to it, (except the costs of some affidavits in answer to those filed by the brothers and sisters, which did not arrive till after the hearing of the petition had commenced, and, though stated to the Court, were not taken into consideration in the judgment), should be paid by the respondents. If the scandalous publications, of which the respondents had just reason to complain, had been brought home to the petitioners, that, his Lordship said, would have made a difference in his order with respect to costs (a).

The nearest relations of an alleged lunatic will be allowed to have the carriage of a commission, in preference to strangers, unless there be some specific ground of objection (b).

In a case where there was a contest for the carriage of a commission of lunacy against a person admitted to be a lunatic, between a person who was his heir-at-law and next of kin, and the sister-in-law of the lunatic, in whose custody he had been for some time, but who was no relation in blood; the heir-at-law was preferred, according to the ordinary rule, as being most likely to insure the objects of the commission (c).

When it appears that the parties applying for the com-

(a) *In re Smith*, 1 Russ. 348. *te Broadhurst*, 1 Ves. & Bea. 59.

(b) *Ex parte Tomlinson*, *Ex parte* (c) *In re Green*, 2nd April, 1831.

mission are actuated by unworthy or improper motives, it will be a sufficient reason for giving the carriage of it to other persons.

SECTION IV.

Of the Execution of the Commission of Lunacy.

WHEN the commission is to be executed, the commissioners, in pursuance of several statutes, the words of the commission, and the standing orders of the Chancellor, issue their precept to the sheriff, requiring him to cause a jury of good and lawful men of his county to come before them at a certain time, and in a certain place, to inquire upon their oaths of the matters and things which shall be given them in charge, by virtue of the commission (*d*).

By statute 1 Hen. 8, c. 8, s. 3, it is directed, that every escheator and commissioner shall sit in convenient and open places, according to the statutes (*e*) theretofore made; and that the said escheators and commissioners shall suffer every person to give evidence openly in their presence, to such inquest as shall be taken before any of them, upon pain of 40*l*. And these statutes extend to inquisitions taken before sheriffs (*f*). No inquest can be taken upon the oaths of fewer than twelve jurymen; if twelve jurymen, however, concur in the verdict, it will be sufficient, although others refuse to join (*g*).

The common order of the Chancellor directs the commission of lunacy to be executed in or near the place of abode of the supposed lunatic, and a jury of the county and of the neighbourhood where the supposed lunatic lives to be returned to inquire of the lunacy. The general rule is, where

(*d*) See Appendix.

(*f*) 4 Rep. 58 a.

(*e*) 34 Edw. 3, c. 13; 36 Edw. 3,
st. 1, c. 14; 23 Hen. 6, c. 17.

(*g*) *Ex parte Wragg*, 5 Ves. 450.

the party is resident within the jurisdiction of the Chancellor, not to direct the commission to be executed at any other place than the place of residence of the supposed lunatic (*h*). There are exceptions to this rule, but some satisfactory ground must be made out in evidence by the party contending for such an exception. In one case, where the supposed lunatic had a town and country residence, both in the county of Middlesex, the commission was directed to be executed at or near either of such places of abode as the commissioners should direct (*i*).

In a case where a petition prayed that a commission of lunacy, which had issued into Devonshire, might be executed in London, where the alleged lunatic had been about six months; having been removed, as was represented, for the benefit of advice, from temporary residences at Exeter and Teignmouth, his previous residence having been in his father's family in Devonshire—Lord *Eldon* observed, that, without undertaking to say that there could be no exception to the rule last laid down, he had not found any instance in fact where the party was within the realm; and that motives of convenience, with reference to the attendance of witnesses, much more of counsel, ought not to form an exception. His Lordship said, that it was a most improper proceeding, to bring a person into Middlesex for the purpose of executing the commission there; and expressed a doubt, whether he had any right to make the alteration as to the place of executing the commission, after it had issued (*k*).

In a recent case, Lord Chancellor *Brougham* took into consideration the convenience of the attendance of witnesses upon the inquiry, and directed the supposed lunatic to be conveyed from London, where he had been some time, to the place of his former residence, where the commission was directed to be executed (*l*).

If a man, resident in the city of London, were conveyed by

(*h*) *Ex parte Southcot*, 2 Ves. sen. 401; *Ex parte Baker*, 19 Ves. 340; *S. C. Coop. C. C. 205.*

340; *S. C. Coop. C. C. 205.*

(*k*) *Ex parte Baker*, 19 Ves. 340.

S. C. Coop. C. C. 205.

(*l*) *In re Green*, 8 April, 1831.

(*i*) *In re Jervis*, 14 Aug. 1829.

force into Essex, he would still, for the purpose of executing a commission, be considered as resident in the city; for a man cannot be said to reside in a place to which he has been carried while he had not mind enough to intend a change of residence. Where the object of inquiry is rather to ascertain the time at which the lunacy commenced, than the fact of lunacy, it is more material that the commission should be executed among persons who knew the state of the individual prior to the accident, to which by the witnesses on one side the lunacy is imputed (m).

The principle, on which the Crown extends its protection to lunatics, requires an examination into the circumstances of competence or incompetence, under which the lunatic has performed acts affecting his property; and therefore it is usual, in all such cases, when it appears that the lunacy has been of some duration, to inquire from what period it commenced (n).

There are instances of inquisitions having been quashed, on the ground that the commencement of the lunacy was not carried back so far as was warranted by the evidence. Thus, in one case, where it appeared by a petition, that the party who had been found a lunatic by inquisition had been idiotic and of unsound mind from his infancy, and had done or acquiesced in several acts affecting his property, and the jury had carried back the lunacy only for the period of six years, no committees having been appointed, the inquisition was quashed, and a new one directed to issue; and it was ordered that the brother of the lunatic, and the petitioners for the commission, should lay before the commissioners and jury such evidence as they might be able, touching the state of mind of the lunatic, from the earliest period of his life down to the time of executing the commission (o).

And in another case, where the lunatic had executed deeds prior to the period at which the jury found the lunacy to have commenced, the inquisition was quashed, on the

(m) *Ex parte Smith*, 1 Swanst. 6.

(n) *Ibid.*

(o) *In re Wooler*, 8 Aug. 1825.

ground, that the finding of the jury was not carried back so far as was warranted by the evidence; and a new commission was directed to issue (*p*).

The commissioners and jury have a right to inspect and examine the lunatic, and, it is believed, most commonly do so. The commissioners have also power to order the lunatic to be produced before them, without the prior order of the Lord Chancellor; and if the persons, in whose custody the lunatic is, refuse to produce him, they are liable to the censure of the Court, and to the payment of costs (*q*). The disobeying the Chancellor's order for production of the supposed lunatic is a contempt punishable by commitment to the Fleet (*r*).

An order may be obtained for allowing access to be had to a person supposed to be a lunatic, for the purpose of enabling him and his friends to oppose the commission. Thus, in a case where a commission had been issued against a party who was in confinement, and access to him had been denied; on the petition of his daughter and her husband, stating that they believed that they could produce competent witnesses to prove that the party supposed to be a lunatic was of sound mind, and able to manage his own affairs, and that they disapproved of the issuing of the commission, on the ground that the same was not necessary, and would be prejudicial to the alleged lunatic, his family, and affairs—The Lord Chancellor ordered that the petitioners and their solicitors, and such medical advisers as they might think fit to appoint, should have access to and be at liberty to visit the party supposed to be a lunatic, at all seasonable times prior to and during the execution of the commission of lunacy, for the purpose of ascertaining the actual state of his mind, and his competency to manage his affairs; and the persons having him in custody were restrained by the order from interfering with or interrupting the petitioners, or their solicitors, or medical advisers, in such visits, and were further restrained from removing or

(*p*) *In re Warren*, 17 April, 1824. (*r*) *Lord Wenman's case*, 1 Peere

(*q*) *Ex parte Southcot*, 2 Ves. Wms. 702.

concealing him from the petitioners, or their solicitors, or medical advisers (r).

In one case, where the wife of the supposed lunatic opposed the issuing of the commission, an order was made that she should be at liberty to attend the execution of the commission by counsel, if she thought fit (s).

In another case, the Lord Chancellor ordered any person or persons in whose custody or power the supposed lunatic might be, to produce him at the execution of the commission of lunacy, or on any adjournment thereof, to be inspected and examined, as often as there might be occasion, before the commissioners and jury (t).

And, sometimes, a further order is added, that notice of the time and place of executing the commission be given to the supposed lunatic, or some other person on his behalf (u).

If the persons who have the *non compos* in their power carry him out of the Chancellor's jurisdiction, to avoid producing him, it has been said, that the commission may be executed in his absence (v). But, where the party had been secreted, and the jury required his production, it was one ground for superseding the commission and issuing a new one (w).

A commission may be directed against a *non compos* abroad, and the inquisition shall be taken, not where he last resided, but where his mansion house or other property is situated. On a petition for a commission of lunacy against a person who was positively sworn to be a lunatic then resident in Flanders, Lord *Hardwicke* said, there can be no good reason, why, if any subject having an estate in England happens to be an idiot or lunatic, but is out of the kingdom, there can be no inquiry here. No inquiry can be made beyond sea, for it is not to be executed by the commissioners only, as in taking an answer or assigning a guardian, which may be executed beyond sea, but there must be a jury to inquire of the fact; which must be of a county

(r) *In re Fletcher*, 25 April, 1832. *In re Clement*, 30 July, 1831.

(s) *In re Clement*, 30 July, 1831. (v) *Hals's case*, cited 2 Ves. sen.

(t) *In re Holmes*, 13 Dec. 1827. 404.

(u) *In re Jervis*, 14 Aug. 1829; (w) *In re Hals*, 30 Nov. 1743.

in England; then, if no inquiry can be made in this country, both the person and his estate would be in a very unfortunate case, and also the King as to his prerogative. The whole matter must be inquired into before the commissioners and jury, so that no mischief may arise from the absence of the party. If they are satisfied by clear evidence that he is a lunatic, they will find so without inspection; if not satisfied without inspection, they will make no verdict, or return that he is not; and there it must rest, nor can any effect arise from it. Nor is this conclusive; for, if he is beyond sea, and is of sound mind himself, the laying hold of his lands is notice to him that such proceedings are against him, and he may come and appear, or any person opposing the commission on his behalf will be heard; and if insisted upon, and reasonable evidence adduced, he must be then inspected. A commission was accordingly issued into the county where the mansion house and great part of the alleged lunatic's estate lay (*x*).

The Chancellor, if possible, will prevent a *non compos* from being carried out of the jurisdiction of the Court, even before a commission has issued (*y*).

An order to restrain the removal of a supposed lunatic out of England was made upon the petition for a commission, the hearing of which was postponed (*x*).

But an order to prevent the removal of a supposed lunatic out of the Lord Chancellor's jurisdiction will not be made, except upon affidavits which satisfy the Court that the party is a fit subject of a commission of lunacy, and that there is reasonable apprehension of such an intended removal.

The supposed lunatic himself has a right to be present at the execution of the commission (*a*).

(*x*) *Ex parte Southcot*, 2 Ves. sen. 401; *S. C.* Ambl. 109.

(*y*) *Lady Marr's case*, Ambl. 82.

(*x*) *In re Frank*, 26 Feb. 1825.

(*a*) *Ex parte Cranmer*, 12 Ves. 455.

A lunatic ought not to be brought before the Court of commissioners under any artificial excitement. A case mentioned of a supposed lunatic

having been brought before the commissioners for a second examination, his conduct at the first having been rational: in the interval he had been permitted to drink a considerable quantity of ale, spirits, and bottled porter, immediately after which he was again produced; when his altered demeanor convinced the jury (ignorant of his potations), that he was a lunatic;

It is said to be a practice by no means uncommon in cases of lunacy, (analogous to a practice very common in civil cases), when the lunatic cannot be removed to the jury, and it is inconvenient for the jury to go to the lunatic, for one or two of the jury to examine the lunatic, and report their observations to the rest (b). But such a practice ought not to be encouraged, except in cases of absolute necessity, as it deprives the party of the benefit of the judgment of the other jurors.

In a recent case, on issuing a commission, it was ordered, that if the commissioners and jury thought fit to examine the supposed lunatic, for the purpose of ascertaining the actual state of his mind, then they, or such of them as thought proper, should visit him (c).

In another case, where the fact of the lunacy of the party was not much disputed, directions were given, with the view of shortening the inquiry and saving expense, that the jury should examine the supposed lunatic previously to entering upon other evidence (d).

In one case, where the commission was executed in London, and the jury thought it necessary to have a view of the supposed lunatic's mansion-house in the country, it was ordered that one of the commissioners should be at liberty to attend such view by the jury (e).

In ordinary cases of the execution of inquests of office, inasmuch as such proceedings are *ex parte* and not conclusive, notice is not given of the execution of the commission to the party who will be affected by it; but if a sufficient reason for such notice is made out, on application to the Court, an order may be obtained that reasonable notice be given to the party requiring it (f).

and a verdict was found accordingly. One of the commissioners being afterwards accidentally informed of the circumstance, laid the case before the Lord Chancellor, who immediately quashed the commission. 1 Paris & Fonbl. Medical Jurispr. p. 294, n. (a).

(b) *Ex parte Smith*, 1 Swanst. 6.

(c) *In re Clement*, 30 July, 1831.

(d) *In re Green*, 2 April, 1831.

(e) *In re Sir G. O. P. Turner*, 13 Dec. 1823.

(f) *Rex v. Daly*, 1 Ves. sen. 269.

It is a subject of surprise, that such a rule as this should still prevail in matters of lunacy, and that a commission should be granted without requiring any notice to be given either to the party to be affected by

If the person against whom a commission of lunacy is sought to be obtained, or any person interested in opposing such a proceeding, or their agents, have entered a *caveat* at the office of the Secretary of lunatics against the issuing of the commission, notice of the execution of the commission must be given to the party who has entered such *caveat*. Where a party against whom a commission had been prayed had presented a petition against the issuing of the commission, and stated that he was perfectly competent to govern himself and to manage his affairs; it was ordered that due notice of the time and place of executing the commission should be given to his solicitors, who were to be at liberty to attend the execution of the commission by counsel, if they thought fit, and that they should be allowed their costs in case the party should be found a lunatic (*g*).

In a case, where a petition was presented by a party, stating that he had been informed, that a commission of lunacy had been issued against him on the application of his two daughters, and that he was in a sound state of mind, and perfectly competent to the management of himself and his affairs, which he was ready to prove by the evidence of persons of respectability, and stating some objections to the commissioners named in the commission on account of their connexion with the solicitor for the commission: the Lord Chancellor, on a number of affidavits being filed, ordered the commission to be resealed, and to be forthwith tried; and that due notice of the time and place of executing the

it, or to some of his relations who are not concerned in the application; and that it is practicable for a comparatively secret tribunal to sit in judgment upon the actions and state of mind of a party, without his having an opportunity of preparing for his own vindication, and defending himself against the imputation of insanity. Notwithstanding the right to traverse, it is submitted, with great deference, that it would be proper to make a general order of Court, requiring reasonable notice in all cases

to be given to the party, or to some of his relations or friends who are not concerned in the application, of the intention to apply for a commission of lunacy against him. Such notice, if the party possessed any reason, would enable him to oppose the application in the first instance, and would be no obstacle against the issuing of a commission in cases of absolute necessity.

(*g*) *In re* Sir G. O. P. Turner, 8 Dec. 1823.

commission should be given to the alleged lunatic or his solicitors (*h*).

Notice of the execution of a commission was ordered to be given to the nephew and heir-at-law of an alleged lunatic, on his presenting a petition in opposition to the commission (*i*).

Where notice of the execution of a commission had been directed to be given to a party who had an interest in respect of a contract with the supposed lunatic, the Court, on the petition of such party to quash the commission, or for liberty to traverse the inquisition, on the ground that the commission had not been executed at the residence of the lunatic, and that the order as to notice had not been complied with, after much hesitation, refused to quash the inquisition, but granted leave to the petitioner to traverse (*j*).

The commissioners, under commissions of lunacy, have power to summon witnesses and issue subpoenas, as incident to their office; and if the witnesses refuse to attend, it seems that the Chancellor will make an order for their attendance in the same manner as in cases of bankruptcy (*k*).

The commissioners are bound, under a penalty of 40*l.*, to suffer witnesses to give evidence openly in their presence (*l*).

An inquisition may be set aside, on the ground of the sheriff's refusal to hear evidence (*m*).

It seems that the costs incurred in opposing a commission of lunacy under the sanction of the Court, will be ordered to be paid out of the lunatic's estate. In a recent case, where a solicitor had been employed by a party as his attorney, some time prior to the application for the commission of lunacy, and had been instructed to oppose it; and acting on the evidence of two medical men of considerable eminence and practice, under whose care the party supposed to be a lunatic had been for some time, who deposed that

(*h*) *In re Braithwaite*, 21 June, 1826.

(*i*) *In re Bushnell*, 9 May, 1821.

(*j*) *Ex parte Hall*, 7 Ves. 261.

(*k*) *Ex parte Lund*, 6 Ves. 784.

(*l*) 1 Hen. 8, c. 8.

(*m*) 1 Vez. sen. 270.

the person in question, though of singular and eccentric habits and conversation, was of sound mind, had entered a caveat against the issuing of the commission, which was afterwards granted, with a direction that due notice of the time and place of executing it should be given to the supposed lunatic and his next of kin, who were to be at liberty to attend the execution thereof by their solicitors, or counsel; the consideration of the costs of such appearance was reserved. The solicitor attended the inquiry, which lasted three days, before the commissioners and jury, and employed two counsel for opposing the commission, and the jury found the party to be of unsound mind, and the Master approved of committees, but his report had not been confirmed. The solicitor presented a petition for obtaining an order for the taxation and payment of the costs which had been incurred in the matter; which application was opposed by the committees. The Lord Chancellor referred it to the Master to tax the costs incurred by the petitioner prior to the issuing of the commission, and about its execution, and for instructing and employing counsel; but the consideration of such costs, and of the application for them, was reserved (n).

And in another case, where a solicitor had been appointed to conduct the defence of a person against whom a commission of lunacy was issued, and had expended considerable sums of money for that purpose, and the Master on a reference had taxed the costs; on a petition being presented by the solicitor for payment of such costs out of the lunatic's estate, or by sale or mortgage of a competent part of his real estates, or that a sufficient sum for the purpose might be directed to be set apart out of the annual rents of his estates—The Lord Chancellor referred it to the Master to inquire and certify, whether there were any and what funds or property belonging to the lunatic, out of which the costs could be raised and paid; with liberty for

(n) *In re Knight*, 20 March, 1832. been settled; which is usually done

In this case, the allowance for the before any order for payment of costs maintenance of the lunatic had not can be obtained.

the Master to state special circumstances, and to examine any of the parties on interrogatories (o).

In Lord *Portsmouth's* case, on the order for reference as to maintenance of the lunatic, it was also referred to the Master to tax and settle the reasonable costs which had been incurred by the committee of his estate, and by the Countess of *Portsmouth*, who opposed the commission (p).

After it has been ascertained that the lunatic has funds applicable to the payment of costs, which have been taxed and allowed, an order may be obtained, on petition, for payment of them.

It seems, that if parties vexatiously oppose an application for a commission, which is absolutely necessary for the protection of the lunatic, the Court will compel them to pay the costs incurred by such opposition (q). The costs incurred by a solicitor in opposing a commission, where the party is found to be of *sound mind*, must be paid by the person who employs him, unless the Lord Chancellor orders the person who prosecuted the commission to pay the costs of an improper application for one. Even if the Lord Chancellor will not award costs in such a case, yet an action may be maintained for taking out a commission of lunacy maliciously, and without sufficient cause; and the costs incurred by the party in resisting it can be taken into consideration by the jury in assessing damages (r).

In a recent case, a rule was obtained in the Court of Exchequer against an attorney, to shew cause why his bill of costs, for defending a party against a commission of lunacy, under which he was found *sane*, should not be taxed. It was contended, on the part of the defendant, that the bill could not be taxed by a Court of law or the Court of Chancery, because the inquiry did not partake of the nature of a proceeding either at common law or in equity; and on the other side, that a Court of common law could tax the attorney's

(o) *In re Frank*, 26 March, 1831.

(p) *In re The Earl of Portsmouth*,

3 June, 1823.

(q) *In re Smith*, 1 Russ. 348, 8

March, 1826.

(r) See *post*, Chap. ix. s. 1.

bill, as the writ *de lunatico inquirendo* issued from the petty-bag office, and was returnable there. Chief Baron *Lyndhurst*, after having taken time to consider the question, expressed his opinion, without deciding the point before the Court, that the officers of the Court of Chancery were more competent to entertain the subject than those of the Court of Exchequer, as the former had more experience in such matters (s).

When the jury is ready to return their verdict, and offer to do so, the commissioners must receive it, or they will incur a penalty of 100*l.* (t).

The inquisition, by statute 36 Ed. 3, c. 13, is required to be made by indenture; and an inquisition not indented was held void (u).

The inquisition must be under the seals of twelve jurymen, otherwise the officer by whom it is taken will be liable to a penalty of 100*l.* (v).

If the jury agree upon their verdict, and deliver it in writing to the commissioners, it will be void, unless indented and sealed (w).

The commissioners are to deliver to the jury, and the jury is to receive, a counter-panel of the inquisition by them presented, indented and sealed, which the juryman first sworn is required to keep, lest the commissioners should alter or embezzle the inquisition; in default of so doing, the commissioners are to forfeit 100*l.* and each juryman 20*s.* (x).

The commissioners are required to execute the commission within a month after it has issued; and to return the inquisition with the commission into Chancery, within a month after it has been taken; in default they are liable to a penalty of 40*l.* (y).

In a case, where the commission had not been returned for two years and more after it had been executed, and the solicitor who prosecuted it refused on application to give any

(s) *Bywater v. Davis*, in the Court of Exchequer, 3rd & 9th May, 1832.

(t) 1 Hen. 8, c. 8.

(u) *Barantime's case*, Dy. 170 a.

(v) 1 Hen. 8, c. 8.

(w) *Lord Possis's case*, Dy. 170 a.

(x) 1 Hen. 8, c. 8.

(y) 18 Hen. 6, cc. 6, 7; 23 Hen.

6, c. 16; 1 Hen. 8, c. 8.

information respecting it, and a petition was presented that the inquisition might be returned, which was afterwards done; the solicitor was ordered to pay the costs of the petition (x).

A person's keeping a commission of lunacy by him for several years, without ever putting it into execution, is a contempt of Court; and such commission, as well as a petition under it, was discharged with costs, on account of its dangerous tendency, and the improper use which in many respects might be made of it, particularly to terrify and distress the person against whom it issued (a).

The clerk of the petty-bag office of the Court of Chancery, or his deputy or other officer having authority to receive any office or inquisition, which ought to be returned into Chancery, must receive the same and put it on the files, to remain of record, within three days after it has been received or offered to him, or in default forfeit 40*l*. And if such clerk, or his deputy or other officer, refuse to receive such office or inquisition when offered, the commissioners are relieved from the penalty to which they would otherwise be liable for not returning such office or inquisition, provided it be returned within a month. The clerk of the petty-bag of the Court of Chancery must certify the transcript of every office or inquisition taken before any commissioners, to the Court of Exchequer, the next term after the receipt thereof, upon pain of forfeiture for every default of 5*l*. (b).

On the accidental loss of a commission of lunacy, upon which an inquisition had been taken, and signed by the jury and three commissioners, an order was made for the clerk of the custodies to make out a duplicate of such commission, bearing the same teste, and directed to the same commissioners; and for the three acting commissioners under the former commission to annex to such duplicate, when sealed, the inquisition which had been taken, and to return the same forthwith (c).

(x) *In re Matthew*, 18 Nov. 1828.

(a) *Anon.* 2 Atk. 52.

(b) 1 Hen. 8, c. 8.

(c) *Ex parte Ruine*, 19 Ves. 589.

SECTION V.

Of the Inquisition under the Commission of Lunacy.

THE commission and the verdict must be consistent upon the face of the record, which cannot be, unless the verdict is either in the words of the commission, or in equipollent words. But, in inquiries under commissions, the jury have not been strictly limited to the question whether lunatic or not; but if they find that the party is of unsound mind, it has been held a sufficient finding. The Lord Chancellor has no authority to act upon the liberty and property of the subject, except upon a verdict expressed in legal terms; and if the jury should return a special verdict, stating, that they could not say whether the party was lunatic or not, and the evidence, the Court cannot on such a verdict determine the fact of insanity (*d*).

Where a special return to a commission of lunacy was made and filed, the commission was quashed, and another commission issued; if the return had not been filed it would have been a void return (*e*).

The proper return to a commission of idiocy or lunacy, where the party is not found an idiot or a lunatic, but is considered by the jury as an object fit to be under the superintendence of the Court of Chancery, is that the party is of *unsound mind*, so that he is not sufficient for the government of himself, his lands, and tenements: and therefore, where the return was, "that the party was so far debilitated in his mind, as to be incapable of the general management of his affairs; and had been in the same state of mind for six months last past," the inquisition was quashed, and a new commission issued (*f*).

(*d*) *Ex parte Cranmer*, 12 Ves. 449.

(*f*) *Ex parte Cranmer*, 12 Ves. 445.

(*e*) *Ex parte Freak*, Sel. C. C. 47.

It is settled, that if the jury find merely the incapacity of the party to manage his affairs, but do not infer from that and other circumstances unsoundness of mind, though the party may live where he is exposed to ruin every instant, yet upon that finding the commission cannot go on (*g*).

A return, finding "that a party was, from great weakness of mind, incapable of governing himself and his lands," was held to be illegal and void (*h*).

Inquisitions have been quashed, with returns finding persons in the following condition, namely—"Not sufficient to manage his person and estate" (*i*); "not of sufficient understanding to manage her own affairs" (*k*); "not a lunatic, but incapable" (*l*); "not a lunatic, yet not proper to take care of his affairs during his fits" (*m*); "weak for the last twenty years" (*n*); "worn out with age, and incapable of managing her own affairs" (*o*); "had been a lunatic, but that, at that time, he enjoyed a lucid interval, and that he was not at present capable of the management of his own affairs, and that he had been in the same state from the 9th of February last" (*p*).

An inquisition may be supported, finding a person of unsound mind, although neither an idiot nor a lunatic. An inquisition finding a party "not a lunatic, but of *unsound mind*, so as not to be sufficient for the government of herself, her lands," &c. was considered good (*q*). For, "of unsound mind" are legal and technical words, indeed they are the proper terms of a plea; it would be improper in pleading to describe a man *lunaticus* instead of *non sanæ mentis* (*r*).

(*g*) *Sherwood v. Sanderson*, 19 Ves. 286.

(*h*) *Ex parte Barnesley*, 3 Atk. 168.

(*i*) *Ex parte Road*, 1 Atk. 160; 2 Inst. 405.

(*k*) *Ex parte Harvey*, 3 Atk. 169.

(*l*) *Ex parte Ashton*, 3 Atk. 169.

(*m*) *Ex parte Hals*, 2 Ves. sen. 405. It appears, that the lunatic in this case was an infant, and had been secreted from the jury, who returned the following verdict "not a lunatic,

but we judge him a person not proper to be trusted with the management of his affairs during the continuance of his epileptic fits." *Ex re Hals*, 30 Nov. 1743.

(*n*) *Hulsey's case*, 3 Atk. 173.

(*o*) *Wall's case*, 3 Atk. 173.

(*p*) *In re Cox*, 5 Nov. 1829.

(*q*) *Sherwood v. Sanderson*, 19 Ves. 280; *S. C. Coop. C. C.* 108.

(*r*) *Dennis v. Dennis*, 2 Saund. 352.

A return, finding a party "*insanæ mentis, et sic deprivatus rationis et intellectus, ita quod regimini sui et ipsius status omnino incapax existit,*" was held good (s).

Where a party was found "an idiot, not having lucid intervals for the space of eight years last past," Lord Chancellor *Nottingham* held this repugnant; but it was decided good at law, on the ground that idiocy implied an infirmity *a nativitate*, and consequently the eight years were surplusage (t).

Where a jury returned "that the party, at the time of taking the inquisition, is a lunatic enjoying lucid intervals, and during such lucid intervals is competent to the government of himself and the administration of his own affairs;" and a petition was presented, praying a reference to approve of a committee, or such other order as the Court might think fit—Lord Chancellor *Eldon* said, that he could not make a grant of the committee upon that finding, and directed a search to be made as to the course of proceedings in similar cases. After several precedents of inquisitions had been produced from the office of the Secretary of lunatics, the Lord Chancellor thought nothing could be done but to issue a new commission. There was no instance of a *melius inquirendum* in such a case. It was then objected, on the part of the supposed lunatic, that a commission was unnecessary, the evidence shewing that he was in such a state of mind as to be competent to the management of himself. His Lordship said, that a short petition might be presented against the issuing of the commission; which, having been done, and affidavits filed on both sides, his Lordship thought it a proper case for a commission, and a new one was issued (u).

It is a rule of law, where a jury state their premises, and draw a conclusion, which does not of necessity follow from the premises, that the conclusion is not to be taken by itself. Thus, where, under a commission of lunacy, the jury found "that the party is not a lunatic, but that partly from paralysis, and partly from old age, his memory is so much im-

(s) *Ex parte Pauncefort*, 3 Atk. 43; 1 Vern. 16.

170.

(u) *Ex parte Atkinson*, Jacob, Rep.

(t) *Prodgers v. Frasier*, 3 Mod. 333.

paired, as to render him incompetent to the management of his affairs, and consequently of unsound mind, and that he had been so for the term of two years last past:" the inquisition was quashed, and a new commission was ordered to issue (*v*). Under the second commission, the jury found the party to be of unsound mind.

An inquisition may be good, notwithstanding the omission to state whether the party has or has not lucid intervals. Thus, a return finding a party a lunatic and of unsound mind for the space of six years and upwards, was objected to as irregular, in not finding whether the lunatic had or had not lucid intervals. It was in evidence, that the commissioners neglected to state that circumstance to the jury; that the foreman took no notice of it; that it was not omitted through accident; for, in a conversation about settling the inquisition, some discourse arose as to its insertion, when one of the commissioners said it was better not to insert it; and it was accordingly omitted in the presence of the greater part of the jurors, if not of all. Lord *Rosslyn* observed, if the usual course is to find expressly, whether the person does or does not enjoy lucid intervals, this inquisition is not returned in the usual form; for he could not take the fact of lucid intervals to be found either way. He considered, however, the inquisition as not having in express terms, but by implication, negatived lucid intervals; and directed an inquiry, whether there had been an uniform course. After an interval of a few days, his Lordship said, that he had caused search to be made; and that, in *Ex parte Barnesley* (*w*), no objection was taken upon that ground; and that the return was certainly according to the usual course, as very few of the numerous references in that case stated whether the party had lucid intervals; and all that could be done was to allow a traverse (*x*).

Where there is any misbehaviour in the execution of a commission, it must be examined into; and if the Court see cause, they may quash the inquisition, and direct a new commission to issue (*y*).

(*v*) *In re Holmes*, 4 Russ. 182.

(*w*) 3 Atk. 168, 184.

(*x*) *Ex parte Ferne*, 5 Ves. 450.

(*y*) *Ex parte Roberts*, 3 Atk. 6.

When a regular return is made, and there is sufficient evidence in the case to satisfy the Lord Chancellor that the party is the proper subject for a commission, a new one will be directed to issue.

In one case, three commissions were applied for against a party before he was found *non compos* (x).

Lord Chancellor *Hardwicke*, on quashing an inquisition as repugnant, ordered a new one to issue (a). Lord *Erskine*, after quashing an inquisition for uncertainty, was strongly inclined to direct a *melius inquirendum*; but finding, upon inquiry, that it had never been directed in lunacy, he issued another commission (b). And the same course was pursued by Lord *Eldon* (c), and afterwards by Lord *Lyndhurst* (d).

In one case, where an inquisition found a person of sound mind, who appeared to be in a state of imbecility, Lord *Eldon* directed two physicians to visit the party, for the purpose of determining whether the state of her mind was competent to the management of her affairs; and instead of issuing a second commission, an order was made to restrain the party from executing any deed or will disposing of funds in Court, except in the manner directed by the order (e).

SECTION VI.

Of Traversing the Inquisition of Lunacy.

BY the common law, when the King became seised of any estate of freehold or inheritance, by matter of record,

(x) Lord *Wenman's* case, cited in 2 Vea. sen. 408.

(a) *Hals's* case, 2 Vez. sen. 405.

(b) *Es parte Cranmer*, 12 Vea. 454.

See *Es parte Roberts*, 3 Atk. 5.

(c) *Es parte Atkinson*, Jac. Rep. 333.

(d) *In re Holmes*, 4 Russ. 182.

(e) *Ridgway v. Darwin*, 8 Vea. 65.

See post, Chap. x. a. 3.

whether judicial or ministerial, or by matter of fact found by office, the party aggrieved could have no traverse of the inquest; but he was put to his petition of right, in the nature of a real action, to recover his right; in some cases, including chattels real as well as higher interests, there was another remedy called a *monstrans de droit*; and that was where office was found for the King, and by the same office the title of the party was also found. As, if a disseisor aliened in mortmain, and the special matter was found by office, namely, the disseisin and alienation, the disseisee had his *monstrans de droit*; but if the office omitted the title of the party, he was put to his petition of right (*f*). But a traverse was allowed only in those cases, where, by the inquest of office, land was not in the King's hands; but the King was only entitled to a *scire facias* in the nature of that action, to which a subject would have been entitled under similar circumstances. In such cases, the party, being in the nature of a defendant, might appear and traverse the office, without shewing any title in himself (*g*). So, at common law, if the King, by false office, was possessed of the custody or interest in any land, by reason of *idiocy*, or the like, the party aggrieved could not have a traverse, but was put to his petition (*h*). The remedy by petition having been found inconvenient, the statute 34 Edw. 3, c. 14, provided, that, in certain cases, after the return of the office into Chancery, the party aggrieved might traverse the office in Chancery, and the process was directed to be sent into the King's Bench, to be tried according to law. And by statute 36 Edw. 3, c. 13, the right of traversing was extended to all kinds of offices taken before escheators; and other provisions, not material to be here stated, were afterwards made respecting traverses (*i*).

By the statute of the 2nd & 3rd of Edw. 6, c. 8, s. 6 (*k*), it is provided, that if any person shall be untruly found lunatic or idiot, every person and persons aggrieved by such

(*f*) 4 Rep. 54; Gilb. Exch. 172. c. 6; 1 Hen. 8, c. 10. See *ante*,

(*g*) 4 Rep. 54. pp. 76, 77, 78.

(*h*) 4 Rep. 56 a. (*k*) See 2 Inst. 688.

(*i*) 8 Hen. 6, c. 16; 18 Hen. 6,

office or inquisition shall and may have his or their traverse to the same, immediately or after, at his or their pleasure, and proceed to trial therein, and have like remedy and advantage as in other cases of traverse upon untrue inquisitions or offices found. This statute is considered as not confined to particular inquisitions only, but to apply to all inquisitions (*l*). The Irish statute, 15 Car. 1, c. 4, s. 3, contains a similar provision as to Ireland. By stat. 6 Geo. 4, c. 53, (which extends to Ireland), it is enacted, that, where any person shall be desirous of traversing any inquisition of lunacy, a petition for that purpose shall be presented to the Lord Chancellor, or other person intrusted by the King's sign manual with the care of lunatics, within three calendar months from the return of such inquisition, who is required to hear and determine such petition; and the person so intrusted shall, in every order to be made upon any such petition, limit a time, not exceeding six calendar months from the date of such order, within which the persons desiring to traverse, and all other proper parties, are to proceed to trial of such traverse; and the person so intrusted as aforesaid, upon every such traverse, may order the persons traversing, not being the party who has upon such inquisition been found idiot or lunatic, or of unsound mind, within three weeks after such order, to give sufficient security to one of the Masters in Chancery, and to his satisfaction, for all proper parties proceeding to the trial of such traverse within the time to be for that purpose limited.

The second section of the same act enacts, that every person who shall have right to traverse any such inquisition, who shall not present his petition within the limited time, or who shall neglect or refuse to give such security, or who shall not proceed to the trial of such traverse within the time limited, and the heirs, executors, and administrators of every such person, and all others claiming under him, shall be absolutely barred of such right of traverse, unless the person intrusted as aforesaid shall, under the special circumstances of any particular case, think fit, upon petition, to allow such traverse to be had or tried after the time limit-

(*l*) Co. Litt. 77. b.; 12 East, 115.

ed; in all which special cases the person so intrusted may make such orders as to him shall seem just.

The third section of the same act provides, that it shall be lawful for the person intrusted as aforesaid, if he shall be dissatisfied with any verdict to be returned upon any such traverse, to order one or more new trial or trials thereon, as to him shall seem meet, and as is usual in cases of issues directed by the Court of Chancery.

When the person who has been found a lunatic, or his friends, or any other party having an interest in disputing the inquisition, are dissatisfied with the finding of the jury, and are desirous of traversing it, application must be made to the Lord Chancellor, or other person intrusted as aforesaid, by petition, praying for leave to traverse; and if, upon hearing this petition, liberty to traverse be granted, such directions as to the time of filing the traverse, and proceeding to trial, and other matters, will be given as the circumstances of the case require.

A traverse may be ordered to be tried by a special jury, at the next assizes to be held for the county where the party's residence is (*m*). And such trial may be postponed in consequence of the absence of material witnesses, and want of sufficient time to prepare for trial (*n*). And the solicitor for the lunatic may be ordered, on the petition of the committee of his estate, immediately to carry into the petty-bag office of the Court of Chancery the traverse which has been directed to issue (*o*).

The subsequent proceedings on traverses of inquisitions of lunacy are in the petty-bag office, and the record is carried from thence into the King's Bench, in which Court alone it can be tried. A traverse is a summary proceeding, setting out the inquisition, and traversing or denying the facts thereby found, whereupon issue is joined for the Crown by the Attorney-General; and a *venire facias juratores* will be awarded, returnable into the Court of King's

(*m*) *Ex parte Ferne*, 5 Ves. 832; (*n*) *S. C.* 6 June, 1826.
In re Sir G. O. P. Turner, 18th Feb. (*o*) *S. C.* 24 Feb. 1826.
 and 1st March, 1826.

Bench (*p*). The issue will be badly joined, if the plea to the inquisition takes up a fact not stated in it (*q*).

If, by inquisition, a person be found a lunatic, and the custody is granted to a committee, and the party found lunatic bring a *scire facias* to set aside the inquisition, his committee cannot plead, nor join issue in such *scire facias*; for the latter has no interest in the estate of the lunatic, being in the nature of a bailiff to the King; and therefore, his duty is to inform the King's Attorney-General, who is the proper person to contest the matter on behalf of the Crown (*r*).

The statutes of 18 Hen. 6, and 1 Hen. 8, require the party tendering a traverse to give sufficient security for pursuing it with effect, and answering the intermediate profits of the lands. And it has been said, that, if a man traverses an inquisition, the usual course of the Court is to take security for the value of two years' profits of the land, because in that time it is considered that the matter will be determined (*s*). But it does not appear that such rule is applicable to traverses of inquisitions of lunacy.

By the statute of 6 Geo. 4, c. 53, s. 1, the Lord Chancellor may order the persons traversing, not being the party found lunatic, within three weeks after the order for traversing, to give security to one of the Masters in Chancery for all proper parties proceeding to the trial of such traverse within the time limited.

A person traversing an inquisition is considered in the nature of a defendant opposing the title found for the Crown, and not in the nature of a plaintiff, as he would be in a petition of right to recover any thing from the King (*t*).

Thus, in a case where a party traversed an inquisition finding him a lunatic, the Attorney-General filed the common replication; and the proceedings having been sent from the petty-bag office to the Court of King's Bench, the prosecutor of the commission made up the record, and carried it

(*p*) 4 Inst. 80; 1 Eq. Cas. Abr. 128; *Jefferson v. Morton*, 2 Saund. 6, 23; Latch, 3; *Ex parte Wragg*, 5 Ves. 452; Trem. P. C. 652; and see Appendix.

(*q*) *Ex parte Ferne*, 5 Ves. 832.
 (*r*) *Thorn v. Coward*, 2 Sid. 124.
 (*s*) *Rex v. Barlow*, Bunb. 25; 5 Vin. Abr. Suppl. 317.
 (*t*) *Regina v. Mason*, 2 Salk. 447.

down to trial; upon which it was objected, that the supposed lunatic was considered as a plaintiff, and his traverse in the nature of a *monstrans de droit*; and therefore, that he had the right to carry down the record. To which it was answered, and resolved by the Court, that he was properly treated as a defendant opposing the title found for the Crown, without setting up any title in himself, as he might do in a petition of right; and that it would be absurd to construe the liberty of traversing to give a power of delaying the Crown, which must be the case if the party was considered as having the common right of a plaintiff. It was therefore held, that the record was well made up, and carried down by the prosecutor of the commission (u).

It seems to have been held formerly, that the Court had a discretion in granting or denying a traverse, according as there appeared just cause or not for such a proceeding (x). Lord Chancellor *Thurlow* declared, that he had such discretion, and that the statute 2 Edw. 6, c. 8, was meant only to remedy a very harsh prerogative, and that, where application was made to the Court for leave to traverse, it must take great care that the general object of the proceedings under a commission should not be defeated (y). It has been laid down in several subsequent cases (z), that a traverse to the return of an inquisition finding a person *non compos* is a right by law, though the Lord Chancellor is not dissatisfied with the return upon the evidence. And Lord *Eldon* seems to have considered it as a general principle, not to discourage applications for a traverse (a). The practice has always been for the party to petition the Chancellor for leave to traverse; and, by the 6 Geo. 4, c. 53, such

(u) *Rez v. Roberts*, 2 Str. 1208; *te Cranmer*, 12 Ves. 449; *Sherwood v. Sanderson*, 19 Ves. 287; and see 2 *Wilson & Shaw*, 515, 520.

(x) *Sir John Cutt's case*, Ley. 26. See a traverse to an inquisition under a commission of escheat, in *Ex parte Webster*, 6 Ves. 809; and See 3 Atk. 6.

(y) *In re Fust*, 1 Cox, 418. *Ex parte Webster*, 6 Ves. 809; and

(z) *Ex parte Ferne*, 5 Ves. 450; *In re Sadler*, 1 Madd. 581. *Ex parte Wragg*, 5 Ves. 832; *Ex parte Ward*, 6 Ves. 579; *Ex parte* (a) 6 Ves. 580.

petition must be presented within three months after the return of the inquisition.

An idiot may traverse the inquisition, but must appear in person at the trial to be inspected (*b*); for idiocy, it is said, may be discerned (*c*).

A woman having been found an idiot by inquisition, prayed by herself and counsel, that she might have leave to traverse the inquisition; and, after her examination, an order was made accordingly, upon condition that she would appear in person at the trial at the next assizes, or whenever it was brought on (*d*).

An idiot is never permitted to traverse by attorney. Thus, where application was made on behalf of an idiot to traverse by attorney, Lord *Hardwicke* desired precedents of such a liberty to be produced; but as no precedent could be found of an idiot having traversed by attorney, although several where lunatics had, his Lordship directed the idiot to appear in person, and, having done so, leave was given to traverse (*e*).

A lunatic, or person of unsound mind, may traverse the inquisition, either in person, or, with the Lord Chancellor's permission, by attorney (*f*); he may, however, be required to appear in Court in person, for the purpose of being examined (*g*).

The private examination for the purpose of the traverse is merely to satisfy the Lord Chancellor, that it is the wish of the party to exercise such right, which, it is said, cannot be refused (*h*). Where the party found to be a lunatic had appeared before the Lord Chancellor, and claimed by petition the right to traverse, an order was made that he should be at liberty to do so (*i*). And where the lunatic was confined in prison for debt, and a petition to traverse the inquisition had been presented, the Lord Chancellor ordered an *habeas corpus*, returnable immedi-

(*b*) *Ex parte Roberts*, 3 Atk. 7.

(*c*) *Skinner*, 5.

(*d*) *Anon. Mos. Ch. Rep.* 71.

(*e*) *Smithie's case*, cited 3 Atk. 7.

(*f*) 3 Atk. 7.

(*g*) *Ambl.* 112.

(*h*) *Sherwood v. Sanderson*, 19 Ves. 283; *Ex parte Ferne*, 5 Ves.

832.

(*i*) *In re Sir G. O. P. Turner*, 24 Feb. 1824.

ately, to issue to the Marshal of the King's Bench, to bring the lunatic before the Chancellor at the sitting of the Court two days afterwards (*k*).

Where a party had been found a lunatic under two inquisitions, the Court refused to allow him to traverse the second; but such inquisitions, not being conclusive, may be again questioned in actions at law or by suits in equity (*l*).

The heir of a *non compos* cannot traverse the inquisition after his death, for the party on every traverse may be required to appear in person. Lord Chancellor *Hardwicke* observed, "a trial by inspection is the proper trial by the Lord Chancellor as to the person, when there has been a solemn trial in the lifetime of the lunatic, who is bound, himself, to say, that after his death, when he cannot appear in person, and cannot be inspected by the jury, it should still be open to a traverse by the heir-at-law, carries a great absurdity with it, particularly in the case of idiocy, where the Crown grants the custody and profits of his estate during his life" (*m*). But the inquisition of a coroner finding a party *felo de se* may be traversed by his administrator, on the ground that the party was of non-sane memory, and that the coroner had refused to receive evidence of such fact (*n*).

The Lord Chancellor will sometimes discharge a commission and inquisition without putting the party to the expense and trouble of a traverse or *monstrans de droit*, provided, on inspection and examination, he be fully convinced of the soundness of his understanding. And the party may apply either personally to the Chancellor to be inspected, or his friends may sue out a writ, returnable in Chancery, for that purpose (*o*).

(*k*) *In re Sir G. O. P. Turner*, 15 April, 1824.

(*l*) 3 Atk. 184. See *ante*, p. 63; *post*, Chapters ix., x.

(*m*) *In re Roberts*, 3 Atk. 312.

(*n*) *Ripley v. Oldfield*, Sir T. Jones, 198; *S. C.* 2 Show. 199; *Skinn.* 45.

(*o*) 9 Rep. 31 a; *Bac. Abr.* tit. Idiots and Lunatics, (B); *Vin. Abr.* tit. Lunatics, (E.2.); *F. N. B.* 233, ed. 1794; *Staundf. de Pr. Reg.* 86; *Wingate's Maxims*, 123; *In re Heli*, 3 Atk. 7, 635; 3 *Bl. Comm.* 332. See *ante*, p. 81, and *post*, Ch. v. s. 11.

In a case, where it appeared that a party who had been found an idiot was not so, all former proceedings were discharged (*p*).

But a motion, that a person who had been found a lunatic, and since recovered his understanding, might be inspected, and make a settlement of his estate, was refused; and it was directed that such settlement should be made by fine, in order that the Judges of the Court of Common Pleas might examine the party (*q*).

The Crown cannot traverse an inquisition, but a *melius inquirendum* may be granted on behalf of the Crown; and if, upon the *melius inquirendum*, it be found for the Crown, the party may traverse the inquest (*r*).

The alienee of a lunatic, or other person having a title to, or interest in, his land, may traverse an inquisition as well as the lunatic himself (*s*); and, if both the lunatic and the alienee traverse, and the former is found a lunatic at the time of the alienation, the alienee is bound (*t*). But a traverse taken by a *non compos* will not bind a purchaser, unless he is a party to, or consents to be bound by, such proceeding (*u*).

Leave to traverse is sometimes granted upon terms, such as upon condition that some third person, who claims under conveyances from the party, will agree to be bound by the event of the traverse (*x*). And a party submitting to be bound by a traverse, and afterwards refusing to be bound by it, is guilty of a contempt of Court (*y*).

A person who has entered into a contract with a *non compos* for the purchase of any portion of his property, is such an equitable alienee and owner thereof as will give him a right to traverse the inquisition.

The petitioner, as having an interest in respect of a con-

(*p*) *Darwin's case*, Ley. 25.

(*t*) *In re Roberts*, 3 Atk. 312.

(*q*) *Anon.* 1 Vern. 155.

(*u*) *Ex parte Roberts*, 3 Atk. 7.

(*r*) 8 Rep. 168 b; *In re Roberts*,

(*x*) See Bull. N. P. 212; 3 Atk. 184.

3 Atk. 6; and see *Knight v. Duplessis*,

(*y*) *Ex parte Roberts*, 3 Atk. 308;

2 Ves. sen. 555; 4 Madd. 313.

(*s*) 15 Vin. Abr. tit. "Lunatic," 4 Bro. C. C. 238, n.

(*L*); Skinn. 178.

tract with the lunatic for the purchase of two advowsons, impeached the execution of the commission, and prayed that the inquisition might be quashed, or that the petitioner might be at liberty to traverse. Lord Chancellor *Eldon* decided, that a person who had become the *bona fide* owner in equity of two advowsons under a contract, was a party aggrieved by the finding of the jury, and had a right to traverse, and granted leave for that purpose to the petitioner; the issue being, whether the party was a lunatic at the time of the inquisition, and at the period to which the lunacy was carried back and since (x). And a person who had entered into a contract with another person, who was afterwards found a lunatic from a period antecedent to the date of the contract, was allowed to traverse the inquisition (a). And in one case, the passing of a decree against a defendant in a suit in Chancery was stayed for the purpose of giving liberty to the defendant to traverse an inquisition (b). Sir *William Grant*, however, is reported to have expressed a doubt in a case where the alienation was overreached by an inquisition finding the party a lunatic with lucid intervals, whether the alienee, relying on the fact that the contract was executed during a lucid interval, could establish that fact by a traverse; an issue in such a case being the proper and effectual remedy (c).

In a case where a lady, who was entitled to a very considerable fortune, and had just attained the age of twenty-one years, but who was represented to be of very weak and infirm mind, had been carried off to Flanders, and there married by a gentleman; and the lady was afterwards found a lunatic under a commission taken out by her mother, Lord Chancellor *Thurlow* would not allow the husband liberty to traverse the inquisition, thinking that the way in which he had obtained the lady precluded him from being entitled to any assistance from the Court; and that the lady was in the most proper hands under the care of her mother, whose duty it was to discuss the marriage most seriously, and to see

(x) *Ex parte Hall*, 7 Ves. 260. *hurst* and Others, 1 Ch. Cas. 112.

(a) *Ex parte Morley*, 9 Ves. 478. (c) *Hall v. Warren*, 9 Ves. 605;

(b) *Attorney-General v. Park-* and see *Ex parte Ferne*, 5 Ves. 832.

whether she could not, in that manner, get rid of the gentleman's pretensions (*d*).

In a case, where a petition praying leave to traverse an inquisition of lunacy was presented by an entire stranger, without any interest, and an objection was taken upon that ground, and because no reason appeared for impeaching the inquisition; Lord Chancellor *Eldon* said, "this petitioner does not qualify himself by any interest; and he did not recollect any instance, in which the Court had permitted a mere stranger to traverse the inquisition. His Lordship would not say, without further consideration, when it might be necessary to decide the point, whether the Court would permit it or not. Whatever might be the rule in such a case, he hoped the wisdom, policy, and humanity of the law, with regard to these unhappy persons, would never be disappointed; his own experience enabled him to say, the Court had not been in the habit of discouraging any fair and reasonably provident application, with regard to the situation of a person allowed to be a lunatic; if, in the execution of the commission, he is more pressed than a tender and humane consideration of his circumstances authorize; as of a person not allowed to be a lunatic, but made the object of a commission. The present petition, as far as his Lordship could perceive upon the affidavits, laid no foundation whatever for impeaching the commission in any one circumstance that took place at the period of the finding of the jury; the petition must therefore be dismissed with costs, it being ill founded and most rashly preferred" (*e*).

Lord *Eldon* observed in another case, that any individuals, who suppose their interests affected by the acts which the lunatic has done, have a right to apply to the Great Seal for leave to traverse the inquisition, which is never refused in any proper case (*f*).

It has been decided, that where an action has been commenced on the petty-bag side of the Court of Chancery, but tried in the Court of King's Bench, that an application for a new trial must be made in the latter Court, which is

(*d*) *In re Fust*, 1 Cox, 418.

(*e*) *Ex parte Ward*, 6 Ves. 579.

(*f*) 2 *Wilson & Shaw*, 520.

to send back the record with final judgment upon it, and therefore the objection to the verdict should be there stated (*g*).

A motion for a new trial of a traverse was formerly allowed to be made in the Court of King's Bench; thus, where a defendant had been prevented by illness from attending the trial of a traverse, and, in consequence of no defence having been made, the jury had found in favour of the inquest, the Court of King's Bench granted a new trial, in order that the second jury might have an inspection of the alleged lunatic, and not be left to judge upon less evidence than was laid before the former jury (*h*). The defendant, after the trial of the first traverse, applied to Lord Chancellor *Hardwicke* to direct a new trial at the bar of the Court of King's Bench; which was refused: but on application to that Court, and on payment of the costs of the trial of the former traverse, a trial at bar was granted (*i*).

Power is now given to the Lord Chancellor, when dissatisfied with any verdict returned upon any traverse, to direct one or more new trial or trials, as is usual in cases of issues directed by the Court of Chancery (*k*). And therefore, it should seem that, after the trial of a traverse, the application for a new trial should be made, in the first instance, in the Court of Chancery, as in cases where it has directed trials of issues; and as well where the objection relates to the admissibility of evidence as to other points.

The uniform practice of the Court of Chancery has been, whenever an action has been directed by it, that the application for a new trial should be made to the Court of law which has tried the action, till that Court is satisfied with the verdict; though it is otherwise with an issue, in which case the motion for a new trial is to be made in the Court of Chancery (*l*).

(*g*) *Ex parte Baker*, 1 Cox, C. C. May, 1744.

418. See *Fraser v. Lloyd*, 19 Ves. (*k*) 6 Geo. 4, c. 53, s. 3.

317; *Rez v. Knox*, Coop. C. C. 98. (*l*) *Ex parte Kensington*, Coop.

(*k*) *Rez v. Roberts*, 2 Str. 1208. C. C. 96; *Bowker v. Nixon*, 6 Taunt.

(*i*) *In re Roberts*, 4 April and 23 444. See 4 Maule & Selw. 196.

But if the Lord Chancellor should refuse to grant a new trial, there does not appear any reason, why an application for that purpose should not be made to, and granted by, the Court of King's Bench, as the statute 6 Geo. 4, c. 53, contains no express words depriving that Court of the power which it previously exercised in such cases.

Before the passing of the statute 6 Geo. 4, c. 53, if, upon the trial of a traverse, the jury returned an improper and irregular verdict, the practice was to supersede the commission. Thus, where upon a trial of a traverse, the jury found the party a lunatic at the time of her marriage, and at the period of the inquisition; but that she was of sound mind when the jury returned the verdict. The husband preferred a petition on behalf of himself and his wife, praying that the commission, inquisition, and other proceedings, might be set aside and vacated. Lord Chancellor *Rosslyn* said, "he had great doubt whether an instance could be found of such a double issue upon the traverse as that; the issue being, whether she was a lunatic at the time of the inquisition, and still was a lunatic. It did not appear that the jury had any right to find her a lunatic when she was married. The inquisition did not state her to have been a lunatic at the time of the marriage; there was no such allegation upon it. No other order can be made than to supersede the commission; which was accordingly done" (*m*).

The statutes of the 8th and 18th Hen. 6, direct a month to elapse between the return of the inquisition and the grant of the custody of the estate, that the party may come in and tender a traverse. And it seems, that if the grant is made before the expiration of the month, it is void (*n*). In case a traverse be tendered, the grant of the custody will generally be suspended, at least until further order; for, if upon the trial of the traverse the party be found *compos mentis*, the property cannot be taken. And therefore, where leave to traverse an inquisition had been granted, the Court refused to confirm the Master's report approving of committees (*o*).

(*m*) *Ex parte Ferne*, 5 Ves. 832. (*o*) *Ex parte Wragg, Ex parte*

(*n*) *Frasier v. Progers*, Skinn. 178. *Ferne*, 5 Ves. 450.

See 3 Atk. 7, *ante*, pp. 76, 77.

In a case of an inquisition finding a party an idiot, which Lord Chancellor *King* thought a hard case, he would not grant the custody without giving leave to traverse the inquisition (*p*). And it seems, that, formerly, it was a common practice to suspend the grant of the custody, in order to give an opportunity of traversing (*q*), particularly where the party, upon the second inspection, appeared to be in an improved state of mind (*r*). But, in a recent case, the Master's report as to the appointment of committees was confirmed, they being willing to act at their own expense, in case the traverse, which was pending, succeeded (*s*).

Before the statute 6 Geo. 4, c. 53, in case the Crown had not taken possession of the property, the traverse would prevent its being taken; and if successful, the Lord Chancellor had no authority to order costs to be paid out of the estate of the *non compos*. Thus, where a party had been found a lunatic under a commission, and, upon the trial of a traverse of the inquisition, the jury returned an irregular verdict, in consequence of which the commission was superseded; when the persons who had prosecuted it applied for their costs, as they had established the lunacy, and were not accountable for the irregular conduct of the jury; Lord Chancellor *Rosslyn* held, that he had no jurisdiction to give costs, there being no fund over which he had power, as the lands and goods of the lunatic had never come into the hands of the Crown (*t*).

Where the jury under the commission has determined that the object of it is of unsound mind, the consequence is, that the person who has authority to issue the commission is bound to make a grant of the custody of the person and estate; yet it is clear, that a person found by the inquisition to be of unsound mind, has an absolute right to require the farther proceeding of a traverse. No grant, therefore, of the custody could formerly be made, pending the traverse; and the Court, if there was no fund in its hands, could not make an order as to the costs of the commission. When

(*p*) *Ex parte Smith*, 3 Atk. 185.

(*q*) 3 Atk. 7.

(*r*) *Ibid.*

(*s*) *In re Sir G. O. P. Turner*, 15 April, 1824.

(*t*) *Ex parte Ferne*, 5 Ves. 833.

the determination of the party to traverse is known, the Lord Chancellor is bound to put the soundness of the verdict in that course of inquiry; in the interval, every thing with regard to the dominion over the property or the person was formerly stopped; and the consequence was, that it was impossible to make any order about costs, as there was no fund upon which it could attach. But, in a case where a lady, who was plaintiff in a cause pending in the Court of Chancery, and entitled to funds in that Court, had been found by inquisition to be of unsound mind, and, on the petition of some of her friends, liberty to traverse the inquisition had been granted, and the parties who prosecuted the commission applied to the Court for their costs, which was opposed by the next of kin of the lunatic, because no committee had been appointed, and leave to traverse had been granted. As the Court, in that case, distinguished from its jurisdiction in lunacy, had in its possession a fund which could be appropriated to the payment of these costs, Lord Chancellor *Eldon*, acting on the principles by which he was guided as to persons in a state of incapacity, though not objects of a commission of lunacy, and being satisfied that the proceedings which had been taken were for the benefit of the party, pronounced an order for the costs, desiring to be distinctly understood, as by no means thinking the costs of the traverse of course; that, on the contrary, there might be many instances of persons permitted to traverse, who would have no right to costs; but the lunatic having been permitted to traverse after a personal examination, the costs of the traverse must be allowed (*u*).

In a case where a commission was superseded on the subsequent recovery of the lunatic, and no committee had been appointed, it was held, that no order for payment of costs could be made, as there was no fund on which the order could attach; and that the solicitor must look for his indemnity to the person by whom he was employed (*w*).

The Court will sometimes, where the lunacy of a person

(*u*) *Sherwood v. Sanderson*, 19 Ves. 280; S. C. Coop. C. C. 108.

(*w*) *Ex parte Glover*, 1 Mer. 269.

is in question, interpose, by making a provisional order for the care and custody of his estate, until the lunacy shall be finally determined (*x*).

The Court will protect the property of a supposed lunatic, in the interval between the presenting of a petition for a commission of lunacy and the finding of the jury; but it ought at the same time to take care that ample means for resisting the commission be furnished to those who act in the inquiry on behalf of the alleged lunatic.

In one case, where a commission of lunacy had issued, but had not been executed, an order was made by the Lord Chancellor to restrain the wife of the supposed lunatic, and all other persons in whose custody or power the personal estate and effects of the lunatic were, from selling or disposing of the same, or in any way converting the same to their own use, and from parting with the possession of the same, until order to the contrary; and it was ordered, that, leaving a copy of such order at the dwelling-house of the supposed lunatic should be good service (*y*).

And in another case, where a petition for a commission only had been presented, certain parties were restrained from interfering in any manner with the concerns of the supposed lunatic (*z*).

An order for appointing committees *ad interim* of a particular estate of the lunatic was made, and a reference was directed to the Master, to inquire whether any steps should be taken, either at law or in equity, to prevent the sale of effects belonging to the lunatic, under an execution which had issued against them (*a*).

Where a party against whom a commission had issued, prayed that it might be quashed, it was ordered that the commission should be executed at the end of three weeks, and not sooner, after the brother of the supposed lunatic should have advanced to his solicitor, out of the property of the alleged lunatic, the sum of 1500*l.* (*b*).

(*x*) *In re Heli*, 3 Atk. 635; *ante*, pp. 60, 61.

(*a*) *In re Sir G. O. P. Turner*, 23 Dec. 1823.

(*y*) *In re King*, 15 Jan. 1827.

(*b*) *In re Baker*, 24 April, 1815.

(*z*) *In re Galloway*, 28 July, 1827.

By the statute 6 Geo. 4, c. 53, s. 4, it is provided, "that the person intrusted, by the King's sign manual, with the care and commitment of the custody of the persons and estates of lunatics, after the return of any inquisition, and notwithstanding any petition or order which may be depending, relating to a traverse of such inquisition, may make such orders relative to the custody and commitment of the persons, and the commitment, management, and application of the estates and effects of any persons who shall have been found lunatic, idiot, or of unsound mind, by any such inquisition as he shall think necessary or proper; and all acts, matters, and things which shall have been done by any persons appointed committees of the persons or estates of the persons found lunatic, idiot, or of unsound mind, as aforesaid, or by any other person or persons, shall be and are thereby declared as valid and effectual; and such committees and other persons respectively are indemnified in respect of such acts, matters, and things, against all actions, suits, and proceedings, damages, costs, and expenses to be brought, commenced, or recovered by the person or persons so found lunatic, idiot, or of unsound mind, as fully and effectually as if such inquisition had not been traversable, but no further or otherwise."

In one case it was ordered, that the custody of the person of a lunatic, *ad interim*, should be granted to his sister, and that a gentleman should be appointed the receiver of the estate of the lunatic, *ad interim*, if he would accept the office, and give security to account, to be allowed by the Master (c).

In another case, on the petition of the lunatic, it was ordered, that the committees of the estate should pay to the lunatic's solicitor the sum of money he required for the purpose of trying the traverse, on his undertaking to apply the same, or a sufficient part thereof, in the necessary expenses of the traverse, and to account for such money before the Master; and that the committees should be at liberty to oppose the traverse; and that the lunatic should be at liberty to appear on the trial of the traverse (d).

(c) *In re Frank*, 11 Aug. 1825.

(d) *In re Sir G. O. P. Turner*, 27 June, 1826.

Again, on the petition of the sister, next of kin and heir-at-law of a lunatic, an order was made for granting the care and custody of the lunatic to the petitioner, until a committee of the person should have been appointed; and for delivery of the lunatic to the petitioner; and for restraining certain persons from visiting or interfering with the person of the lunatic without the Lord Chancellor's order (e).

Where a petition to traverse the inquisition had been presented, and an immediate reference to the Master for appointment of committees could not be obtained; on the petition of the heir-at-law of a lunatic, it was ordered that the lunatic should be removed to a particular place, and that the petitioner should be at liberty to adopt such means as two physicians should approve, for the due care of the person of the lunatic, until the appointment of the committees of his person and estate, as thereafter directed; and it was referred to the Master, sitting during the vacation, to appoint proper persons (not the petitioner) to be the committees of the person of the lunatic *ad interim*; and that such committees, when appointed, should act under the direction of the physicians, with respect to the care of the person of the lunatic, until a permanent committee should be appointed, or until further order; and it was also referred to the Master to appoint proper persons to be committees of the estate of the lunatic *ad interim*, such persons giving such security as the Master should approve, and the circumstances of the case might require; and such committees of the estate and effects of the lunatic *ad interim* were also ordered duly to account for the same, until a permanent committee should be appointed, or until further order (f).

(e) *In re Chapman, alias Dunn*, 1 Aug. 1829.

(f) *In re Brand*, 11 Sept. 1830.

CHAPTER V.

OF THE COMMITTEES OF THE PERSONS AND ESTATES OF
LUNATICS.

SECTION I.

Of the Appointment of Committees.

THE regular course pursued upon the return of the inquisition, where there is no traverse, or after the trial of a traverse upon which the party is found to be a lunatic or of unsound mind, is, for the Lord Chancellor, by letters patent under the Great Seal, to commit to one or more person or persons, during pleasure, the custody of the person and management of the property of the lunatic, with a reasonable allowance out of his estate for the maintenance of him and his family (a).

The custody of lunatics being a branch of the King's prerogative, the appointment of the committees must necessarily be in the discretion of the person to whom that branch of the prerogative is intrusted; and to whom therefore the application for the appointment of committees must be made. There is no instance where a party has been found a lunatic under a commission, in which the

(a) See the form of the grant in 370; and a copy of a similar grant, the Appendix; there are some forms in the 16 Car. 2, will be found in of old grants of idiots and lunatics Hargrave's MSS. in the British Museum, No. 292. and their estates, in West's Symbol. part 1, sections 365, 368, 369 and

Court of Chancery has interfered in such appointment (b). In the exercise of the discretion given to the person intrusted with the execution of this branch of the prerogative, certain rules have been regarded as best calculated to protect the person and interests of the unfortunate lunatic. "To prevent sinister practices," says Sir *William Blackstone* (c), "the next heir is seldom permitted to be committee of the person of the lunatic, because it is his interest that the party should die. But it hath been said that there lies not the same objection against the next of kin, for it is his interest to preserve the lunatic's life, in order to increase the personal estate by savings, which he or his family may be entitled to enjoy; the heir is, therefore, generally made the manager of the estate, it being clearly his interest by good management to keep it in condition, accountable, however, to the Court of Chancery, and to the *non compos* himself if he recover, or otherwise to his administrators."

Lord Chancellor *Macclesfield* very much disapproved of the rule of our law, which gives the guardianship in socage to the next of kin to whom the land cannot descend. He would not allow the exclusion of the heir to the land to be founded in reason, but deemed it the offspring of barbarous times and the effect of a cruel presumption. Therefore, when he was applied to, on a like principle, for an order to remove a lunatic from the custody of Mr. Justice *Dormer*, who was the lunatic's uncle, and entitled to his estate as the person next in remainder, and who had, with the consent of the nominal committee of the lunatic's person, taken care of him for many years, and treated him with the greatest tenderness; his Lordship refused to make such an order (d). But notwithstanding this censure by one most deservedly of high authority, the rule of our law in respect to guardianship in socage, considered as one settling the right by nearness of blood without regard to personal qualifications, which was the point of view in which Lord *Coke* and those he follows extolled it, is surely very

(b) *Murray v. Frank*, 2 Dick. 555.

(c) 1 Bl. Comm. 305.

(d) *Dormer's case*, 2 P. Wms. 262.

defensible; for it gives the custody of the infant's person to those who in point of nearness of blood have equal pretensions to the trust, without the same temptation in point of interest to abuse it (e).

The old rule, however, has not been adhered to for a great length of time; and therefore, Lord Chancellor *Eldon*, in a case where a petitioner (being brother of the half-blood of a lunatic, and entitled in remainder to his real estate, and having been appointed committee of the real estate of the lunatic,) had objected to being appointed committee of the person, under a conception that the appointment would be against the practice under the old rule, but afterwards applied to be appointed committee of the person, made an order for that purpose (f).

The usual course is for the Lord Chancellor, on petition, to refer it to one of the Masters of the Court of Chancery, to inquire and certify who are the most fit and proper persons to be appointed the committees of the person and estate of the lunatic, and who are his heirs-at-law and next of kin, to whom due notice of attending the Master is directed to be given. The principle which leads the Court to call for the next of kin and the heir-at-law of lunatics, is, to receive from the persons probably entitled that assistance in the protection of the property, which persons having such expectant rights will be likely to afford, and not for the purpose of trying their title. But the report of the Master is not considered conclusive, for the parties may not choose to put themselves to the expense of trying their rights of representation, which may turn out to be worth nothing (g). After the Master has made his report, approving of the persons proposed as committees, and finding who is the heir-at-law and next of kin of the lunatic, the persons who are selected for committees must then present a petition for having the Master's report confirmed, and praying that they may be appointed committees of the person and estate of the lunatic, and that the care

(e) Co. Litt. 88, note (b), by Har- 590.
grave.

(g) *Ex parte Clarke*, Jac. Rep.

(f) *Ex parte Cockayne*, 7 Ves. 589; 19 Ves. 123.

and custody of his person and estate may be granted to them upon their giving the usual security; and that it may be referred back to the Master to inquire into the nature and amount of the lunatic's property, and to settle a proper annual sum to be allowed thereout for his maintenance and support; and it is usually further prayed, that the committees may be at liberty out of the lunatic's property to pay their costs of the inquiry before the Master, and of the application to the Court; and that such costs may be taxed and allowed to the committees on passing their accounts before the Master.

If any persons are dissatisfied with, or object to, the committees appointed by the Master, they may present a petition to the Lord Chancellor, praying that the Master's report may not be confirmed, or that other persons may be appointed committees, or that the Master may be directed to review his report. And the Court, upon hearing such petitions, will either decide the matter at once, or refer it back to the Master to review his report generally, or to take the particular objections of the parties into consideration (*h*).

On the petition of the heir-at-law of the lunatic against the confirmation of the Master's report appointing committees of the estates, it was referred back to the Master to review his report as to the approval of such committees; and in so doing the Master was directed to take into consideration the objection to the proposed committees, on account of their respective distances from the estates of the lunatic, and their being recommended by his mother, who had other children by the same father born before marriage; and the objection to the committee proposed by the heir, on account of his connection with the solicitor of the heir-at-law, and his situation as receiver to numerous estates under the management of the Court of Chancery (*i*).

In some cases, where the lunatic's property is very small, the Court will, on application, supported by satisfactory evidence, appoint committees without the usual reference to

(*h*) See forms of such petitions in the Appendix.

(*i*) *In re Miles*, 17 Jan. 1831.

the Master. An application was made by the sister of a lunatic and her husband, that she might be appointed committee of the lunatic's person and estate; and that, to save expense, the appointment might be made by the Court in the first instance, without a reference to the Master. It appeared by affidavit, that the lunatic's fortune consisted of a messuagē of the yearly value of 25*l.*, of 350*l.* stock in the 3*l. per cent.* Consols, and of household furniture and other effects, and debts due to him, to the amount of 90*l.* more. The Lord Chancellor granted the application (*k*).

In another case, where it was stated that the whole of the property of the lunatic was totally inadequate to defray the expense of the care and maintenance of the lunatic and her children, and that it was therefore desirable that the usual proceedings and inquiries relating to the property and the appointment of the committees might be dispensed with; it was ordered that the custody of the lunatic should be granted to the petitioner on his giving the usual security to account, and that the dividends of the stock belonging to the lunatic should be paid to the committee of the estate on his producing the grant thereof, and applied in the maintenance of the lunatic (*l*).

On the death of one of the committees of a lunatic, where his property was very small, a new committee was appointed without the usual reference to the Master, and the old maintenance ordered to be continued (*m*).

Where a person has been found a lunatic or of unsound mind, by an inquisition taken in Ireland, and a transcript of it has been transmitted to the Court of Chancery in England, committees of the estate in England may be appointed without any inquisition taken there. Thus, where it appeared by a petition, that, by an inquisition taken on a commission issued under the Great Seal of Ireland, a party had been found of unsound mind, and incapable of managing his own affairs; that the said lunatic was resident in Ireland, and possessed of a freehold and leasehold estate in Lincoln-

(*k*) *Ex parte Farrow, In re Adams*, 1 Russ. & Mylne, 112. (*m*) *Ex parte Pickard*, 3 Ves. & Bea. 127; *In re Lacy*, April, 1808.

(*l*) *In re Morris*, 6 May, 1826.

shire, but that no commission of lunacy had issued against the party in England; and that a transcript of the record of the inquisition in Ireland had been, by order of the Lord Chancellor of Ireland, transmitted to the Chancery of Great Britain, and duly entered of record in pursuance of the Act 9 Geo. 4, c. 78, s. 3 (n)—It was referred to the Master to inquire and certify who were the most fit persons to be appointed committees of the lunatic's estate mentioned in the petition, or elsewhere in Great Britain (a).

On the confirmation of the Master's report, approving of committees, it was ordered that the care and management of the lunatic's estate in Lincolnshire and elsewhere in Great Britain should be granted to the petitioner, on his giving security; and a reference as to maintenance was directed at the same time (p).

It appears that in one case, where a person who had been found a lunatic petitioned to supersede the commission, on the ground that he enjoyed perfect and constant sanity of mind, the commission was not superseded, but the party was permitted to have the care and management of his estates for several years; and upon his again becoming disordered in his senses, a committee was appointed of his person and estate (q).

The Chancellor being himself a stranger to the private connections of individuals, allows those who are concerned in prosecuting the commission, or are connected with the lunatic by the ties of consanguinity, or have a vested or presumptive interest in his property, to propose committees before the Master; and they are generally reimbursed their expenses out of the estate.

A *caveat* may be entered in the office of the Secretary of lunatics against the appointment of committees: and then the Chancellor will not pronounce an order, unless notice has

(n) This statute was repealed by statute 11 Geo. 4 & 1 Will. 4, c. 65, but re-enacted by the 41st section of the latter act. See *ante*, pp. 21, 22.

(o) *In re Newport*, 22 Dec. 1828.

(p) *In re Newport*, 21 Feb. 1829.

(q) *Ex parte Fermor, In re Erington*, Jac. Rep. 404.

been given to the solicitor or party by whom or on whose behalf the *caveat* was entered, of the hearing of the petition (*r*).

In a case where a petition for the appointment of committees of the person and estate of a lunatic had been presented, and a *caveat* had been entered against such appointment, an order was made, on the petition of the co-heiresses and three of the next of kin of the lunatic, that they should be at liberty to carry in proposals before the Master for the appointment of the committees of the person and estate, and that they should have notice of all other proposals to be carried into the Master's office, and the proceedings to be had thereon for that purpose (*s*).

The Master is sometimes directed to make a separate report as to the committee of the person and estate (*t*). In case the Master has approved of improper persons as committees, the Lord Chancellor, on application, will direct him to review his report (*u*), or will appoint others, without requiring the Master to review his report (*v*).

An appeal against an appointment of a committee by the Lord Chancellor, may be made to the King in council (*w*). But the previous proceedings on the commission, to inquire whether or no the party be *non compos*, are on the law side of the Court of Chancery, and can be only redressed, if erroneous, by writ of error in the regular course of law (*x*).

The power of the Chancellor to appoint committees cannot be controlled by a testamentary devise of the custody; except in the case of a father appointing a guardian to his child, a *non compos* under the age of twenty-one years, until he attain that age (*y*).

When two or more persons are appointed committees,

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| (<i>r</i>) <i>In re Galpine</i> , Nov. 1808. | 221. |
| (<i>s</i>) <i>In re Howell</i> , 8 Aug. 1829. | (<i>w</i>) <i>Pitt's case</i> , 3 P. Wms. 108; |
| (<i>t</i>) <i>In re Weatherell</i> , July, 1808. | <i>Rockfort v. Earl of Ely</i> , 1 Bro. P. C. |
| (<i>u</i>) <i>In re Hardy</i> , Aug. 1808; <i>Ex</i> | 450, Toml. ed. |
| <i>parte Fermor</i> , <i>In re Errington</i> , Jac. | (<i>x</i>) 3 Bl. Comm. 427, <i>ante</i> , p. 19. |
| Rep. 405. | (<i>y</i>) <i>Ludlow's case</i> , 2 P. Wms. 636. |
| (<i>v</i>) <i>Ex parte Le Heup</i> , 18 Ves. | |

and one of them dies, the grant being joint, and a mere authority without any interest, the right to the custody of the lunatic's estate will determine; and it is necessary to obtain an order for a new appointment, which contains a direction to inquire who are then the heir-at-law and next of kin of the lunatic (x).

SECTION II.

Of the Committee of the Person.

THE committees of the person of a *non compos* are generally selected from his next of kin, not being his heir-at-law. Attempts, however, were formerly made to exclude the next of kin, on the same principle of interest which formerly excluded the heirs-at-law (a).

Where two of the next of kin of a lunatic preferred a petition to be appointed committees of her person, and it was objected, that, as they would be entitled upon her death to a distributive share of the personal estate, whose value might exceed that of the land, they had an interest in her dying; or, at least, supposing the personal estate likely to increase during her life, it would be for their advantage that she should remain for ever incapable of making a will. Lord Chancellor *King* observed, it was true, where the party seeking the custody had been heir-at-law, or next entitled to the real estate upon the lunatic's death, an objection had prevailed upon that ground, though to an extent much more considerable formerly than of late years; but that a person was next of kin, so as to be entitled to a share of the personal estate, was not an objection, nor did he remember it to have ever prevailed as such; for

(x) *Ex parte Lyne*, Cases tempo- 583. See Jac. Rep. 593.
re Talbot, 143; *Anon.* 2 Eq. Cas. Abr. (a) *Neal's case*, 2 P. Wms. 544.

the personal estate would probably increase during the life of the lunatic, and it was consequently for the advantage of the next of kin to preserve and be careful of such life. And his Lordship appointed one of the petitioners committee of the person (c).

The relations of a lunatic are not, without some specific and strong grounds of objection, to be passed over in the appointment of committees, and have their affliction increased by the insidious imputation which must be the consequence, for the mere purpose of introducing a stranger. The feelings of relations are not to be put in competition with the benefit of the lunatic; but a relation will not in general be excluded from the office of committee unless proved to be unfit. The governing principle has always been, that, if the connections by blood and affinity of the lunatic can supply a proper person for the office, the influence of the family, which ought to be confined in its own circle, is not to be transferred to a stranger (d).

But the claims of consanguinity, although entitled to great regard, create no right with respect to the appointment of a committee of the person; in case of misconduct or incapacity, the nearest relations will be set aside in favour even of strangers. In the case of a lady found a lunatic, the custody of whose person was committed to a stranger; the sister of the lunatic, who had proposed making considerable gain by the allowance for maintenance, preferred a petition, insisting, that, as next of kin, she would be the most proper committee; that, being entitled to administration upon the death of the lunatic, she would be most

(c) *Ex parte Ludlow*, 2 P.Wms. 366. The distinction, upon which, in the two cases last cited, that rule was considered not applicable to the next of kin, from their interest in the probable increase of the personal estate during the life of the lunatic, is not satisfactory. To those upon whom the suspicion which was the foundation of that rule could attach,

immediate gain is a stronger temptation than the hope of future advantage, subject to disappointment not only by the casualties of life, but also, where the state of the lunatic admits it, by the liberal application of his income for maintenance. See 7 Ves. 590 a, note 44, 2nd edition.

(d) *Ex parte Le Heup*, 18 Ves. 227.

careful of the property; and that the objection to a guardian who was next of kin entitled to the inheritance did not apply to the present instance, there being no inheritance. The Lord Chancellor, however, held the appointment to be a matter of prudence, and no right; and would not remove the custody from the stranger, nor ever appoint a person committee of a lunatic, who would make a gain of the office. The sister was directed to render a yearly account before the Master; and the stranger was continued in the situation of committee (e).

And in another case it was held, that a person proposed as committee had rendered himself unfit for the office by an agreement to give to another person three fourths of the profits as committee (f).

In a case where it appeared by the Master's report that the lunatic's property amounted only to the sum of 523*l.*; and that the lunatic was a pauper belonging to, and supported by a parish; and that the brother and sisters of the lunatic were in very indigent circumstances, and some of them absent—the Lord Chancellor appointed the rector, and two other inhabitants and freeholders of the parish where the lunatic resided, committees of her person and estate, on their giving the usual security; and, after payment of the taxed costs, the dividends from time to time to accrue in respect of the lunatic's estate, were ordered to be applied in her maintenance (g).

Where the *non compos* is a female, and unmarried, the custody of her person will be given to one of her own sex, in preference to one of the other. In a case where two persons related in the same degree to a female lunatic, the one a man and the other a woman, and neither of them being heir-at-law to the lunatic, contended for the custody, and the objections against the one were no stronger than those against the other; the custody was granted to the woman, as being of the same sex, and so probably better knowing how to take care of the lunatic; and as it had been found

(e) *Lady Cope's case*, 2 Ch. Cas. 239; 1 Eq. Cas. Abr. 277.

(f) *Ex parte Fletcher*, 6 Ves. 427.

(g) *In re Jones*, 5 Aug. 1825.

by experience, that granting it to two had proved inconvenient, by occasioning lawsuits, and putting the estate to great expense, the custody was granted to one only (*h*).

Unless there exist strong reasons for exclusion, the custody of the person of a married man *non compos* will be committed to his wife; and the custody of a married woman *non compos*, to her husband. Even in a case where the wife had been committed for a contempt of Court, in not producing her husband before the commissioners under a commission of lunacy, the custody of his person was granted to the wife, on her being discharged from the commitment (*i*).

In most cases, the strongest presumption is, that the wife of a lunatic is the most proper committee of his person, as being most capable of administering to his comfort, and most likely to alleviate his calamity; but, if the wife insists upon acting upon a system of her own, inconsistent with that recommended by the best advice, and her treatment is so injudicious as probably to promote his disorder, whether from her being under the direction of another person, or acting with her own inclination from want of judgment, or from motives of mistaken affection, although she is not on that account absolutely disqualified for the appointment, yet another person will be named to act with her.

The Master having approved of the wife of a lunatic and his uncle, as committees of his person, and of another person, who was not related to him, as committee of his estate, rejecting a proposal of the uncle and a friend of the family, a petition was presented by the mother of the lunatic, praying, that she and the uncle might be appointed committees of the person, and not the wife; and that the uncle and the friend might be appointed committees of the estate, instead of the person approved by the Master. Lord Chancellor *Eldon* said, that he should have felt great pain in exposing the wife to the possible consequences of being sole committee of her husband, and thought the Master quite right in not appointing her the sole committee. All who were acquainted with the subject, knew that a person who filled that of-

(*h*) *Ex parte Ludlow*, 2 P. Wms. 635. (i) Lord *Wenman's* case, 1 P. Wms. 701.

fice, in the exercise of which affection must be tempered with firmness, was often under the necessity of doing what was unacceptable to the object of his care; and a rooted, though unjust, aversion was the usual effect of a line of conduct, ungrateful perhaps to the feelings, but essential to the recovery of the lunatic. Difficulty arose from the different views of the parties; but, considering the circumstance by which the wife was influenced, meaning extremely well, but much mistaken and misled by circumstances she could not understand, though her affection might produce a wish to be constantly with her husband, she must intrust his medical care and treatment to some persons in whose judgment and humanity she could confide; and as his Lordship could not be induced to take from her the care of his person, he must declare that it was for them not for her to determine what was medically right or wrong. He was therefore glad that the uncle, who was a physician, was willing to co-operate with her, and he appointed them joint committees of the person (*k*).

An order is sometimes made, that the committees of the person of a lunatic be at liberty to appoint physicians to visit the lunatic from time to time as they may think proper (*l*).

The unfounded prejudice of a lunatic against a person proposed as committee has been taken into consideration in a case, where it appeared that the appointment as committee of one in the profession of the law would have a tendency to irritate the lunatic (*m*).

Sometimes the Court, on a reference to the Master to appoint committees, will recommend the Master to approve of such proper person or persons, if such should be proposed or could be found, whose place or places of residence in the county was or were such as to admit of his or their frequently visiting the lunatic, and inspecting the management of his concerns (*n*).

(*k*) *Ex parte Le Heup*, 18 Ves. 221.

(*m*) *Ex parte Fletcher*, 6 Ves. 427.

(*n*) *Ex parte Fermor*, *In re Erington*, Jac. Rep. 405.

(*l*) *In re Worsley*, 8 Aug. 1829.

The custody of a lunatic may be granted to a *feme covert*, though not *sui juris*, but under the power of her husband. It is usual, however, to join the husband with her in that office (*o*).

If, when a committee of the person has been appointed, the parties in whose power the *non compos* is refuse to deliver him up, possession of his person may be obtained, either by *habeas corpus* or by application to the Lord Chancellor, who will make a summary order for the delivery of the *non compos* to the committee, or any other person appointed by him, and commit the parties in case of disobedience (*p*).

The committee of the person of a lunatic has an important and delicate trust reposed in him: it is his duty to administer all the comfort and amusement which the nature of the case will admit, and the funds of the lunatic will afford; and if the unhappy person be not under his immediate care, the committee ought to engage humane and proper persons to take charge of him, and to consult such intelligent and kind physicians as will employ their utmost skill and efforts for the purpose of restoring the individual to the enjoyment of his senses and his liberty, and not, as it is apprehended is too often the case, prolong and aggravate his disease by unnecessary and petty acts of tyranny, by insults and by provocations, which even a person of sane mind would find much difficulty in bearing with perfect composure. Cases undoubtedly occur, in which it is necessary to put lunatics under much restraint; but in the present age it is admitted, that kindness and reasonable indulgences not only promote their immediate comfort, but have a tendency to increase the probability of their being restored to a sound state of mind, a result which interested motives ought not to be allowed to retard or frustrate.

The Lord Chancellor will in some cases make orders for

(*o*) 3 P. Wms. 111, note; *Ex parte Lyne*, Cas. tempore Talbot, 143; 456.
 (*p*) *Ex parte Cransmer*, 12 Ves. Jun. 2.
Ex parte Mildmay, 3 Ves. Jun. 2.

insuring proper attention to the state of the lunatic (*q*). An order was made that a particular physician be requested to visit the lunatic at her residence, and to direct any medical attendance which he might deem necessary to be rendered until further order; and that the physician should report to the Chancellor the state in which he might find the lunatic, as to health and otherwise, and also what he might think should be done for her comfort and health, having regard to her income (*r*).

The misconduct of the committee of the person of a lunatic, with respect either to the treatment of his person, or the application of the sums of money allowed for his maintenance, or other purposes, may be represented to the Lord Chancellor, by petition, supported by affidavits, and be made the subject of judicial investigation and inquiry.

Thus, where the committees of the person of a lunatic had not substantially complied with an order, directing a particular sum to be advanced for his benefit, a reference was directed to the Master, to inquire as to its application. In this case, a sum of money had been ordered to be paid to the committees of the person of a lunatic for a specific purpose, and the committee of the estate presented a petition, alleging that such sum had not been applied according

(*q*) A bill is now before Parliament, by which, after reciting that it is expedient, for the better care and treatment of idiots, lunatics, and persons of unsound mind, found such by inquisition, that proper and fit persons should be appointed to superintend, and from time to time report to the Lord Chancellor, or other the person or persons intrusted by the King's sign manual with the care and commitment of the custody of the persons and estates of lunatics, the care and treatment and state of every such idiot, lunatic, and person of unsound mind; it is proposed to be enacted, "that it shall be lawful for the Lord Chancellor, or other the person or persons

intrusted as aforesaid, by an instrument under his hand and seal, or hands and seals, to appoint three persons to be visitors during pleasure, for superintending, inspecting, and reporting upon, under the order and direction of the Lord Chancellor, or other the person or persons intrusted as aforesaid, the care and treatment of all persons found idiot, lunatic, or of unsound mind, by inquisition, and to make all such orders and regulations as to the duties of such visitors, as the Lord Chancellor, or other the person or persons intrusted as aforesaid, shall from time to time think fit."

(*r*) *In re Pearson*, 19 Nov. 1828.

to the order; whereupon it was referred to the Master to inquire whether the order allowing a sum to the committees of the person as an outfit had been substantially complied with; and, in case the Master should be of opinion that such order had not been substantially complied with, then he was to direct the application of such part of the sum as he should be of opinion had not been properly expended, in such manner as he should think proper, in accordance with the former order (*s*).

SECTION III.

Of the Committee of the Estate.

THE heir-at-law is the most favoured in the appointment to the committee of the estate, on the supposition that he has the greatest interest in taking care of the property, and preserving it in good condition (*t*).

A relation of the *non compos*, or one interested in the estate, will, *cæteris paribus*, be preferred to a stranger (*u*).

A stranger may, however, be appointed committee; and, in one case, a neighbouring gentleman, who was considered likely to manage the property to advantage, was chosen (*v*).

The Court refused to appoint a Master in Chancery to the office of committee of a lunatic's estate, upon the ground that he would have to pass his accounts before some of the other Masters; and that, if once allowed, might lead to such results as would be subversive of the due administration of justice; for, if one Master might be appointed a committee or receiver, every other Master might be a committee or receiver of some other lunatic's estate, and they would have to pass each other's accounts (*w*).

(*s*) *In re Jodrell*, 13 Aug. 1829. (*v*) *Neal's case*, 2 P. Wms. 544.

(*t*) 1 Bl. Com. 304.

(*w*) *Ex parte Fletcher*, 6 Ves.

(*u*) *Ex parte Le Heup*, 18 Ves. 427.

And it seems that a solicitor, who prosecutes a commission of lunacy, ought not to be appointed committee of the lunatic's estate (x).

The committee of the person of a lunatic is in many cases appointed committee of the estate also.

SECTION IV.

Of the Appointment of a Receiver of the Lunatic's Estate.

IN case it be not thought expedient to intrust the committee with the receipt of the rents and profits of the estate, a receiver may be appointed for that purpose.

On the petition of the brother of a lunatic, praying to be named committee of his person, and that a receiver might be appointed of the estate, the heir-at-law (who, with such brother, was the only next of kin) declining to be committee of the estate, on account of his being unable, from his circumstances, to give the security required—Lord Chancellor *Hardwicke*, after declaring it to be an unusual thing, appointed the petitioner committee of the person and estate, with a restriction not to receive any sums of money, part of the lunatic's estate; and referred it to the Master to appoint a receiver, who was to account and pay the balance to the Accountant-General, after paying what should be allowed to the petitioner for the maintenance of the lunatic (y).

In a case, where it appeared that no one could be procured to act as committee, and that the property of the lunatic consisted only of real estate and funds vested in trustees—Lord Chancellor *Eldon* made an order, that a receiver should be appointed, with a salary; who should be considered as committee, and give such security as

(x) *Ex parte Pincke*, 2 Mer. 452, post, p. 146.

(y) *Ex parte Billinghamurst*, 1 Ambl.

should be satisfactory to the Attorney-General, as is done by a committee (x).

The receiver is not always required to give the same security as a committee. Thus, it was referred to the Master to appoint a fit and proper person to be receiver of the lunatic's estate, and to allow him a reasonable salary for his care and pains therein; such receiver, so to be appointed, first giving security to be allowed by the Master duly to account for what he should so receive, and to pay the same as the Lord Chancellor should direct (a).

Where the person who had been appointed committee of the person and estate of the lunatic had refused to accept a grant of the estate without compensation, and no person could be found who would act gratuitously, a receiver of the estate was appointed (b).

But the Court refused to appoint a receiver, on the application of the heir-at-law of the lunatic, who had been appointed one of the committees of the estate, and neglected to perfect his security; and it seems that the expense of a receiver is not to be incurred, in order that a person, who cannot give security, may be appointed committee (c).

A receiver will sometimes be appointed, where the committee resides at a distance from the estate (d).

A receiver may be appointed where the committee is infirm, although not resident at a distance; or where the management of the estate is attended with considerable trouble (e).

Where the committee of the person of a lunatic petitioned that he might be at liberty to propose before the Master the solicitor to the commission as receiver of the lunatic's estate, stating that nobody else was willing to accept the office of receiver—The Court refused to make the order, as it was extremely jealous of appointing any person to be receiver, whose duty it was to call the receiver to an account; and said that the same objection applied to appoint-

(x) *Ex parte Warren*, 10 Ves. 621.

(a) *In re Squire*, 5 Aug. 1828.

(b) *Ex parte Radcliffe*, 1 Jac. &

Walk. 639.

(c) *In re Frank*, 2 Russ. 450.

(d) *In re Seaman*, Aug. 1808.

(e) *In re Birch*, Aug. 1808.

ing a person who acts as solicitor under the commission to be receiver of the estate, as to the appointment of a Master in Chancery to be committee or receiver (*f*).

Contrary to the general rule, a receiver may be appointed of the estate of a lunatic on petition only, without any bill having been filed, as is requisite in other cases, where the Court of Chancery appoints a receiver.

With respect to the powers of a receiver when appointed, it appears that he has very little discretion allowed him (*g*), for he must apply to the Court for liberty to bring or defend actions (*h*), or let the estate (*i*); and, in most cases, even to be allowed to lay out money in repairs (*k*). And it seems, that he cannot, without an order of the Court, distrain upon a tenant (*l*), unless the rent be in arrear, for any period short of a year (*m*).

A receiver has generally a plain course to follow: he has only to pay into Court the money which he receives yearly, and to expend nothing extraordinary without an order of Court (*n*).

General orders are sometimes made with respect to the course to be pursued by the receiver of a lunatic's estate. The receiver of a lunatic's estate was ordered to pay the balance of rents and profits, and any future balances to be from time to time found due from him, on passing his future accounts, until further order, into the Bank of England, in the name and with the privity of the Accountant-General of the Court of Chancery; and the sums so paid in, and all future balances to be thereafter paid in, were ordered to be

(*f*) *Ex parte Pincke*, 2 Mer. 452. Ves. 563. See *Tempest v. Ord*, 2 See *ante*, p. 145. Mer. 55.

(*g*) 6 Ves. 802; 15 Ves. 26.

(*h*) *Wynn v. Lord Newborough*, 3 Br. C. C. 88; *S. C.* 1 Ves. jun. 164; *Anon.* 6 Ves. 287; *Angel v. Smith*, 9 Ves. 335; 1 Jac. & Walk. 178.

(*i*) *Morris v. Elme*, 1 Ves. jun. 139; *Id.* 165.

(*k*) *Blunt v. Clitherow*, 6 Ves. 799; *Attorney-General v. Vigor*, 11

(*l*) *Pitt v. Snowden*, 3 Atk. 750; *Raincock v. Simpson*, cited in 1 Dick. 120; *Hughes v. Hughes*, 3 Bro. C. C. 87; *S. C.* 1 Ves. jun. 161.

(*m*) *Brandon v. Brandon*, 5 Madd. 473; *Dancer v. Hastings*, 4 Bing. 2.

(*n*) *Fletcher v. Dodd*, 1 Ves. jun. 85; *Waters v. Taylor*, 15 Ves. 25; and *post*, sect. 9.

laid out by the Accountant-General in the purchase of Bank *3l. per cent.* Annuities, in trust in the matter, and the trusts to be declared accordingly; and the dividends from time to time to accrue on such stock were ordered to be from time to time laid out in like manner (o).

The Lord Chancellor made an order, founded on the Master's report, that the receiver of the lunatic's estate should be at liberty to manage as well as to let the estates of the lunatic to such persons, at such rents, and for such periods, as the Master should approve of, subject to further order (p).

SECTION V.

Of the Security required of the Committee of the Estate.

IN order to afford due protection to the property of lunatics, and to prevent its misapplication, the committees of their estates are required to enter into recognizances, together with two responsible persons as sureties, in double the amount of the annual rents and profits of the estates, and of the outstanding property, for answering and duly accounting for them once in every year, or oftener if required. When executed, the recognizances are deposited with the clerk of the custodies.

It is the duty of the Attorney-General, on behalf of the Crown, to settle the amount of the requisite security; to approve of the sureties; and to see that the recognizances are properly executed and filed with the clerk of the custodies.

Even the eldest son and heir-at-law of a lunatic will not be appointed one of the committees of his estate without giving security, unless the Master reports that no person can be found to act as committee, who will give security. The eldest son and heir-at-law of a lunatic having been appointed one of the three committees of his estate, and not having perfected his securities within the time li-

(o) *In re Rosomon*, 13 Aug. 1828. (p) *In re Webb*, 12 July, 1828.

mitted, presented a petition praying that it might be referred back to the Master to certify who were the most proper persons to be committees jointly with the petitioner, without giving security; and that it might be referred to the Master to appoint a receiver of the rents, such receiver giving the usual security. But the Lord Chancellor said, that he could not appoint a committee without security, unless the Master reported that no person would act as committee, who would give security; and it was referred back to the Master to appoint committees of the lunatic's estate (*q*).

In cases where the lunatic's property is very small, and can be transferred into the name of the Accountant-General of the Court of Chancery, or otherwise satisfactorily secured, the usual security required of committees has been dispensed with. Thus, where the property of a lunatic was reported by the Master to consist only of 87*l.* 4 *per cent.* Bank Annuities, and 100*l.* 3 *per cent.* Bank Annuities, the brother of the lunatic was appointed committee of the person and estate of the lunatic, without entering into any security until further order, and the stock was ordered to be transferred into the name of the Accountant-General (*r*). And, in another case, where it appeared that the lunatic was possessed only of 1,459*l.* Bank 3 *per cent.* Annuities, standing in the name of the Accountant-General, and 197*l.* cash; on the death of the former committee, a new one was appointed without giving any security; and the residue of the cash, after payment of certain costs, was ordered to be invested in the purchase of like annuities (*s*).

An inventory of the property, verified by oath, is left with the clerk of the custodies for the inspection of the Attorney-General, who will seldom approve of sureties objected to by any of the parties interested. With a view to reduce the amount of the requisite securities, stock standing in the name of the lunatic, or any part of his outstanding estate, which can be paid into Court, may be transferred into the name of the Accountant-General in trust in the matter.

The time for perfecting the security required of the committees is sometimes enlarged. An order for this purpose

(*q*) *In re Frank*, 2 Russ. 450.

(*r*) *In re Hicks*, 25 Feb. 1825.

(*s*) *In re Lee*, 12 May, 1825.

was made where several mortgages, bonds, and promissory notes had been deposited in the Master's office, and the amount of the security required thereby reduced (*t*). And a similar order was made, where, partly owing to the largeness of the amount of the security required, and partly owing to the absence in France of one of the intended sureties, the security had not been perfected within the time limited (*u*).

Where the committee of the estate, through inadvertence, had omitted to complete the security required, the time for doing so was enlarged (*v*). And where a petition stated that one of the committees was in Ireland, and could not, without much inconvenience, return to England for three months, when the necessary sureties would be procured, the time for completing the security was enlarged (*w*).

Under particular circumstances, after the execution of the bond, such as the reduction of the outstanding estate, the original bond may, upon application, be given up, and security to a less amount taken (*x*).

The committee may petition to have his first bond delivered up, and to change the security by giving a greater; but, though this has the appearance of being intended for the benefit of the lunatic's estate, yet the application will not be granted without strict examination, lest the specious offer should cover, or afford the means of effecting, a fraud; for if, when the first bond was given up, no account had been rendered of part of the profits, there would be no remedy but from the time when the last bond was taken (*y*).

An order for reducing the security given by a receiver of a lunatic's estate has also, under particular circumstances, been made.

On the petition of the committee and receiver of a lunatic's estate, it was referred to the Master to reduce the security entered into by the receiver of the lunatic's estate

(*t*) *In re Jones*, 13 Aug. 1827.

(*x*) *Ex parte Northleigh*, 2 Ves.

(*u*) *In re Clare*, 13 Aug. 1827.

sen. 673.

(*v*) *In re Arrousmith*, 22 Oct. 1828.

(*y*) *Ex parte Pereira*, 2 Ves. sen. 674.

(*w*) *In re De L'Isle*, 1 Nov. 1828.

and his sureties, (in consequence of the transfer and payment into the name of the Accountant-General, and the deposit of the mortgage and other securities, as had been directed by a former order), to an amount corresponding with the condition of the estate and effects of the lunatic. And afterwards, an order was made, that the petitioner and his sureties should be at liberty to enter into fresh security, to the approbation of the Master, for answering the estate of the lunatic, and accounting for the rents and profits thereof once in every year, or oftener if required; and that the former recognizance entered into by the petitioner and his sureties, be vacated and discharged; and that the clerk of the enrolments should attend the Master of the Rolls with the enrolment of the recognizance for that purpose (z).

When the executors or administrators of a deceased committee have passed his accounts before the Master, and paid the balance into Court, the recognizance will be delivered up by the clerk of the custodies to be vacated and cancelled.

On the recovery of the lunatic, after the commission has been superseded, the recognizance will be delivered up to be vacated and cancelled, on the committee passing his accounts, and paying the balance to the lunatic.

Upon the death of a lunatic, the bond will be delivered up to be vacated and cancelled, on the committee passing his accounts and paying the balance into Court, or to the representatives of the deceased lunatic. In case the committee makes default in passing his accounts when required, the recognizance may be put in suit against him and his sureties.

The Court of Exchequer refused to grant a *fiat* for an extent, on an application made by a committee of a lunatic against a preceding committee (on the usual bond to the Crown), where he had been declared a bankrupt under a commission of bankruptcy, issued against him so long as ten years before the application. The remedy of the party is by *scire facias* (a).

Where both the committee and sureties reside in Scot-

(z) *In re Palmer*, 6 Nov. 1828.

(a) *In re Lacy*, 10 Price, 135.

land, the Chancellor's jurisdiction does not reach them, and proceedings for enforcing the bond must be instituted in the Courts in Scotland; and the sum recovered in such an action will be lodged in a bank there, to await the orders of the Lord Chancellor (*b*); and in order to enforce the security in such cases, the clerk of the custodies will be required to deliver up the bond to be put in suit against the committees and their sureties.

If the committee should disobey an order for payment of what has been found due from him, the Chancellor, if he thinks fit, may enforce the order by attachment (*c*).

A question, which it became unnecessary to decide, was raised in a recent case (*d*), whether the usual bond to the Crown entered into by the committee of a lunatic, be an obligation of the same force and effect as a statute staple within the 33 Hen. 8, c. 39, s. 50.

SECTION VI.

Of the Allowance for the Maintenance of Lunatics, and their Families.

AFTER the committees have been appointed, and perfected their security, the usual course is, for the Lord Chancellor on petition to refer the matter to the Master in Chancery (to whom it stands referred by the former orders), to settle what will be proper to allow for the maintenance of the lunatic out of his estate.

The usual form of reference on such occasion is, "to inquire and certify what is the situation of the lunatic, and the nature of his lunacy, and of what the fortune of the lunatic did at the time of issuing the commission of lunacy

(*b*) Erskine's Inst. by Ivory, 202, 706.

n. 245.

(*d*) *Res v. Lambe*, M'Clelland's

(*c*) *Ex parte Grimstone*, Ambl. Rep. 402.

consist, and of what it doth now consist; and in what manner, at what expesne, and by whom, the lunatic hath hitherto been maintained, and also what will be fit and proper to be allowed for his future maintenance, regard being had to the circumstances and estate of the lunatic" (e).

When the Master has made his report of the proper sum to be allowed for the maintenance of the lunatic, application must be made to the Lord Chancellor for its confirmation; and if any parties object to such report, they can apply to him by petition; and generally the report will be referred back to the Master to review it.

In settling an allowance to the committee of a lunatic, the Court does not so much regard the benefit of his next of kin, as the comfort of the lunatic himself; with a view, therefore, that he may be afforded as much enjoyment as his unfortunate condition will admit, and his pecuniary resources procure, a liberal sum will generally be allowed for maintenance. The Master, on a reference, having reported that the sum of 300*l.* a-year was a proper allowance for the maintenance of a lunatic, whose disorder consisted of great imbecility of mind, and who had an income of 1700*l.* a-year, and had been placed in a private madhouse by his grandmother at a time when he had no fortune—Lord Chancellor *Eldon* said, the allowance was too little, and that the lunatic, with his fortune, might be rendered more comfortable. It is not a judicious act (said his Lordship) for the Court to lay up 1400*l.* a-year for persons who may happen to be his next of kin at his death, when his own happiness may be promoted by a more liberal application of the property. To confine him in a private madhouse is very harsh, considering that his disorder is not of a nature to require coercion, nor of a species that gives much hope of recovery, which might render the treatment given in such a place expedient. And he could not see why the lunatic should not live in a house of his own, under the care of some relation. It was referred to the Master to review his report; and to consider whether

(e) *In re Davidson*, 11 January, 1827. See forms of such petitions in the Appendix.

it was not proper to apply a larger income for maintenance (f).

The allowance for maintenance will be augmented, according to the lunatic's circumstances. Where 350*l.* a-year had been allowed for the maintenance of a lunatic, whose income, in consequence of the death of a relation, amounted to the annual sum of 2000*l.*, Lord Chancellor *Thurlow* referred it to the Master to inquire into his situation, and what maintenance would be proper; for although, said his Lordship, 350*l.* might have been very adequate before, it is a miserable maintenance for a man of 2000*l.* a-year, unless he is in chains, or incapable of any degree of comfort. Next of kin and expectants are not to be considered; but the lunatic is to have every comfort which his circumstances will allow (g).

As the King is required by the statute *de prærogativa regis* to maintain, not only the *non compos*, but also his family, an allowance may be granted by the Chancellor for the maintenance of his children; and sums of money applied by the committee of a lunatic for the maintenance of his children have been allowed by the Court, where no previous order had been obtained for the purpose (h). But the regular and proper course is for the committee to apply to the Lord Chancellor previously to making any extraordinary payment for the benefit of the children of the lunatic, or of any other person. The Lord Chancellor has power to direct money belonging to the lunatic to be applied for the maintenance or advancement in life of his children (i), or for payment of their debts (k).

In many cases, the whole income of the property belonging to a lunatic is ordered to be applied for his maintenance; and where that has not been done, an increased allowance may be obtained, if the situation of the lunatic or his family, or the state of his property, require it.

It was referred to the Master to inquire and certify whe-

(f) *Ex parte Baker*, 6 Ves. 8. 263.

(g) *Ex parte Chumley*, 1 Ves. jun. 296.

(i) *In re Alderson*, April, 1808; *In re Jessop*, Aug. 1808.

(h) *Foster v. Marchant*, 1 Vern.

(k) *In re Medhurst*, April, 1808.

ther any addition was proper to be made to the allowance for the maintenance and support of the lunatic and his wife and daughter, regard being had to the present circumstances and estate of the lunatic, and the increased age of his daughter; and whether any sum ought to be allowed for the payment of bills incurred on her account (*l*).

There was a reference in another case to the Master, to inquire whether any and what sums ought to be applied for the advancement of the sons of a lunatic, and out of what fund the same ought to be paid (*m*).

The Master was directed to inquire, having regard to the comfort of the lunatic and the circumstances of his estate, whether the sum allowed for keeping up a family residence should be increased, and whether the sum allowed to the committees of the person of the lunatic for maintaining his establishment should be also increased. On the confirmation of the Master's report, recommending additional sums of money to be allowed for the last-mentioned purposes, an order to that effect was made by the Lord Chancellor (*n*).

With respect to the application of the separate estate of a married woman towards her maintenance, Lord *Eldon* said, that the Court must look at the substantial benefit of the object of the commission; and must therefore consider the extent, not only of the husband's means, but of his obligation to maintain her; and, if the law would not compel him to contribute to her comfort in the degree in which he ought, the committee would be directed to apply a part of her separate income: but that it could be done only by arrangement (*o*).

There are, however, some modern instances of orders for the payment of the separate estate of married women, being lunatics, to their husbands. In a case where it was found by the Master's report that a married lady, who had been found by inquisition to be a person of unsound mind, was entitled under a settlement to the dividends of stock

(*l*) *In re Le Heup*, 24 Dec. 1828. See Appendix.

(*m*) *In re Watts*, 24 Dec. 1828.

(*o*) *Brodie v. Barry*, 2 Ves. &

(*n*) *In re Starkie*, 18 Aug. 1828. Bea. 39.

vested in trustees, upon trust for such persons as she should appoint, but not in the way of anticipation, and in default of appointment, in trust for her separate use, and the husband had been appointed sole committee of her person and estate on giving the usual security—It was ordered that the dividends, to which the lady was entitled for her separate use, should be paid to her husband, to be applied by him in her maintenance, until further order (*p*). And by another report, made by the Master, it appeared that the wife of the lunatic was entitled to a rent charge of 200*l.* settled to her separate use; that she had two sons; and that the annual income of the husband, the sole committee of the person and estate, consisted of the dividends arising from 2499*l.*, Bank Annuities, and the annual sum of 258*l.*, which was insufficient to support the lunatic, and to educate her children in a proper manner—It was ordered that the said annuity of 200*l.* should be paid to the husband as committee of the estate, until further order; and he was to give credit for the same in passing his accounts before the Master (*q*).

In another case, where a married lady, who had been found a lunatic by inquisition, was entitled to the dividends of stock, amounting to 796*l.* 4*s.* *per annum* for her separate use—It was ordered, that 400*l.* *per annum* should be paid to one of the committees of the person of the lunatic, to be applied for her comfort and maintenance, in the manner directed by the order, and that the remainder of such dividends should be paid to her husband as her other committee (*r*).

The practice of making an allowance to the immediate relations of a lunatic, other than those whom the lunatic would be bound by law to provide for, has been extended to the case of his brothers and sisters and their children, and is founded, not on their supposed interest in the property, which cannot exist during the lunatic's lifetime, but upon the principle that the Court will act with reference to the lunatic, and for his benefit, as it is probable the lunatic

(*p*) *In re Evans*, 24 May, 1826. (*q*) *S. C.* 8 March, 1828.

(*r*) *In re Cay*, 16 April, 1829.

himself would have acted if of sound mind. The amount and proportions of such an allowance are, therefore, entirely in the discretion of the Court (s).

It is stated, that the origin of the practice of granting an allowance for the relations of a lunatic (other than those whom the lunatic is bound by law to provide for) has been traced to an order of Lord Chancellor *Thurlow* in the matter of *Cotton*, which was made upon an objection to a report, allowing maintenance generally, without specifying the proportions which were meant to be granted to the relations respectively. It was referred back to the Master to review his report; who thereupon certified that the sum allowed was appropriated; and, after specifying the sum allowed for the lunatic himself, stated that the remainder was to be divided among his immediate relations. Lord *Thurlow* confirmed that report, and directed the allowance to be paid by, and allowed to, the committee, on passing his accounts (t).

On a reference to the Master to inquire and certify whether it would be reasonable and proper, that any, and what, increase should be made to the then allowance for the maintenance and support of the lunatic, regard being had to his circumstances and estate, and also to the situation of his immediate relations, and from what time such increase should take place. The Master, by his report certified, that an increase should be made in the allowance for the support of the lunatic; and with respect to the lunatic's immediate relations, he submitted, that regard being had to their respective circumstances, the several yearly payments in his report mentioned should be made to them respectively out of the increased allowance. No objection was taken to the report, which was ordered to be confirmed; but the order was not drawn up. A petition was then presented by a niece of the lunatic, one of the immediate relations provided for by the report, who conceived herself aggrieved by the Master's apportionment, praying that the

(s) *Ex parte Whitbread, In re* on Lun. 246.
Hinde, 2 Mer. 99. But see 1 Coll. (t) 2 Mer. 100, n.

minutes might be varied in the several particulars specified, and especially that the report might not be confirmed as to the apportionment of part of the lunatic's allowance among his relations in the manner therein mentioned; but that the Lord Chancellor would be pleased to make such order or declaration as would enable the petitioner to receive such other proportion of the said allowance as the petition required; but no order was made upon the petition. Lord Chancellor *Eldon* observed, "for a long series of years the Court has been in the habit, in questions relating to the property of a lunatic, to call in the assistance of those who are nearest in blood, not on account of any actual interest, but because they are most likely to be able to give information to the Court respecting the situation of the property, and are concerned in its good administration. It has, however, become too much the practice, that, instead of such persons confining themselves to the duty of assisting the Court with their advice and management, there is a constant struggle among them to reduce the amount of the allowance made for the lunatic, and thereby enlarge the fund which, it is probable, may one day devolve upon themselves. Nevertheless, the Court, in making the allowance, has nothing to consider but the situation of the lunatic himself, always looking to the probability of his recovery, and never regarding the interest of the next of kin. With this view only, in cases where the estate is considerable, and the persons who will probably be entitled to it hereafter are otherwise unprovided for, the Court, looking at what it is likely the lunatic himself would do if he were in a capacity to act, will make some provision out of the estate for those persons. So, where a large property devolves upon an elder son, who is a lunatic, as heir-at-law, and his brothers and sisters are slenderly or not at all provided for, the Court will make an allowance to the latter for the sake of the former, upon the principle that it would naturally be more agreeable to the lunatic, and more for his advantage, that they should receive an education and maintenance suitable to his condition, than that they should be sent into the world to disgrace him as beggars. So also, where the fa-

ther of a family becomes a lunatic, the Court does not look at the mere legal demands which his wife and children may have upon him, and which amount, perhaps, to no more than may keep them from being a burthen on the parish—but considering what the lunatic would probably do, and what it would be beneficial to him should be done, makes an allowance for them proportioned to his circumstances. But the Court does not do this because, if the lunatic were to die to-morrow, they would be entitled to the entire distribution of his estate, nor necessarily to the extent of giving them the whole surplus beyond the allowance made for the personal use of the lunatic. There is difficulty as to the extent of relationship to which an allowance ought to be granted. There are instances in which the Court has, in its allowances to the relations of the lunatic, gone to a further distance than grandchildren—to brothers and other collateral kindred; but the principle is, not because the parties are next of kin of the lunatic, or as such have any right to an allowance, but because the Court will not refuse to do, for the benefit of the lunatic, that which it is probable the lunatic himself would have done" (u).

In a recent case, a petition was presented by a mother on behalf of her infant son, by which it appeared that a lunatic was tenant for life of estates of the annual value of 1190*l.*, with remainder in tail to the petitioner, an infant of the age of eight years, and the great nephew of the lunatic; and that the surplus income of the lunatic's estates, after payment of the allowance for maintenance, amounted to the annual sum of 800*l.* That the lunatic was seventy-five years of age, had been declared a lunatic twenty years, and was then in a most hopeless state of lunacy. That the mother of the infant petitioner had only an income of 40*l.* for their maintenance. The petition prayed a reference, to inquire into the state and circumstances of the lunatic, as to his family and relations, and particularly as to the circumstances of the petitioner, the infant, and whether his mother was capable of properly maintaining and educating him, with reference

(u) *Ex parte Whitbread, In re Hinde*, 2 Mer. 101—103.

to his rights, interests, and expectations, upon the death of the lunatic; and to certify whether it would be proper, that any increase should be made to the allowance for the maintenance of the lunatic, regard being had to his circumstances and estate, and also to the situation of the petitioner, the infant; and whether it would be proper that any, and what, allowance should be made to any person, and to whom, towards the maintenance and education of the petitioner, the infant, out of the rents and interest of the lunatic's estate. The petition stood over for some time, to give an opportunity to the committee to answer certain affidavits in support of it; and as it afterwards appeared that the surplus income of the lunatic was required for several contingent expenses, as renewing leases of his property; and that the lunatic, every other day, was capable of expressing his wishes as to the application of his property—Lord Chancellor *Brougham*, although he recognised the doctrine of Lord *Eldon* in the preceding case, refused to make the order prayed by the petition last stated (*v*).

In one case, where the Master had reported that the income of the lunatic was sufficient to allow the sum of 200*l.* a-year to be paid to each of his married daughters, and that the same ought to be allowed from the date of the commission, and that, from a subsequent period, an annual sum ought to be paid for the support of each of the lunatic's married children, in proportion to the income of the lunatic, and the wants of himself and his wife, and the other branches of his family; and that the net annual income of the lunatic ought to be divided into thirty-two equal parts, seventeen of which should be allowed for the support of the lunatic, his wife, and his two unmarried daughters, and the remaining fifteen parts paid to the four married children and the children of a deceased child—an order for apportioning the income of the lunatic amongst himself and his children and grandchildren was made (*w*).

A petition was presented for a natural child, by his mother and next friend, whereby it appeared to have been

(*v*) *In re Windsor*, 21 Dec. 1831. (*w*) *In re Freak*, 14 Aug. 1830.

the intention of a lunatic to give a natural child a liberal education, and the mother had not sufficient means for his support or for carrying those intentions into effect. Lord Chancellor *Lyndhurst* declared, that, under the particular circumstances of the case, the natural child ought to be maintained and educated out of the estate of the lunatic, and referred it to the Master, to inquire and certify what would be a fit and proper sum to be allowed for the past and future maintenance and education of the child (x).

Where the lunatic has two funds applicable towards his maintenance, and both are not required for that purpose, it will be charged on one fund exclusively of the other, if such arrangement is beneficial to the lunatic's estate. A mother, whose only daughter, a lunatic, was entitled to a large real and personal estate under her father's will, bequeathed the residue of her estate and effects to trustees, upon trust to apply the interest, amounting to about 1600*l.* a-year, towards the maintenance and support of her daughter, and otherwise for her comfort and advantage, as they should think proper, without being liable to account; and after her decease to pay the principal, and also such interest as should not have been actually so applied, to the testatrix's nieces. The Master found, that the residue of the mother's estate amounted to about 1600*l.* a-year; that an annual sum of 1200*l.* was proper to be allowed for the maintenance of the lunatic; and that the whole of that allowance ought to be paid out of the income to arise from the property to which she was entitled under her mother's will. The next of kin prayed a confirmation of the Master's report; and the trustees under the mother's will presented a counter petition, praying that the lunatic's allowance might be charged, either entirely or at least rateably, on the income of the property which she derived from her father. The Court held that the testatrix intended that the fund should be applied, in the first instance, for the maintenance, support, and clothing of her daughter; it might turn out, eventually, that it was not a sufficient provision; which would explain the use of the

(x) *In re Jodrell*, 14 Aug. 1828.

word "towards;" and if there was any surplus, she gave it to the legatees over. Under these circumstances, it being for the interest of the lunatic, and not contrary to the intention of the will, it was held that the charge should be wholly borne by the maternal estate (y).

Where a lunatic had estates in England and Scotland, it was ordered that the burthen and expense of the maintenance and debts ought to be borne in a rateable proportion between his real and personal estate in England, and his real and personal estate in Scotland, regard being had to the respective incomes and produce of each estate; and the Master was directed to inquire into, and settle, the proportions accordingly (x).

Where it appeared by the petition of the committees of the person of a lunatic, that, in consequence of the unsettled state of the lunatic's affairs, no regular allowance had been fixed for his maintenance, and that they had advanced their own money for that purpose—It was referred to the Master to inquire and certify what sum would be proper to be allowed for a provisional allowance for the future maintenance of the lunatic, until the Master should have made his general report, and from what time such provisional allowance was to be payable (a).



SECTION VII.

Of the Allowance for Trouble to the Committees of the Estates of Lunatics.

THE general rule of the Court of Chancery is, not to make any allowance to committees of lunatics for their trouble in the execution of their trust; but, under particular

(y) *In re Ashley*, 1 Russ. & Marchioness of Anandale, 2 Ves. sen. Mylne, 371. 381; Reg. Lib. 1750, B. fol. 612, 13.

(x) *Marquess of Anandale v.* (a) *In re King*, 11 Aug. 1829.

circumstances, the allowance for maintenance has been increased, or a reasonable compensation for trouble allowed.

The committee of the person and estate of a lunatic, being also his younger son, preferred a petition, to be allowed, in addition to 400*l.* a-year, a sum of money reported by the Master as proper to be allowed for his trouble in taking care of the lunatic's estates, which were large, and dispersed in England and Ireland. The next of kin consented to such allowance, as far as by law they could give such consent. Lord Chancellor *Hardwicke* observed, that trustees or committees of lunatics never have any allowance made to them for their trouble; committees were generally the relations, or at least friends, of the lunatic, and were supposed to have a regard for his welfare, and to undertake the care of him from charitable motives; and as an allowance had never been made, his Lordship refused to make a precedent for himself and his successors. The present case had less favourable circumstances than where a stranger was committee; for a son was in duty bound to undertake such a trust: nor was the consent of the next of kin (so far as they were by law capable of consenting), a sufficient ground for obtaining the allowance; for, it is the interest of the lunatic which the Court regards, and the lunatic might outlive the present next of kin, and his personal estate go into other hands after his death. The management of the property, however, in that case being attended with great trouble, his Lordship directed the committee to prefer a petition for an increase of maintenance, taking no notice of the Master's report; and he would then order an additional allowance of 200*l.* a-year (*b*).

On a petition, presented in lunacy, for an allowance to the committee of the estate, for his care and trouble, Lord Chancellor *Eldon* is reported to have said, that he did not recollect an instance of allowing a committee of the estate any thing for his care and trouble; and refused to make an order for that purpose (*c*).

But, under peculiar circumstances, a salary is sometimes

(*b*) *In re Annesley*, Ambl. 78.

(*c*) *Anon.* 10 Ves. 104.

allowed to the committee of the estate of a lunatic. Thus, where a gentleman, unconnected with the family of the lunatic, had been induced at their request to suffer himself to be proposed as committee, in order to carry into effect the Lord Chancellor's recommendation; and the inspecting the estate, and receiving and remitting the rents, would be attended with considerable trouble; and the Master had approved the appointment. On a petition being presented by some of the next of kin, praying that the committee of the estate might have an allowance, in the same manner as a receiver—Lord Chancellor *Eldon* directed the Master to inquire and certify what reasonable allowance under the peculiar circumstances of the case it would be proper to make to the committee, for his care and pains in the management of the lunatic's estate, and in collecting and receiving the rents thereof, with liberty to state any special circumstances (*d*).

In another case, where a person had been appointed committee of the estate of a lunatic, but, in consequence of the large amount of the security required, and of the trouble which he must necessarily be put to in collecting the rents of the lunatic's houses, and the interest due upon bonds and mortgage securities, refused to act, unless he was also appointed receiver, with some remuneration for his trouble in attending to the affairs of the lunatic—Lord Chancellor *Lyndhurst*, on the petition of the sisters and co-heiresses of the lunatic, made a reference to the Master to settle a reasonable and proper salary, to be allowed to the committee of the estate, for his care in the management of the lunatic's estate, on his giving security, to be approved by the Master, to account annually for what he should receive and pay (*e*).

So likewise where the estate of the lunatic consisted of lands in different parts of a county, which were divided into upwards of twenty farms, let on leases, which contained very special covenants, an order was made, without a reference to

(*d*) *Ex parte Fermor, In re Er-* 453; *ante*, p. 146.
rington, Jac. Rep. 404. See *Mar-* (*e*) *In re Palmer*, 15 March,
shall v. Holloway, 2 Swanst. 432, 1828.

the Master, that the committee of the lunatic's estate should be at liberty to employ a particular person for inspecting the lunatic's property, at a fixed salary, to be paid out of the rents of the estate(*f*).

But in a case where the committee of the person of the lunatic petitioned for payment of an annual sum directed to be allowed to him for expenses incurred by him in visiting the lunatic; and it appeared that such committee had resided in Scotland from 1818 to 1821—Lord Chancellor *Eldon* said, if a sum was allowed the committee for the expenses of visiting the lunatic, and he retired out of the jurisdiction, where the Court could not compel him to do his duty, the Court would not order it to be paid to him. It must be paid to some one over whom the Court had control. If an application had been made, stating that he was gone to reside permanently in Scotland, the Court would have discontinued the allowance. The order made on the last petition declared that the committee was not entitled to the allowance of 40*l. per annum* claimed by him, and directed the Master to inquire, regard being had to any visits which he should find to have been actually made by the petitioner to the lunatic, at his place of residence, whether any, and what sum ought to be allowed him for such visits(*g*).

Where a person, who had been appointed committee of the estate, stated in his petition that he had never consented to the appointment, that he declined to act as committee, and that no other person could be found to undertake the office; but that he was willing to accept the situation of receiver of the estate of the lunatic, on being allowed a proper salary—It was referred to the Master to approve of some other proper persons as committees; and if no proper person could be found to act as such committee, then the Master was to appoint a proper person to be the receiver of the lunatic's estate, with a reasonable salary for his care and pains, on his giving the same security as is re-

(*f*) *In re Errington*, 2 Russ. 567. (*g*) *Ex parte Ord*, Jac. Rep. 94.

quired from the committees of lunatic's estates to account annually; and a further order was added, that the tenants of the lunatic's estates should attorn and pay their rents to such receiver, who was to be at liberty to let the estates from time to time, with the approbation of the Master, as there should be occasion (*h*).

SECTION VIII.

Of the Removal of Committees.

AS the King is bound to execute the trust reposed in him by the statute *de prærogativa regis* (*i*), and cannot do it otherwise than by persons appointed for that purpose, the Lord Chancellor is the proper person to direct and control the authority of the person so appointed; and it is the duty of the person holding the Great Seal to see that the committees do not use their trust to the prejudice of the lunatic in his life-time, or of those entitled to his property after his death.

The committee of the estate is considered as a mere bailiff, appointed by the Crown, and under its control, to take care of the property, and to act according to the duty imposed on the Crown; and is liable to account, to censure, to punishment, and to removal, if he shall misconduct himself (*k*).

It has been stated, that the superintendence of the conduct of committees of lunatics in the management of their property and persons belongs to the Court of Chancery (*l*); but such jurisdiction is always exercised by the Keeper of

(*h*) *In re Smith*, 23 Feb. 1828.

(*l*) *In re Fitzgerald*, 2 Sch. & Lef.

(*i*) See *ante*, p. 11.

438; *ante*, pp. 17, 18.

(*k*) 2 Sch. & Lef. 436.

the Great Seal, and not by the other branches of the Court.

In case committees abuse the powers with which they are intrusted in that character, or in case their circumstances become so embarrassed as to render it unsafe or inexpedient to intrust them any longer with the management of the lunatic or his concerns, they will either be removed or suspended from the office, as occasion may require, and orders will be made for the appointment of others in their place.

In a case in which a committee of the estate of a lunatic had neglected to carry in his accounts, and afterwards rendered very deficient ones, and had called in and received several sums of money belonging to the lunatic, keeping part of it in his own hands, and making a profit of it, and had lent other part of the lunatic's money on mortgage, and expended some in repairs, without the authority of the Court, besides retaining a balance in his own hands; such committee was ordered in the first instance to render an account of his receipts; and the Master, having found by his report that the committee had been guilty of such irregularities with respect to the management of the lunatic's funds; on a further petition being presented, an order was made for removing the committee from his office, and for directing another to be appointed in his place (n).

Where a lunatic was defendant in a cause, and his committee, who was also a defendant in the same cause, refused to put in an answer for him; on a motion by the plaintiff, for the committee to put in an answer by a limited time, or for one of the Six Clerks to be appointed guardian *ad litem*—The Court thought the proper course would be to proceed against the lunatic; and, if the committee declined putting in an answer, to apply to the Great Seal for the appointment of another committee (o).

The committee of a lunatic, who had been guilty of a contempt by publishing a pamphlet, which reflected on persons acting in the management of the lunatic under the Chancellor's orders, and who had moreover intruded into

(n) *In re Pearson*, 15 Aug. 1826.

(o) *Lloyd v. Mar*, 2 Dick. 460.

the Master's office, and interrupted the business there, was dismissed, and a reference was directed to the Master for the appointment of a new committee (p).

Bankruptcy of the committee of the person of a lunatic is a sufficient cause for removing him, on account of the fund for maintenance; but the custody of the person is not always changed on that account; but it will be referred to the Master to appoint another committee, in order that he may consider the particular circumstances of the case, and the propriety of continuing the custody, having regard to the comfort of the lunatic (q).

The Court will not remove a committee of the person, merely on the ground of his having become a bankrupt, whether he has obtained his certificate or not; even where he has obtained his certificate, and, possessing no other funds than those which are given for the maintenance of the lunatic, is under a temptation to appropriate them to his own benefit, still the Court will not change the custody of the person of the lunatic, unless it be impracticable otherwise to secure his maintenance. For, the Court in such cases has a species of control over the funds, and the true subject of consideration is, whether such committee has done what is required for the comfort of the lunatic, which in many cases is best promoted by not changing the custody of his person. And, therefore, on a petition to remove a committee, on the ground that he had become a bankrupt, an inquiry was directed whether the comfort of the lunatic had been sufficiently provided for, regard being had to the sum allowed (r).

The bankruptcy of the committee of the estate of a lunatic is a sufficient ground for removal. Thus, in a case where such a committee had been declared a bankrupt, it was ordered that he should be discharged from the office, and from acting in any manner in the affairs of the lunatic, and that the bankrupt should pass his accounts before the Master, when his assignees were to be at liberty to at-

(p) *Ex parte Jones*, 13 Ves. 237. (r) *Ex parte Proctor*, 1 Swanst.

(q) *Ex parte Mildmay*, 3 Ves. 531.

tend, and the balance to be found due was ordered to be paid into Court, upon which his recognizance was to be vacated; and in default of such payment, it was referred to the Master to inquire and certify whether any proceedings should be taken against the bankrupt and his sureties, for obtaining payment of such balance; and the Master was directed to inquire who were the most proper persons to be appointed committees of the estate in the place of the bankrupt (s).

Sometimes, the bankrupt committee of the estate is suspended from the office until he shall have obtained his certificate. Thus, in a case where a committee of the estate of a lunatic had been made a bankrupt, and was indebted to the lunatic's estate in a large sum of money—Lord Chancellor *Lyndhurst* ordered the committee to be suspended from the committee-ship of the lunatic's estate, and from all interference therewith, until he should obtain his certificate, on receiving which he was to be at liberty to apply to resume such committee-ship; and the Master was ordered to appoint a proper person to be receiver of the lunatic's estate in the mean time, with a reasonable salary, on giving security; and it was ordered that the committee should proceed to complete the passing his accounts, and that the receiver should prosecute the orders made for passing such accounts; and it was referred to the Master to inquire if any and what proceedings were necessary and proper to be taken for recovering what was due to the lunatic's estate from the committee (t). Afterwards, on the petition of two of the next of kin of the lunatic, the assignees of the bankrupt were ordered to deposit in the Master's office, upon oath, all such deeds, papers, and writings in their custody or power, as related exclusively to the estate of the lunatic, and to the accounts of the bankrupt as the committee of his estate. And the bankrupt was ordered to be examined upon interrogatories, as the Master should think fit, touching a particular farm, and the estate and interest of the lunatic therein, and the rents and profits thereof received by

(s) *In re Barrow*, 20 June, 1827. (t) *In re Chambers*, 15 April, 1826.

the bankrupt, and as to the accounts of the lunatic's estates generally; and the petitioners were to be at liberty to charge the bankrupt with such proportion of the rents and profits of such farm as the Master should find to be due from him to the estate of the lunatic in respect thereof, and in respect of certain other sums therein mentioned. And the Master was to be at liberty to fix a period within which the bankrupt was to vouch and pass his accounts before the Master; and, in default, the Master was directed to look into the state of the accounts and certify what balance appeared to be due from the bankrupt to the estate of the lunatic (u).

The committee's going to reside permanently out of the jurisdiction of the Court seems to be a sufficient cause for removing him (v). But where only a temporary absence of the committee of the person and estate is contemplated, it may be referred to the Master to approve of a proper person to be intrusted with the care of the lunatic during such absence (w).

A party may apply to the Lord Chancellor, by petition, to be discharged from the office of committee; whereupon it will be referred to the Master to take and pass his accounts of the receipts and payments on account of the lunatic and his estate, from the foot of the last account; and an order will be made that, after payment of the taxed costs and reasonable allowances of the committee and next of kin of the lunatic, the balance to be found due from such committee be paid into the name of the Accountant-General of the Court of Chancery, and thereupon that the committee may be discharged from his committee-ship, and the recognizance entered into by him and his sureties cancelled; and it will also be referred to the Master to appoint another committee in the place of the one who has been discharged, of which notice must be given to the next of kin of the lunatic (x). And sometimes, on a petition for the appointment of new committees, it will be ordered that the custody

(u) *In re Chambers*, 13 Aug. 1828.

(w) *In re Aguilar*, 22 Feb. 1823.

(v) *Ex parte Ord*, *Juc. Rep.* 94.

(x) *In re Yorke*, 5 Aug. 1828.

of the person of the lunatic be committed to particular persons, until a new committee shall have been appointed, and directions will be given as to the custody of the lunatic in the interval (y).

SECTION IX.

Of Passing the Accounts of Committees.

THE committees of lunatics are required, from time to time, to render an account of their receipts and payments in respect of the estate of the lunatic. The Lord Chancellor refers it to the Masters in Chancery, to pass the accounts of committees, and on each particular occasion a specific order must be pronounced for the purpose (x).

The Masters of the Court of Chancery were ordered to certify on the last seal after Trinity term, in every year, to the Lord Chancellor, Lord Keeper, or Lords Commissioners for the custody of the Great Seal, for the time being, the state of the several committees' and receivers' accounts, in their respective offices (a).

In some cases, where the property of the lunatic is small, the Court will on application dispense with the general rule requiring the committees to pass their accounts annually. In one case, where the sum annually received by the committee beyond the maintenance did not exceed *8l. per annum*, it was ordered that the same might, from time to time, when received by the committee, be paid into the Bank of England to the credit of the matter, (the amount to be verified by the affidavit of the committee;) and that the order

(y) *In re Metcalfe*, 28 Aug. 1822. of the Great Seal, 25 July, 1792;

(z) See forms of petitions for this purpose, in the Appendix. Beames' Orders in Chancery, 453; and see Harr. Ch. Pr. by Newl. 386.

(a) Order of Lords Commissioners

directing the committee to pass his accounts annually be dispensed with (c).

On an application that the committee of a lunatic might have liberty to pass his accounts, which, in consequence (as was alleged) of the smallness of the property, had not been passed since the year 1823—Lord Chancellor *Lyndhurst* granted leave in that case; but said, that, whenever from any cause it is found inexpedient to pass the accounts of a lunatic's estate regularly, an application ought to be made, in the first instance, for liberty to dispense with the general rule, and the Court would then exercise its discretion on the subject (d).

In other cases, it has been referred to the Master to consider of the propriety of passing altogether the accounts of committees of the estates of lunatics for several years; and they have been ordered to be passed accordingly, if the Master approve of such a course (e).

In another case, where it appeared that the property of the lunatic consisted only of 771*l.* 7*s.*, 3 *per cent.* Bank Annuities, and 889*l.*, 3*¼ per cent.* Bank Annuities; and that the expense of passing the accounts annually before the Master amounted to the sum of 16*l.*; and that it would be for the benefit of the lunatic, if the whole dividends of his stock were allowed for his maintenance—On the petition of the committee of the person and estate of the lunatic, it was ordered that so much of a former order, as directed the accounts to be passed annually, should be dispensed with, and that the whole of the annual dividends of the stock belonging to the lunatic should be paid to the committee from time to time, as the same became payable, for the maintenance of the lunatic until further order (f).

The committee will not, in general, be suffered to pass his accounts without referring it to the Master, to see what balances of money belonging to the lunatic have been retain-

(c) *Ex parte Pickard*, 3 Ves. & Bea. 127; *In re Stephenson*, Aug. 1814.

(e) *In re Robinson*, 28 Nov. 1828; *In re James*, 3 April, 1828.

(d) *Anon.* 1 Russ. & Mylne, 113. 1830.

(f) *In re Scarpelain*, 22 May,

ed in his hands from time to time ; which he will not be allowed to keep without paying interest (*g*), nor to take upon himself the management of the savings of the estate, without being charged with interest (*h*).

The Master is sometimes directed to make annual rests, for the purpose of calculating the interest on balances. Thus, it was referred to the Master, to take the accounts of the receipts and payments of the committee of the person and estate of the lunatic, on account of her and her estate ; and, in taking such accounts, the Master was directed to make annual rests, and calculate interest after the rate of *4l. per cent. per annum*, on any balances which he might find due from the committee. The personal representative of a deceased committee was, in like manner, ordered to account and pay interest after the same rate, for balances (*i*). In another case the committee of the person and estate was ordered to carry in his accounts, within eight days, to be passed by the Master, and in taking the same he was directed to make annual rests, and charge the committee with interest after the rate of *4l. per cent. per annum* on any balance that might appear to have been in his hands at the end of each year ; and the committee was ordered to pay the costs of the petition (*k*). The committees will be ordered to pay such balances and interest into the Bank of England in the name of the Accountant-General of the Court of Chancery (*l*). In one case, it was ordered that a committee should, within a month from the service of the order, pay into the Bank the balance found due from him as by the Master's report, and, in default of such payment, stand committed to the Fleet for contempt (*m*).

Although, as a general rule, where the accounts of committees have not been passed for several years, and balances have been retained in their hands, they will be charged with interest ; yet it is competent for them to shew by satisfactory evidence any circumstances which the Court may deem sufficient to excuse them from the payment of interest (*n*).

(*g*) *Ex parte Cotton*, 1 Ves. jun. 156.

(*h*) *Ex parte Chumley*, Ibid.

(*i*) *In re Middleton*, 14 Aug. 1826.

(*k*) *In re Lewis*, 5 April, 1813.

(*l*) *In re Pitt*, 30 March, 1820.

(*m*) *In re Owen*, 5 Aug. 1812.

(*n*) *Ex parte Hall*, Jac. Rep. 160.

By a general order of the Court of Chancery, it is directed that receivers shall annually pass their accounts and pay in their balances, or be disallowed their salaries, and be charged with interest upon the balance in their hands, at *5l. per cent. per annum*, during the time they shall have retained them (*o*). But such order not having been observed, Lord *Eldon* desired that it might be enforced in future (*p*).

A receiver of a lunatic's estate has been recently ordered to pay interest after the rate of *5l. per cent.* on the balance in his hands. On the petition of the administratrix of a deceased lunatic, it was ordered, that the receiver appointed in the lunacy should pay to her the sum certified by the Master's report to be due from him, as the receiver to the estate of the lunatic, on the balance of his accounts, with interest after the rate of *5l. per cent. per annum*, from the date of the Master's report up to the time of payment, and that the Master should tax the petitioner's costs of the application, which were to be paid by the receiver (*q*).

Receivers being bound by recognizance to account regularly, or when called on, are considered as officers of the Court, and are obliged to account on application by petition or motion (*r*); and proceedings may be taken against them personally by commitment, for disobeying the order of the Court (*s*).

A committee of the estate is sometimes ordered by the Court to be examined by the Master upon interrogatories, touching his management of the lunatic's estate, and the application of the rents and profits thereof (*t*).

Parties in contempt for not putting in their examinations are, in some cases, on application to the Court, allowed further time for that purpose, on payment of the costs of such contempt (*u*).

(*o*) 23 April, 1796, Reg. Lib. B. 1 Ball & Beattie, 74; see 2 Eq. Cas. 1795, fol. 381; 15 Ves. 278; and see Abr. ch. 87.
Beames' Orders of the Court of Chancery, 454—463. (*s*) *Davies v. Calcraft*, 14 Ves. 143; Mos. C. C. 43. See *ante*, pp. 145—148.

(*p*) *Potts v. Leighton*, 15 Ves. 274, 276. (*t*) *In re Lloyd*, 19 June, 1794.

(*q*) *In re Webb*, 29 March, 1831. (*u*) *In re Leith*, 10 Aug. 1813.

(*r*) Mos. C. C. 40; *In re Burke*,

In the Lord Chancellor's order for passing the accounts of a lunatic's estate from time to time, notice of passing them is invariably directed to be given to such persons as would be entitled to distributive shares of the personal property, in case the *non compos* were dead intestate. The persons answering this description are ascertained upon inquiry by the Master.

Such notice is given to the next of kin, and they are allowed to go before the Master, not so much by virtue of any right under which they can claim to be entitled in respect of their contingent possibilities, as for the purpose of checking the accounts, and to assist the Court in watching over the interests of the lunatic (v).

It was held formerly, that, although such notice was given, yet that the next of kin were not allowed the costs of attendance, unless some special case was laid before the Court, as that they were at expense on some extraordinary litigation with respect to the accounts; otherwise, if every relation, who thought he had an interest to attend, should have the costs, it would bring a great burthen on the lunatic's estate (w). It is considered, however, so much for the benefit of the *non compos*, that the accounts of the committee should be watched by persons interested in their accuracy, that the costs of the next of kin are now generally allowed as a matter of course. So also the costs of the heir-at-law and next of kin in attending the Master to propose committees; and this, upon a like principle of advantage to the *non compos* (x).

But the Court, in one case, refused to allow one of the next of kin, being an annuitant and defendant in a suit for the administration of an estate, in the residue whereof the lunatic was principally interested, the costs of attending before the Master and passing such accounts; as the decree for taking the accounts did not direct such attendance.

(v) *Ex parte Wright*, 2 Ves. sen. 25; *Tharp v. Tharp*, 3 Mer. 512; 25.

Ex parte Clarke, Jac. Rep. 595. (x) 1 Coll. on Lun. 308.

See 19 Ves. 123.

In that case, a suit had been instituted against executors and trustees, for the purpose of taking the accounts of an estate, in which a person, who had become lunatic after the commencement of the suit, was principally interested; and one of the defendants, who was made a party to the suit in respect of an annuity charged on such estate, was not allowed to attend at the passing of the accounts of the general estate at the costs of the lunatic, nor to be paid the costs of past attendances as one of the next of kin of the lunatic: as the decree for taking such accounts contained no direction for such attendance (*y*).

A committee, who shall neglect to pass his accounts regularly, will not be allowed his costs. Where a committee of a lunatic who had passed his accounts not regularly, but the accounts of several years together, applied for costs, Lord Chancellor *Thurlow* declared, that the negligence of a committee in not passing his accounts as he ought was alone a sufficient reason for always refusing him costs (*x*).

In a case where the committee of a lunatic came to pass his account, and it appeared that a demand which he had in his private capacity against the estate of the lunatic was barred by the statute of limitations, Lord *Eldon* compelled him to take the same advantage for the lunatic against his committee, as would have been taken against a stranger; and the particular sum was disallowed (*a*).

In case the sureties die, and the committee become bankrupt, notice of passing his accounts must be given to his assignees; what he owed before his bankruptcy may be proved under the commission; and he will be ordered to pay the committee appointed in his stead what shall be found due from him subsequently to that event (*b*).

If the sureties of a bankrupt committee, or either of them, be living, they will be entitled to notice of passing his accounts, because they are liable to the payment of what shall be found due from his estate.

(*y*) *Tharp v. Tharp*, 8 Mer. 510. *Congreve v. Power*, 1 Molloy's Cases in Ireland tempore Hart, 122. See *Fergus v. Gore*, 1 Sch. & Lef. 107.

(*a*) *Per* Lord Chancellor *Hart*, in (b) *In re Lacy*, Aug. 1806.

If default be made by the committee in passing his accounts, or in paying the balance into Court when required, the recognizance may be enforced against him and his sureties. On the death of a surety, the accounts ought to be passed, and the balance paid into Court. And on the death of the committee, his executors or administrators ought to pass his accounts, and pay what shall be found due from him out of his estate. On the death of the *non compos*, the accounts of the committee ought to be passed, and the balance paid to his representatives, or into Court (c). On the recovery of the lunatic, and the superseding of the commission, the committee ought to pass his accounts, and pay the balance to the party restored (d).

A solicitor employed by a committee on behalf of a lunatic cannot maintain an action against the lunatic for his bill of costs, but has a lien on the lunatic's estate for the amount of such bill. A solicitor acting on behalf of a lunatic preferred a petition, stating, that he had expended great sums of money in prosecuting suits at law and in equity, for the lunatic; and praying that he might be at liberty to enter up judgment, with stay of execution against the lunatic for obtaining a lien on his real estate. Lord *Hardwicke* decided, that the solicitor could not maintain an action against the lunatic; but that it must be brought against the committee who employed him. A solicitor who prosecutes to a decree has a lien on the estate recovered in the hands of the person recovering, for the amount of his bills; but if his client die, he has no such lien on the estate in the hands of the heir, unless it be necessary to have the suit revived, and then the lien will revive too. As the committee in that case had a lien on the lunatic's estate, the Court assisted the solicitor, and declared that he should stand in the place of the committee, in respect of such lien (e).

In another case, a petition was preferred by a solicitor for payment of his bill of costs, in taking out a commission of

(c) 1 Coll. on Lun. 309.

(d) *In re Legard*, Aug. 1810.

(e) *Barnsley v. Powell*, 1 Ambl.

on account of costs, see *Lowten v.*

The Mayor of Colchester, 2 Mer. 113,

and the cases there cited.

102. As to the right to revive a suit

lunacy, out of the lunatic's estate; and that he might not be obliged to come under a commission of bankrupt against the prosecutor of the commission of lunacy who had employed him. Lord Chancellor *Hardwicke* said, that solicitors were allowed the equity of having satisfaction for their expenses out of the fund, both in a suit, or in a prosecution in lunacy, or bankruptcy (*d*).

A solicitor, who had been employed in a case of lunacy, and had taken all the affidavits before himself, was ordered to pay the costs of his own petition, which was dismissed on account of such irregularity (*e*).

It seems, that the change in the state of mind of a party, subsequently to the first commission, by his becoming the object of a new commission, does not give any authority to the Court to order payment of the costs of a former commission (*f*). By statute 11 Geo. 4 & 1 Will. 4, c. 65, s. 28, the Lord Chancellor may order the estates of lunatics to be sold, or charged by mortgage, for raising money for payment of the costs of applying for, and obtaining a commission of lunacy, and in opposition thereto, and all proceedings under the commission (*g*).

The orders made by the Court for payment of costs out of the funds belonging to lunatics, invariably contain directions that such costs shall be previously taxed by the Master to whom the matter is referred (*h*). And under particular circumstances, although considerable time has elapsed since the taxation of a bill of costs in lunacy, the Master may be ordered to review his taxation, and to direct his attention to the objectionable charges in the bill (*i*).

(*d*) *Ex parte Price*, 2 Vez. sen. 125, 126.

407.

(*g*) See *post*, Chap. viii. s. 2.

(*e*) *In re Hogan*, 3 Atk. 813.

(*h*) See Orders in the Appendix.

(*f*) *Sherwood v. Sanderson*, 19

(*i*) *In re Middleton*, 13 Aug.

Ves. 288. See *ante*, pp. 103, 105, 1825.

SECTION X.

Of the Powers and Duties of the Committees of the Estate.

THE power of committees to contract on behalf of the persons under their charge, is not recognised by the law of England.

The committee of a lunatic's estate has, under the authority of the Lord Chancellor, the management of his property, but cannot enter into any contract which shall be regarded as binding upon the person intrusted to his care, unless the same is warranted by some act of Parliament; and even, in such cases, the previous direction of the Lord Chancellor is generally required.

It may be laid down as a general rule, that all deeds, contracts, and transactions, by the committee of the estate of a lunatic, respecting the management or disposition of the property of the latter, which are not necessarily incident to the situation of a committee, or authorized by the express provisions of an act of Parliament, will not bind the lunatic or his estate, unless the previous order of the Lord Chancellor has been obtained; and that, with a view to the security of a committee, it is not a prudent or safe course for him to enter into any contracts, or to adopt any proceedings out of the usual course respecting the property or the rights of the lunatic, without the sanction of the Lord Chancellor.

The powers of the committees of the estates under the direction of the Lord Chancellor, to sell, convey, and lease estates vested in them, either beneficially or as trustees for other persons, will be considered in a subsequent part of this work (*k*).

Generally speaking, it is proper for the committee of the estate to apply to the Court for its direction, previously to commencing or defending an action or suit by or against the lunatic (*l*).

(*k*) See *post*, Chap. viii.

(*l*) See *post*, Chaps. ix. x. xi.

The committee is considered as a mere bailiff appointed by the Crown, and under its control, to take care of the property, and has no interest in the land of the lunatic (*m*). And it is laid down by Lord *Coke*, that the committee of a lunatic, whether acting under the authority of the Crown or not, has no further or other power than that of a bailiff (*n*). And, therefore, it should seem, that he has no further power of distraining for rents in arrear due to the lunatics, than that possessed by receivers (*o*). It does not, however, appear to have been the practice in lunacy, to obtain an order for leave to distrain for rents due to the lunatic's estate, even where the rent has been in arrear for more than a year.

The committee of the estate of a lunatic has not authority, without the order of the Court, to make any abatement in the rents of the tenants of his estate; but it must be referred to the Master, on the petition of the committee of the estate, to inquire and certify whether it will be proper that any, or what allowance should be made to the tenant in respect of the rent reserved by a particular lease or agreement, and for what period such allowance should be made (*p*). Lord *Eldon* adopted the general rule of not granting such a reference on the petition of the *tenant* of the lunatic's estate; and always required the application to be made on the petition of the committee of his estate (*q*); and this rule, it is said, has been uniformly followed by Lord Chancellor *Brougham*, who, on several occasions, has dismissed petitions for the reduction of rents, because they were presented by tenants (*r*). Lord Chancellor *Eldon* is reported to have said, that, in all such references, the Master should be directed to inquire whether it would be more for the benefit of the lunatic's estate that the tenant should give

(*m*) *In re Fitzgerald*, 2 Sch. & Lef. 437; *Drury v. Fitch*, Hutton, 16; *Knipe v. Palmer*, 2 Wils. 130.

(*n*) 4 Rep. 127 b.

(*o*) See *ante*, p. 147, and *post*, ch. viii, s. 1. But see *Bradby* on Distresses, by Serjt. *Adams*, p. 62.

(*p*) *In re Potter*, 24 Dec. 1828. See form of such petition in the Appendix.

(*q*) *Ex parte Town*, *In re Alchin*,

1 Turn. Rep. 137.

(*r*) 1 Russ. & Mylne, 355, n.

up his lease, than that his rent should be reduced (s); but it does not appear that such a direction is usual.

On the confirmation of the Master's report recommending a reduction of rents, it will be ordered that the committee of the estate be at liberty to make the abatements in the rents of the tenants specified in the report, and that the committees be allowed such abatements in passing their accounts (t).

An abatement in the rent paid by the tenant of a lunatic's estate, was directed, without the expense of a reference to the Master, where the application was supported by a strong affidavit of the committee, in which he stated, that, in his judgment, the abatement was reasonable and necessary; that similar abatements had been very generally made to the farmers in that part of the country; and that the particular tenant had, from the pressure of the times, got into arrear, but was highly respectable; and as the evidence then before the Court was exactly the same as would be tendered in the Master's office, and the whole sum to be abated was only 60*l.* (u).

According to Lord *Coke* (v), the committee had formerly no power to cut timber on the lunatic's estate, except for repairs; but it has been held for a length of time, that the committee of the estate, under the direction of the Lord Chancellor, may exercise the same power in felling timber as the lunatic himself might have done if in his senses (w). It is frequently referred to the Master to inquire and certify what estate or interest the lunatic has in particular estates; and, having regard thereto, whether it will be proper, and for the benefit of the lunatic and his estate, that any timber should be fallen on his estates; notice of attending before the Master on such an inquiry must be given to the heir-at-law and next of kin of the lunatic. If the Master finds, by his report, that it is proper to fell any timber, after confirmation of such report, a further order

(s) *Ex parte West*, Turn. Rep. 354.

137, n. See the Appendix.

(v) 4 Rep. 127 b.

(t) *In re Draz*, 25 Jan. 1828.

(w) *Ex parte Bromfield*, 1 Ves.

(u) *In re Fitch*, 1 Russ. & Mylne, jun. 461. See *ante*, pp. 12, 13.

will be made authorizing the committee to fell the timber certified by the Master's report as proper to be cut (x).

In cases, where the timber upon the estate makes part of the general rental, it is the duty of the administrator to continue the usual management of the estate, and that which is suited to its circumstances. In case of lunacy happening to the owner of an estate with woods of full grown timber, it was said by the Court, that it would be a breach of duty in those who have the administration of it, not to manage it in the same manner in which it had been managed before, and as the owner would if capable (y).

If an act of Parliament, by general words, purports to confer a power upon several donees, one of whom possesses the same power more amply at common law, as incident to his estate, the statute shall not be intended to apply to him, so as by implication to abridge his power; and therefore his acts, which the statute would have authorized, will be referred to his common law right.

Thus, where estates had been conveyed to tenants for life, with remainder to their first and other sons successively in tail male, with divers remainders over, and, during the life of the tenants for life, a private act had been obtained, which empowered trustees therein named, and the survivor of them, with the *consent of the person for the time being in possession* or entitled to the rents of the settled estates, under the limitations of the settlement, to cut the timber proper to be felled; and the money produced by the sale of such timber was directed to be laid out in the purchase of other lands to be settled to the same uses. The first tenant in tail who became entitled under the settlement, was a lunatic, and, during his lunacy, timber was cut and sold by the authority of the committee of his estate, who was also a trustee under the act of Parliament, and the produce, to the amount of 11,000*l.*, was paid into Court. The next of kin of the lunatic applied that this sum might be paid over to the lunatic's general personal account; while the heir-at-law, on the other hand, contended that the timber

(x) See the Appendix.

(y) *Oxenden v. Lord Compton*, 2 Ves. jun. 71. See *ante*, p. 13.

had been cut under the powers conferred by the act, and therefore that the produce of it should be declared to be real estate, or be invested in the purchase of such estate. The Lord Chancellor held, that the act was intended to apply only to the tenants for life under the settlement; to construe the act otherwise, would be to carry it beyond the purpose obviously in view; for it never could be meant, there being no negative, but merely permissive words, to abridge the common law right of the tenant in tail. The produce of the timber, therefore, was to be taken as personal estate (x).

A committee has been ordered to work mines on the lunatic's estate. Upon a petition in lunacy, it appeared that the lunatic was tenant for life without impeachment of waste; remainder to his first and other sons in tail; with various remainders over. The lunatic was unmarried. Coal was found upon the estate, but in too small a quantity to justify making a shaft; but it was capable of being worked by means of a shaft in the adjoining land. Part of the estate of the lunatic was in mortgage; and the mortgagee was in possession; which reduced the income of the lunatic considerably. There were also other debts without any fund to answer them. Under these circumstances, the committee agreed with the owner of the adjoining land to work the coal; which the Master reported to be for the benefit of the lunatic. Lord Chancellor *Eldon* confirmed the Master's report, observing that the next of kin had an interest that the coal should be worked, and that it might be done by the committee, being like cutting timber, for the heir-at-law had no interest, there being various remainders over (a).

In another case, it was referred to the Master to inquire whether it would be for the benefit of the lunatic and his estate to grant leases of coal mines, or seams of coal, belonging to him (b).

A committee of the estate has been directed to complete a contract for the purchase of real estate lying contiguous to the lunatic's estate.

By the petition of the committees of the estate of a lu-

(x) *Ex parte Clayton*, 1 Russ. & Mylne, 369.

(a) *Ex parte Tabbert*, 6 Ves. 428.

(b) *In re Percival*, 6 Junc, 1822.

natic, it appeared that they had contracted for the purchase of lands lying contiguous to, and convenient to be held with, the estates of the lunatic; whereupon it was referred to the Master to inquire and certify whether it would be for the benefit of the lunatic's estate that such contracts should be carried into effect, and whether a good title could be made to such lands (*d*). The Master having certified by his report, that it would be for the benefit of the lunatic's estate to complete such contracts, and that a good title could be made to the lands agreed to be purchased; and that the purchase money for such lands should be paid by the committees out of the rents and profits of the lunatic's estates; and that the amount of such purchase money should be charged on such estates, and considered as part of the lunatic's personal estate — It was ordered, that the committees should be at liberty to complete the purchase, and to pay for the same out of the rents and profits of the lunatic's estate; but the Chancellor declared, that such purchase-money should be so applied, without prejudice to any question which might arise, upon the death of the lunatic, as to whether the same be real or personal estate of the lunatic; and it was ordered, that it should be referred to the Master to settle and approve of a proper declaration of trust thereof accordingly, wherein all proper parties were to join, as the Master should direct; and it was referred to the Master to settle and approve of a proper deed of conveyance of the lands agreed to be purchased (*e*).

An exchange of lands belonging to the lunatic has been ordered to be effected by the committee of his estate.

It was referred to the Master, on the petition of the committee of the estate, to inquire and certify whether it would be fit and proper, and for the benefit of the lunatic and her estate, that a proposed exchange of lands lying intermixed with the lands of the lunatic should be carried into effect, with liberty for the Master to state special circumstances (*f*).

The Master, by his report, found that the third part to

(*d*) *In re Drax*, 6 Aug. 1825. (*e*) *In re Drax*, 15 Aug. 1826.

(*f*) *In re Miller*, 28 July, 1829.

which the lunatic was entitled in the estate, was vested in her in fee simple, and certified that he was of opinion that it would be proper and for the benefit of the lunatic and her estate, that the proposed exchange of the lands of the other party and of the lunatic should be carried into effect:—on the confirmation of the Master's report, it was ordered, that the committee of the estate of the lunatic should be at liberty to carry into effect the proposed exchange, and that it should be referred to the Master to inquire and certify whether a good title could be made to the lands proposed to be exchanged, and, if so, that the committee of the lunatic's estate should execute in the name and on the behalf of the lunatic, such deeds of release and exchange as might be necessary and proper for carrying into effect the proposed exchange; such deeds to be settled by the Master; and the sum to be received for equality of exchange was directed to be paid into the Bank, in the name and with the privity of the Accountant-General of the Court of Chancery, in trust in the matter, to an account to be intitled "The Real Estate;" such sum to be laid out in the purchase of Bank *3l. per cent.* Annuities, and the interest and dividends to accrue thereon to be laid out in like manner (*g*).

Before the passing of the statutes (*h*) enabling the Lord Chancellor to order the estates of lunatics to be sold or leased, it was held that an order in lunacy for such purpose did not give any title, but only a right of enjoyment during the lunacy of the party whose right was affected (*i*); and as the statute (*k*) which now authorizes the disposition of the estate of lunatics, does not contain any power of exchanging his lands, it may well be doubted, whether an exchange effected under the order of the Court would bind the lunatic if he recovered, or, if he did not, his heirs.

By the general Inclosure Act (41 Geo. 3, c. 109, s. 15), the commissioners under acts of inclosure are empowered to allot lands belonging to lunatics in exchange for others, with

(*g*) *In re Miller*, 26 Jan. 1830.

(*i*) *Ex parte Dykes*, 8 Ves. 79;

(*h*) 43 Geo. 3, c. 75; 59 Geo. 3, but see *Perkins*, s. 29; *Shepp.* c. 80; 9 Geo. 4, c. 78. See *post*, Touch. 291. See *post*, Ch. vi. s. 2. Ch. viii. ss. 1 & 2.

(*k*) 11 Geo. 4 & 1 Wm. 4, c. 65.

the consent of their committees testified in writing under their hands. And by the 16th section of the same act, such commissioners may, with the consent of the committees of lunatics, make partition of lands belonging to them, and allot the same in severalty. By the 17th section of the same act, the persons to whom allotments are made, are required to accept the same within a limited time, or to forfeit their rights. By the 18th section, committees of lunatics are required to accept the allotments made to them; but it is provided, that the non-acceptance of any such committee shall not exclude, or in any way prejudice the right of such lunatic who shall accept his allotment within twelve calendar months after such disability shall be removed. By the 30th section of this act, committees of lunatics may charge allotments or exchanged lands with such sum of money as the commissioners shall, by their award, adjudge necessary to defray their shares of the expenses of obtaining and carrying inclosure acts into execution, not exceeding five pounds for every acre of such allotments or exchanged lands; and grant, mortgage, surrender, lease, or demise, or otherwise charge the hereditaments to be charged, to any persons who will advance the money, for any term or number of years; or, in case the person in possession liable to pay such expenses, or enabled by the act to charge such lands, shall choose to advance the money, then the commissioners may mortgage such lands to the persons paying the expenses for securing the sum paid, upon the terms and in manner expressed in the act.

In most acts of inclosure, the committees of lunatics are enabled to perform certain acts on their behalf.

In one case, it was referred to the Master to settle and approve of a mortgage of the allotments awarded to the lunatic under an inclosure act, for securing the repayment of the sum to be advanced out of the lunatic's personal estate, as his proportion of the expenses of the inclosure chargeable on the estate of which the lunatic was tenant for life; and the commissioners under the inclosure act, and the committees of the lunatic's estate were ordered to execute the mortgage when approved by the Master; the amount of such expenses being the consideration for the mortgage (m).

(m) *In re Smyth*, 21 Jan. 1823.

By the statute for consolidating the acts relating to the redemption of land-tax (42 Geo. 3, c. 116, s. 14) (a), all committees of lunatics or of idiots may contract and agree, on behalf of such lunatics and idiots, for the redemption of any land-tax made redeemable, which such lunatics and idiots could have redeemed by virtue of the act if they had not been under any incapacity. By the 53rd section of the same act, committees and curators of lunatics or idiots have power to sell or mortgage and convey or grant any rent-charge out of any lands, belonging to or limited to the use or for the benefit of any such lunatics or idiots, which they could have sold or mortgaged, or charged with any rent-charge for the purpose of redeeming any land-tax in respect of their estate and interest therein either by virtue of that act or otherwise, if they had not been under any such incapacity. And by the 97th section of that act, the committees of any person interested in remainder, reversion, or expectancy, in any estate in England, of which any part shall be proposed to be sold or mortgaged, who shall conceive themselves aggrieved by such sale or mortgage, may, at any time before such estate shall have been actually conveyed, present a petition to the Court of Chancery, which Court shall have power, in a summary way, to make such order respecting the suspension of a proceeding in such sale or mortgage, or for sale or mortgage of any other part of the estate in question, as well as for payment of costs, as such Court shall think fit.

The Lord Chancellor sometimes orders the land-tax charged on the estates of lunatics to be redeemed, and the consideration for it to be paid out of funds in Court, or by a sale or mortgage of part of the estates belonging to lunatics, or by the produce of timber directed to be felled on their estates.

In one case, it was ordered that the committees should be at liberty to carry into execution two contracts for the redemption of land-tax charged on the lunatic's estate, and, for that purpose, to sell certain farms belonging to her; and, upon

(a) The statutes for regulating the redemption of the land tax, are collected in a note to Vol. 3 of Bythe-wood's Conveyancing, by Jarman, 387—438 m, 2nd Edit.; and Burn's Justice, tit. "*Land-Tax*."

payment of the purchase-money into the Bank of England to the account of the commissioners for the reduction of the national debt, to execute a proper conveyance to the purchaser; and the purchase-money, and the produce of stock belonging to the lunatic, were directed to be applied in satisfaction of such contracts for redemption. And the Lord Chancellor added a declaration, that the order was made without prejudice to any question between the co-heirs-at-law and next of kin of the lunatic, out of what estate the considerations for the aforesaid contracts should be provided for (*o*). In another case, after an order for redeeming land-tax had been made, it was referred to the Master to settle and approve of a proper mortgage for securing, the consideration for redeeming land-tax upon the lunatic's estate, in trust for the next of kin of the lunatic, in case he should die intestate, or for such persons as would be entitled to his personal estate (*p*). And the produce of timber directed to be cut upon the lunatic's estate was in another case directed to be applied in redeeming the land-tax (*q*).

By statute 11 Geo. 4 & 1 Will. 4, c. 65, s. 26, the committee of the estate of any lunatic, with the approbation of the Lord Chancellor, intrusted as therein mentioned, to be signified by an order to be made on the petition of such committee in a summary way, may enter into any agreement on behalf of such lunatic which the guardian of an infant might have entered into on behalf of an infant by virtue of the statute of the 1 Geo. 1, c. 10, s. 9, for making more effectual the provisions for augmenting the maintenance of the poor clergy.

If a power coupled with an interest, or a mere naked authority, devolves upon idiots or lunatics, it is in most cases suspended during the continuance of such disabilities (*r*); and therefore the committees of lunatics cannot execute powers given to lunatics, and, previously to the statute

(*o*) *In re Duchess of Norfolk*, 8 See *post*, s. 13.

July, 1819. See *post*, s. 13.

(*r*) *Mansell v. Mansell*, *Wilmot's*

(*p*) *In re Flitcroft*, 21 Jan. 1806. notes, 51, 52.

(*q*) *In re Fust*, 12 Aug. 1813.

48 Geo. 3, c. 75, s. 3, powers of leasing could not be exercised by them (s)—Lord *Hardwicke* held, that he could not authorize the committee to execute a power of leasing given to a lunatic; and put the case of a voluntary settlement made by a party before his lunacy, with a power of revocation, and that of a power to charge an estate with a sum of money; and said that the committee could not execute such powers (t).

It seems clear, although the contrary has been suggested, that the donor of a power cannot, by any provision inserted in the instrument creating a power, authorize the party to execute it notwithstanding his mental incapacity; for a person under such a disability cannot (with a few exceptions) make any deed which will bind the property of himself or others; and the case is not like coverture, which is a mere *civil* disability (u), and which, in the creation of a power, may be dispensed with; there does not, however, appear to be any legal objection to a provision that a power given to a particular person shall, in the event of his mental disability, be executed for him by his committees, or by some person of competent understanding. It has indeed been intimated (v), that an idiot or lunatic can execute a bare authority; but, as all deeds executed by such persons (except during lucid intervals, or with certain formalities implying capacity,) are absolutely void, it does not appear that such a proposition can be supported.

Where a bare authority, to be exercised for the benefit of other persons, is given to a lunatic, it does not appear that it can be executed by his committee, or by any other person in his place; for, the statute (w) authorizing

(s) See *post*, Chap. viii. s. 1.

(t) *Ex parte* Lord *Bradford*, Cas. tempore *Hardwicke*, by *West*, 1 Vol. p. 133.

(u) *Id.* Co. Litt. 52. a., 112. a., note 6, *Gibbons v. Moulton*, Finch, 346; *Daniel v. Ubley*, W. Jones, 137; *Bayley v. Warburton*, Com. Rep. 494; *Rich v. Beaumont*, 6 Br. P. C. 152; *Marquess of Antrim v.*

Duke of Bucks, 1 C. C. 17; S. C. 1 Eq. Cas. Abr. 343; *Wright v. Cado-*

gan, 1 Br. P. C. 486. Ambl. 468. See 1 *Chance on Powers*, No. 595;

Sugd. on Powers, Chap. iii. s. 1.

(v) See 1 *Preston on Abstr.* p. 328. See *post*, Chap. vi. s. 2.

(w) 11 Geo. 4 & 1 Will. 4, c. 60; and see *post*, Chap. viii. s. 3.

the transfer of trust estates vested in lunatics does not extend to such a case.

In a case where it was provided by an act of Parliament, that it should be lawful for a parson and his successors, vicars of a particular church, by indentures sealed and delivered by the vicar of the church for the time being, to demise or lease, with the consent in writing of the bishop of the diocese, and the patron of the vicarage for the time being, all or any parts of the glebe lands described in the schedule to the act, for any term of years not exceeding ninety-nine years in possession, for purposes of building—The patron of the living being a lunatic, the committees of his estate prayed a reference to the Master to inquire whether it would be proper that they, as such committees, should consent to any lease, to be granted in pursuance of the act of Parliament, of all or any parts of the glebe lands described in the schedule thereto. Lord *Eldon* held, that, unless the act requiring the consent of the patron authorized the committee to consent for him, he could not sanction a lease with the consent of the committee (x).

The committee of a lunatic cannot make grants of the copyholds held of his manor. Where a person, being seised of a manor with a custom of granting copyholds for lives, had granted the stewardship of the manor by deed, and was afterwards found *non compos mentis* by inquisition—it was held, that the committees could not grant any copyhold estate; for they had by law no estate in the manor, and were not lords; but that the lunatic, by his steward, might grant copyhold estates, according to the custom of the manor. But it was ordered, by way of caution, for the benefit of the lunatic, that the steward should not make any grant without the privity of the committees, and the sanction the Court (y).

It seems that the Master will be directed to appoint stewards of manors belonging to a lunatic. Thus, on the petition of the committees of the estate, in a case where a luna-

(x) *Ex parte Smyth, In re Smyth*, Abr. Copyhold (G.) pl. 15; 1 Wats. 2 Swanst. 393.

on Cop. 24.

(y) *Blewit's case*, Ley. 47; 6 Vin.

tic was entitled to certain manors, the stewardship of which had not been *granted*—it was referred to the Master to appoint one or more steward or stewards of such manors, without their entering into any security touching the rents and profits thereof, until further order (*x*). But, where the committee of the estate of a lunatic, being also his heir-at-law, presented a petition praying that two persons might be removed from the stewardship of certain manors belonging to the lunatic, and ordered to deliver up the Court rolls, and that the committee might be at liberty to appoint a steward—the Lord Chancellor refused to make any order for that purpose, but allowed the petitioner the costs of his application (*a*).

It is said, that a lunatic copyholder could not formerly have committed a forfeiture of his copyhold (*b*). The committee is bound, however, if the estate of the lunatic be subject to services or held upon conditions, to tender the services or perform the conditions, so as to prevent a forfeiture; the law indeed (with an exception to its general rule) permits even a stranger to perform such offices of humanity (*c*).

By a recent statute (*d*), the committee of a lunatic may be admitted tenant of any copyhold lands to which such lunatic shall become entitled; and (*e*) in default of the appearance of any lunatic in person or by his committee, the lord of the manor, after three courts, and proclamations having been made, may appoint, at any subsequent court, an attorney for such lunatic for the purpose of admitting him, and, upon such admittance, impose such fine as might have been legally imposed if such lunatic had been of sane mind. The fine imposed is directed (*f*) to be demanded of the committee of the lunatic, or the tenant of the copyhold land, and, if the fine is not paid within three months, the lord of the manor may enter on such land and receive the rents, un-

(*x*) *In re Smyth*, 19 June, 1824. (*d*) 11 Geo. 4 & 1 Wm. 4, c. 65,

(*a*) *In re Jodrell*, 31 March, and s. 3. See *ante*, p. 14.

13 Aug. 1828.

(*e*) 11 Geo. 4 & 1 Will. 4, c. 65,

(*b*) Shepp. Court Keep. ch. 22; s. 5.

Co. Cop. s. 59.

(*f*) *Id.* s. 6.

(*c*) Co. Litt. 206. b.

til he shall be satisfied such fine and costs. It is also provided (g), that a committee who pays such fine and costs, may enter upon and receive the rents of the land of the lunatic, to which he shall have been admitted until such committee shall have been satisfied the sums he has so paid. And it is provided (h), that no lunatic shall forfeit any copyhold land, for neglecting to be admitted, nor for omitting to pay any fine for his admittance.

The committee has no power to present to a vacant benefice belonging to a lunatic (i).

Where the right of visiting a charitable institution has devolved upon a lunatic, so found by inquisition, the committee of such lunatic cannot exercise the office of visitor; but it vests in the Crown, and will be executed by the Lord Chancellor; and an application respecting the management of the charity must be made to him in his capacity of visitor (k).

Provisions by statutes have from time to time been made, authorizing the transfer of stocks in the public funds standing in the names of lunatics or their committees.

The statute 36 Geo. 3, c. 90, s. 3 (l), recites that commissions in the nature of a writ *de lunatico inquirendo* had frequently issued, and persons thereupon had been found lunatics, having certain parts of stocks transferable at the Bank of England, standing in the names of such lunatics, in their own right; and the committees of the estates of such lunatics having like parts of such stocks and annuities standing in their own names in trust for or as part of the property of such lunatics, had sometimes died intestate, or gone to reside beyond the seas, or had themselves become lunatics, or it had been uncertain and unknown whether they were living or dead; and then enacts, that, in all cases whatsoever where any such stock or annuities transferable at the Bank of England should be standing in the names of such lunatics in their own right, or in the names of the committees

(g) Id. s. 8.

(h) Id. s. 9.

(i) See *ante*, p. 20.

(k) *Attorney-General v. Dixie*, 13

(l) This statute was repealed by 6

Geo. 4, c. 74, which has since been repealed by 11 Geo. 4 & 1 Wm. 4,

c. 65.

of their estates in trust for such lunatics, or as part of their property, it should be lawful for the Lord Chancellor to order the Accountant-General or other officer of the Bank of England, to transfer such stocks into the names of any new committees, or otherwise, and also to receive and pay over the dividends, as the Lord Chancellor should direct. The last-mentioned act was held to be confined to the case of stock standing in the name of the lunatic himself, or of his committee, and not to extend to stock standing in the name of another person, to which the lunatic was entitled as administrator (m). And that act was also construed not to authorize the Lord Chancellor to order the transfer of stock standing in the name of a lunatic resident at Amsterdam, for whom curators had been regularly appointed by a judicial proceeding in that city (n).

By statute 11 Geo. 4 & 1 Will. 4, c. 65, s. 33 (o), it is enacted, that, where any stock shall be standing in the name of, or shall be vested in, any person, being lunatic, who shall be beneficially entitled thereto, or shall be standing in the name of, or vested in, any person, being committee of the estate of a person found lunatic, in trust for or as part of his property, and such committee shall have died intestate or shall himself become lunatic, or shall be out of the jurisdiction of, or not amenable to the process of the Court of Chancery, or it shall be uncertain whether such committee be living or dead, or such committee shall neglect or refuse to transfer such stock, and to receive and pay over the dividends thereof to a new committee, or as he shall direct, for the space of fourteen days next after a request in writing for that purpose shall have been made by any new committee, then and in every or any such case it shall be lawful for the Lord Chancellor intrusted as aforesaid, upon the petition of the committee of the estates of the person being lunatic, or of the person reported by the Master to whom the matter is referred as a proper person to be such committee, although such report shall not have been confirmed, to direct such

(m) *Ex parte Adams*, 2 Mer. 112. (o) The statute 6 Geo. 4, c. 74, s.

(n) *Sylva v. Da Costa*, 8 Ves. 13, now repealed, contained a similar provision.

person as such Lord Chancellor shall think proper to appoint for that purpose, to transfer such stock to or into the name of any new committee, or into the name of the Accountant-General of the said Court, or otherwise, and also to receive and pay over the dividends thereof, or such sum or sums of money, in such manner as such Lord Chancellor shall think proper: and such transfers and payments shall be valid and effectual to all intents and purposes whatsoever.

On the petition of the committee, it will be ordered that the Accountant-General, secretary, or deputy-secretary, for the time being, of the Governor and Company of the Bank of England, do transfer the stock (naming the amount and description of it) standing in the books at the Bank of England in the name of the lunatic, into the name and with the privity of the Accountant-General of the Court of Chancery in trust in the particular matter, who is to declare the trust thereof accordingly; and the committee is, as a matter of course, allowed the costs of his application out of the lunatic's estate (*p*).

The statute 56 Geo. 3, c. 60, authorizes the transfer to the commissioners of the national debt, of all stock upon which dividends have been unclaimed for ten years. And an order for the transfer of stock under that act was made without a reference to the Master, on the petition of the committee of a lunatic, stating that 6,300*l.* of stock was standing in the name of the lunatic; that, as no dividends had been claimed on that sum for twenty-seven years, the stock had been carried over to a separate account, under the provisions of that act; and that the Bank, on being applied to, refused to make the transfer required by the committee, without the sanction of the Court (*g*).

By statute 11 Geo. 4 & 1 Will. 4, c. 65, s. 34(*r*), it is enacted, that, where any stock shall be standing in the name of, or vested in, any person residing out of England, it shall be lawful for the Lord Chancellor intrusted as aforesaid,

(*p*) *In re Pince*, 25 March, 1830. (*r*) The statutes 1 & 2 Geo. 4, c.

(*g*) *In re Avery*, 1 Russ. & Mylne, 15, and 6 Geo. 4, c. 74, s. 14, which 356. And see *Ex parte Nicholl*, Turn. are now both repealed, contained Rep. 119. similar provisions.

upon petition, and proof being made to his or their satisfaction that such person has been declared lunatic, and that his personal estate has been vested in a curator or other person appointed for the management thereof, according to the laws of the place where such person shall reside, to direct any person whom such Lord Chancellor shall think proper to appoint for that purpose to transfer such stock, or any part or parts thereof, into the name of any such curator or other such person as aforesaid, or otherwise, and also to receive and pay over the dividends thereof, as such Lord Chancellor shall think fit; and that such transfers and payments shall be valid and effectual to all intents and purposes whatsoever.

When a person resident out of England has been found a lunatic in such place, and the parties interested are desirous of obtaining the transfer of any funds vested in such person, the Lord Chancellor will, on petition, refer it to a Master of the Court of Chancery to inquire and certify whether such person has been found or declared a lunatic or of unsound mind, according to the laws of the place where he resided, and also, whether the personal estate of the lunatic has been vested in any and what person appointed, either as his curator or otherwise, for the management thereof; and, on the Master reporting that the party has been found lunatic, or of unsound mind, and that his personal estate has been vested in a curator according to the laws of the place where he resided, within the meaning of the last-mentioned act, the Lord Chancellor, on another petition being presented, will order the Master's report to be confirmed, and the fund to be transferred into the name of the curator, and the dividends which have accrued to be paid to him (s).

In another case, where it appeared that a party resident at Lisbon had been declared by the Court there deranged and incapable of governing her person or property, and that it was proper that she should be put under guardianship, and that the petitioner had been nominated guardian, on

(s) *In re Irvine*, 22 March, and 28 April, 1828.

giving security for accounting for her property, and that a letter of administration of all the lunatic's real and personal estate had been granted to the petitioner; an order was made, under the statute 6 Geo. 4, c. 74, for the transfer of 500*l.* 3 *per cent.* Consolidated Bank Annuities, standing in the lunatic's name in the books of the Bank of England, to the petitioner, and for payment of the dividends, to be applied for the benefit of the lunatic (*t*).

When a person entitled to a legacy or share of personal estate has been found a lunatic, by inquisition, the proper course seems to be for the executor, or other person liable to make the payment, to apply to the Lord Chancellor, by petition, for leave to pay the money due to the lunatic into the name of the Accountant-General of the Court of Chancery, in trust in the lunacy, or the committee of the estate may apply for a similar order.

In a case where a lunatic was entitled to a share in the residue of personal estate bequeathed by a will, an order was made, on the petition of the other residuary legatees, to transfer and pay the share of the lunatic into the name of the Accountant-General, in trust in the lunacy (*u*).

It is stated, indeed, in a very useful work (*w*), that the committee is the proper person to receive and give a discharge for a legacy due to a lunatic; and it seems clear, that after the appointment of a committee, payment of a legacy to the lunatic would be void, and that it might, notwithstanding, be recovered by the committee in the lunatic's name, from the executors of the will under which the lunatic was entitled. But, in many cases, the safer course appears to be, for the party not to pay a legacy or other sum of money due to a lunatic, without an order having been obtained, either on his own petition or on that of the committee, which would indemnify the person making the payment from any misapplication of such money by the committee.

If a legacy be given for the benefit of the legatee in one way, and, on account of his subsequently becoming lunatic,

(*t*) *In re Pedra*, 23 April, 1827. (*w*) See 1 Roper on Legacies,

(*u*) *In re Sherard*, 9 June, 1831. 778, 3rd ed.

See Appendix.

it cannot be so applied, it seems that it may be applied for his benefit in another mode (*x*).

Money belonging to lunatics, whether in the hands of their committees or the Accountant-General of the Court of Chancery, or due from other persons, will generally be ordered to be invested, in the name of the Accountant-General in trust in the particular lunacy, in the purchase of *3l. per cent.* Consolidated Bank Annuities, in preference to any other security.

The Accountant-General was ordered to lay out a particular sum in his hands in the purchase of such stock, and the dividends thereof, and also the dividends to accrue on other stock before standing in his name, and all accumulations thereof, in the purchase of like annuities (*y*).

On the petition of the committee, it was ordered that bankers should pay the sum in their hands belonging to the lunatic into the Bank with the privity of the Accountant-General (*x*).

General orders for investing the balances in the hands of the committees are sometimes made. Thus, on the petition of the committees of the estate, it was ordered that they should be at liberty, from time to time until further order, to pay into the Bank, in the name of the Accountant-General, such sums of money as the Master should certify to be proper to be so paid, on account of the rents and profits of the lunatic's estates; and such sums were directed to be laid out in the purchase of *3l. per cent.* Consolidated Annuities, and the dividends and accumulations thereof, as well as of the other stock then standing in the matter, were ordered to be laid out from time to time in like manner (*a*). And sometimes it is ordered that the dividends of stock shall be invested from time to time, to form an accumulating fund (*b*).

The purchase money of timber cut on a lunatic's estate, will be ordered to be paid into Court. An application was

(*x*) *Per Sir W. Grant*, 5 Ves. 463.
See *Barlow v. Grant*, 1 Vern. 255;
Leche v. Lord Kilmorcy, Turn. Rep.
207.

(*y*) *In re Morris*, 11 Feb. 1828.
(*x*) *In re Davidson*, 4 July, 1827.
(*a*) *In re Drax*, 23 Feb. 1828.
(*b*) *In re Rodick*, 9 Aug. 1827.

made by the committee, that the purchasers of timber belonging to the lunatic's estate might pay the instalments of their purchase money to the receiver; and that he might apply it in discharge of certain debts which the Master had found to be owing by the lunatic, and might pay the residue into Court. But the order made was, that the several purchasers should pay their respective purchase monies into the Bank, with the privity of the Accountant-General, in trust in the matter (c).

On an application being made, that certain promissory notes given for the residue of the purchase money of timber on a lunatic's estate might be deposited in the Master's office; and that, when the notes became due, the receiver might be at liberty to receive the sums secured by them, and to pay the amount into Court; an order was made, that the receiver should be at liberty to receive payment of the promissory notes, and that he should pay the money when received into Court, the amount to be verified by his affidavit (d).

The Court will order stock belonging to a lunatic, standing in the name of a trustee, to be transferred into the name of the Accountant-General of the Court of Chancery, in trust in the matter (e).

The general rule for investing the personal property of lunatics in the funds, has in some instances been departed from, and part of their fortunes directed to be invested in the purchase of a Government Life Annuity, in order to afford a more ample fund for maintenance.

An inquiry having been directed into the state of the funds of a lunatic, and whether it would be for his benefit to invest his property in the purchase of an annuity for his maintenance, the Master's report stated, that, after his debts were discharged, there would remain 800*l.*; and that it would be for his benefit to lay out that residue in a Government annuity for the life of the lunatic, to be applied to his maintenance. Upon the petition of the committee, the

(c) *Ex parte Cranmer, In re Cranmer*, 1 Russ. 476.

(a) *Ex parte Cranmer*, 1 Russ. 477, n. (a).

(e) *In re Mitchell*, 3 April, 1828.

(d) *Ex parte Clayton, In re Star-*

Master's report was confirmed, and an order made for purchasing the annuity (*f*).

In another case, where it appeared that the lunatic was only possessed of the sums of 900*l.* and 350*l.* 3 *per cent.* Bank Annuities, it was ordered, that the committee should be at liberty to transfer the 900*l.* in the purchase of an annuity for the life of the lunatic, pursuant to the statute 48 Geo. 3, c. 142; and that such annuity, when so purchased, should be accepted by the committee and two other persons, in trust for the use and benefit of the lunatic, and be from time to time received by them, and applied in the maintenance of the lunatic (*g*).

In another case, on the petition of the committee of the estate, it was referred to the Master to inquire what plan could be most advantageously adopted for the future maintenance of the lunatic, whether by sale or exchange of her third parts or shares to which she was entitled in certain property, or any part thereof, and by obtaining in lieu thereof a Government or any other annuity on her life of an adequate amount, or by any other and what mode (*h*).

The committee of the estate will not in general be allowed to invest the lunatic's property on a mortgage of real estate. Upon an application to lay out on mortgage a sum of 3000*l.* in the hands of the Accountant-General, belonging to the lunatic's estate, and the production of several orders of the same nature which had been made in the same lunacy, Lord Chancellor *Thurlow* said, that, although he was perfectly convinced by what was stated, that the proposed security was perfectly good, yet he could not permit such a precedent to be made; and that he was aware, that, in former times, the Court had laid out the money not only of lunatics but of infants in this manner; but, in latter times the Court had considered it as improper to invest any part of the lunatic's estate upon a private security; and it would be a dangerous precedent to break in upon that rule: and

(*f*) *Ex parte Stonard*, 18 Ves. —A similar order was made in *re Barrass*, 16 Nov. 1825.

(*g*) *In re Baldwin*, 6 Aug. 1814. (*h*) *In re Chabot*, 20 June, 1827.

he therefore directed the money to be laid out in the *3l. per cent. Bank Annuities* (*l*).

In a case where a petition was presented, praying that the committee might be at liberty to lay out a sum of money belonging to the lunatic upon a mortgage of real estate supported by two similar orders (*m*), Lord Chancellor *Eldon* said, the general rule is, not to lay out the lunatic's money on any thing but Government securities, except in very peculiar cases, as, where the lunatic has an interest in the estate, or it is in some other manner connected with his immediate interests (*n*). It appears, that, in the case last cited, an order was made for referring it to the Master to inquire and certify whether it would be for the advantage of the lunatic and his estate, to lay out any and what part of his fortune on real estate at interest, and, if he was of that opinion, the grounds of it were to be stated (*o*). By the report made under that order, it appeared that the property of the lunatic consisted of bills and other securities which had become due, and were about to be paid; and, that in consequence of the high price of stock, a comparatively low interest could be obtained; and the Master found that it would be for the benefit of the lunatic's estate to lay out part of his fortune on real security. The report was confirmed with respect to laying out part of the lunatic's money on the security of a particular estate, in case the Master should approve of it, and a good title could be made to it; and, if the Master approved of the proposals, then he was to investigate the title to the estate in question, and settle proper securities to be made to the committees of the estate; and, upon the deeds being executed by all proper parties, the committees were to be at liberty to pay the loan to the mortgagor, or as he should direct (*p*).

Money belonging to a lunatic has been ordered to be lent on mortgage, for the accommodation of his family. Thus,

(*l*) *Ex parte Cathorpe*, 1 Cox, 182.

(*m*) *Ex parte Roxburgh, In re Meux*, 4 Feb. 1817; and *Ex parte Langley, In re Fust*, 14 July, 1817.

(*n*) *Ex parte Ellice*, Jac. R. 234. See *Norbury v. Norbury*, 4 Madd.

(*o*) *In re Ellice*, 30 July, 1821.

(*p*) *In re Ellice*, 28 Aug. 1821.



where a petition was presented by the committee of the fortune, praying an inquiry whether it would be for the benefit of the lunatic, that a sum of money, part of the savings of his income, should be laid out on mortgage, and the next of kin consented, and the families of the lunatic and of the owner of the estate on which it was proposed to lend the money, were connected by intermarriage, Lord Chancellor *Hart* said, as the estate was large, and the parties stood in a degree of relationship, he should make the order of reference; but he should require the security to be the first incumbrance. If the property was fixed in the present next of kin, who consented, there would be no difficulty; but they might die before the lunatic, and the persons who would then be next of kin would not be bound by their consent, and might complain of the delay of an equity suit in getting in this money, instead of its being immediately available in stock. He said, that Lord *Eldon* always took the distinction of never permitting the fund to be lent to a stranger, but sometimes allowed it to be laid out to relieve and accommodate the lunatic's family upon a first mortgage, but never on a second, even if reported for the benefit of a lunatic; for, a mortgage might be good, and yet the entanglement of real property make it ineligible for a fund of this kind (*g*).

The committee of a lunatic's estate will not in general be allowed any sums of money which he has expended, unless he has applied for, and obtained an order of the Court (*r*). In a case where a petition was presented by the committee of a lunatic, praying an allowance for repairs made without a previous order, the Lord Chancellor refused to allow them, although the Master's report stated that such repairs were necessary (*s*). But, where the committees had expended money in repairs without a previous order, and the persons entitled to the estate in remainder expectant on the lunatic's death, were willing to take upon themselves part of the expenditure, an inquiry was directed, regard being had to the estate of the lunatic, and to the proportion that ought

(*g*) *Ex parte Johnson*, 1 Molloy's Cases in Ireland, tempore Hart, 128.

(*r*) *Ex parte Marton*, 11 Ves. 397.
(*s*) *Anon.* 10 Ves. 104.

to fall upon the inheritance, and to what part such owners were willing to bear (*t*). On a motion being made that a receiver might be allowed for necessary repairs which had been done on the lunatic's estate, the Lord Chancellor granted a reference to the Master, to inquire whether the repairs were reasonable, with liberty to apply again; but he observed that the Court was not in the habit of permitting receivers and committees to apply trust funds in repairs to any considerable extent, without a previous application (*u*).

Where the committees of the estate of a lunatic who were entitled to the real estate on his death, purchased timber for repairs, although there was sufficient on the estate proper to be cut, they were ordered to refund the price of the timber, for the benefit of the personal estate (*v*).

When the buildings on the lunatic's estate require any extraordinary reparation, the proper course is for the committee of the estate to present a petition praying that it may be referred to the Master to inquire and certify whether it will be proper and for the benefit of the lunatic and his estate, that a particular messuage or other buildings, according to the circumstances of the case, should be repaired, and that the Master may certify what sum will be reasonable and proper to be allowed for such repairs. After the Master has made his report, another petition must be presented for confirming it, and for the allowance of the sum reported to be necessary out of the rents of the lunatic's estates, and for a reference to the Master to tax the costs of the application. It was referred to the Master to inquire and certify whether it would be proper and for the benefit of the lunatic's estate, having a due regard to his interest therein (which the Master was directed to inquire into and ascertain), that the premises mentioned in the petition should be repaired, and what would be the probable expense thereof (*w*).

In a case where the Master had reported that it was ab-

(*t*) *Ex parte Hilbert*, 11 Ves. 397. row, 6 Ves. 799.

(*u*) *Attorney-General v. Vigor*, 11 Ves. 407. (*v*) *Ex parte Ludlow*, 2 Atk. 407.

(*w*) *In re Child*, 23 April, 1827.

solutely necessary, and for the benefit of the lunatic's estate, to expend sums of money in rebuilding a farm house, it was ordered that the sum expended in rebuilding should be considered and taken as a charge upon the lunatic's real estate (x).

A discretion is sometimes given by the Lord Chancellor to a Master in Chancery, with respect to the management of the concerns of a lunatic. Thus, it was referred to the Master to inquire and certify whether a good defence could be made to a bill filed in Chancery against the lunatic, and in case the Master should be of opinion that a good defence could be made to the suit, then the Lord Chancellor ordered the committee of the estate to defend the same accordingly; but, in case the Master should be of opinion that a good defence could not be made thereto, then the committees were to be at liberty, with the approbation of the Master, to enter into such compromise with the plaintiffs in the suit as the Master should approve of, and to make and execute, with the approbation of the Master, all such acts and deeds as he should deem necessary with reference thereto, and that, in all minor matters which might occur in the affairs and concerns of the lunatic, in which the Master might not think it necessary to have any specific directions, the committees were to be at liberty from time to time to submit matters to him: and the Master was to be at liberty to allow and direct what should be done in all such cases, and that the committees should be at liberty either to act upon his opinion or advice, without further order, or to obtain the Master's report from time to time, as he should think fit (y).

In another case, there was a reference to the Master to inquire and certify whether it would be for the benefit of the lunatic and her estate, to accept a particular sum in full satisfaction of the claim carried in before the Master in a cause in Court (x). The report, stating that it would be proper to accept the sum offered, was confirmed; and it was

(x) *In re Harris*, 9 Aug. 1827. Aug. 1827.

(y) *In re Sir G. O. P. Turner*, 9 (z) *In re Bird*, 9 March, 1827.

ordered, that the committee should be at liberty to carry the compromise into effect, and to execute such deeds and other instruments approved by the Master, as might be requisite (a).

In another case, the Master was directed to inquire whether it would be proper and for the benefit of the lunatic's estate, to defend any actions or suits commenced against him; and whether it would be proper to institute any and what suits or proceedings at law or in equity, to recover back sums of money paid by the lunatic; and whether it would be proper to refer certain demands against his estate to arbitration, and upon what terms and conditions; with liberty for the Master to state special circumstances touching the inquiries directed to be made by him (b).

SECTION XI.

Of superseding the Commission of Lunacy.

THE only lawful object of a commission of lunacy being the protection of the person of the lunatic, and the management of his property during the continuance of his mental incapacity, it necessarily follows, that, on his return to a sound state of mind, and capacity to manage his own affairs, he is entitled to have the commission superseded, and to have his property restored to him, with an account of its application by his committees.

A petition for such purpose should be in the name of the person who has recovered a sound mind, and not in the names of his nearest relations (c.) When such a petition is presented, a time will be appointed for the appearance of the party before the Chancellor, in order that he may be

(a) *In re Bird*, 23 April, 1827.

(b) *In re Baker*, 20 June, 1827.

See form of a petition in a case of this kind, in the Appendix.

(c) *Ex parte Stanley*, 2 Ves. sen.

examined; but, without strong evidence of his sanity and capacity, given by medical men, or other persons competent to form an opinion upon the subject, the Chancellor will not supersede a commission (*d*).

In one case, the lunatic having recovered, and been examined in Court, the commission was superseded on the petition of the lunatic and his two committees; and their recognizance was ordered to be vacated, the lunatic declaring himself satisfied with the account they had rendered (*e*). In another case the commission was only suspended for some months, to see if the party was perfectly recovered, because he had often relapsed, and had been found by the inquisition a lunatic with lucid intervals (*f*).

In a recent case, where a party who had been found a lunatic by inquisition stated in his petition, that he had perfectly recovered his sound mind for four years past, and was desirous that the commission should be superseded, and the costs of all parties taxed and paid:—it was ordered, that the commission of lunacy issued in the matter should be superseded, and that the Master should tax the costs of all parties in the lunacy, which were ordered to be raised by a sale of part of the lunatic's stock standing in the name of the Accountant-General in trust in the matter, who was ordered to transfer the stock belonging to the lunatic into the joint names of himself and his wife, and to pay the dividends which were due thereon to the husband (*g*). And sometimes, in the order for superseding a commission, the accounts of the committees will be directed to be passed, and the costs in the lunacy, after having been taxed, to be paid by the lunatic out of his estate, in case the balance in their hands be insufficient for that purpose (*h*). A commission may also be superseded on the recovery of the lunatic, before the appointment of committees (*i*).

(*d*) See Harr. Ch. Pr. by Newl. See *Anon.* 1 Vern. 155.
383; 1 Coll. on Lun. 324; *ante*, p. (*g*) *In re Walker*, 31 March, 1828.
81. (*h*) *In re Wells*, 14 Dec. 1830.

(*e*) *Ex parte Bampton*, Mos. Ch. (*i*) *In re Edwards*, 26 March,
Cas. 78. 1814.

(*f*) *Ex parte Ferrars*, Id. 332.

When on an application to supersede a commission of lunacy, the evidence respecting the sanity of the party is conflicting, an issue will sometimes be directed, even though the commission is supported by two former verdicts, if the case is of such a nature as to render it proper to be again submitted to the consideration of another jury (*k*).

Lord Chancellor *Eldon* observed, that there was no part of the jurisdiction in lunacy more unpleasant, and requiring greater caution, than that of determining when a commission shall be superseded; for, though a safe conclusion may upon evidence be arrived at in establishing lunacy, it is very difficult to determine when the mind is restored; depending upon the circumstance, whether the party has been led to those topics upon which it was affected. And his Lordship said, that he could not agree to Lord *Thurlow's* proposition, either with respect to property, or with reference to an application to supersede a commission, that, where lunacy is once established by clear evidence, the party must be restored to as perfect a state of mind as he had before, to be proved by evidence as clear and satisfactory. For, there might be frequent instances of men restored to a state of mind inferior to what they possessed before; and yet it would not be right to support commissions against them. On the other hand, where lunacy had been satisfactorily established, particularly where there is a tendency to do great personal harm to others, the absence of the disorder ought to be proved by the evidence of persons having competent knowledge upon the whole subject (*l*).

A commission of lunacy may be superseded, if the party has been irregularly found to be a lunatic (*m*). A commission of lunacy was superseded on the petition of the party against whom it had been issued, complaining of improper conduct in the witnesses examined on the inquisition, and alleging the subsequent recovery of the petitioner (*n*).

Commissions have also been superseded, because the

(*k*) *Ex parte Holyland*, 11 Ves. 10. (*n*) *Ex parte Glover, In re Glover*,

(*l*) *Id.* 11. See *ante*, p. 52. 1 Mer. 269.

(*m*) *Ex parte Roberts*, 3 Atk. 6.

lunacy had not been carried back by the inquisition so far as was warranted by the evidence adduced before the commissioners and the jury (o).

After the Lord Chancellor has made an order for superseding a commission of lunacy, the party must be restored to the government of himself and his property, by a grant under the great seal. The instrument obtained for such purpose, recites the inquisition and the grant of the custody to the committees, and that the party has been examined in Chancery, and found to be of sound mind; in consideration whereof such grant is determined, and the committees are required not to intermeddle in future with the late lunatic, who is restored to the government of himself and all his property by the *supersedeas*.

A doubt seems to have been formerly entertained, whether the King's interest is such, that, after the death of the lunatic, or his recovery, there must be an *Ouster le Mayne* (p) sued out, as was done in the case of an idiot, or whether the King's interest is avoided now by the death or recovery of the lunatic (q). Upon which Lord Chancellor *Redesdale* remarked, with respect to the recovery of the lunatic, it is clear, that, in practice, he is not restored to the possession of his property, but by an order of the Court; and for manifest reason, for, how otherwise is it to be ascertained that he has recovered? And his Lordship added, that, in all the cases he could find, the question put by Staunford had never received a direct decision (r).

(o) *In re Wooler*, and *In re Warren*, *ante*, pp. 97, 98. c. 24; 3 Bl. Comm. 256.

(q) Staunf. Pr. Reg. p. 37.

(p) See *Les termes de la ley*, tit. Ouster le maine, Staunf. Pr. Reg. (r) 2 Sch. & Lef. 437.

SECTION XII.

*Of the Delivery of the Possession of the Estates, and
Transfer of the Funds belonging to Lunatics,
after their Death.*

WHERE, on the death of a lunatic, the title of the heir is uncontested, the Court may make an order to give possession to him; but, if that be contested, the person claiming ought to be left to recover it in the ordinary course of law; and the question must then be decided by the competent jurisdiction. If, on the death of the lunatic, there is no dispute as to who is the heir, and as such entitled to the lands; and an application be made to the Court, stating the death of the lunatic, and praying that a committee may be ordered to deliver possession to the heir, the Court ought to make such order, and ought not to put the heir to his ejection, or permit the committee to retain the possession by disputing the fact of heirship. The Court, after the death of the lunatic, will not permit the committee to interfere with the title to the possession, but considers him like any other person in the situation of a bailiff, manager, or receiver; as one who is to act merely officially, and is not to interfere in any manner with the rights of third persons, on the determination of his authority as committee. And the committee must act with the most perfect impartiality, and will neither be allowed as committee to put himself or any body else into possession as heir, without the authority of the Court; nor to abandon the possession as committee, and take it as heir, for that would be using his office of committee to give himself possession (s).

In a case where a person who had been appointed committee of a lunatic continued in possession of his estates after his death, contending that he was entitled under a

(s) *In re Fitzgerald*, 2 Sch. & Lef. 440. See *Beer v. Ward*, Jac. Rep. 194.

settlement and a will, neither of which he stated; and a petition was presented by a husband and his wife (the latter of whom claimed to be heiress at law of the lunatic), praying that they might be put into possession of the estate, and have the title deeds handed over to them or lodged in Court, and that the committee might account for the rents and profits from the time of his appointment as committee; and in case the Court should not order possession to be given to the petitioners, that a receiver might be appointed. Lord Chancellor *Redesdale* would not order possession to be given to either party, but considered it as retained in the hands of the committee; and an order was made to restrain the committee from receiving any part of the rents of the estates (of which he obtained possession as such committee), and from interfering with any part of the estates by virtue of his authority as committee, until further order: with liberty for such committee to proceed at law, or in equity, in such manner as he should be advised, to assert his claim to such estates, as heir-at-law of the lunatic, or under any settlement or will by which he claimed to be entitled. And the petitioners were to be at liberty in like manner to proceed at law, or in equity, to assert their claims to such estates, in such manner as they should be advised. And in case either party should not proceed for such purposes before the first day of the following term, the other parties were to be at liberty to make such application in the matter of the lunacy as they should be advised (*l*).

It seems clear, that the Chancellor sitting in lunacy has no jurisdiction after the death of the lunatic, to try who are his heirs-at-law, and as such entitled to his real estate; but under special circumstances an order has been made for delivering possession to the persons who had been reported by the Master in the lunatic's lifetime to be his heirs-at-law; and another person claiming as heir has been also allowed to inspect deeds remaining in the Master's office, which it seems may be retained until a proper investigation has taken place.

(*l*) *In re Fitzgerald*, 2 Sch. & Lef. 431.

Under a settlement made in the year 1771, upon the marriage of the late Dowager Duchess of Norfolk, her real estates were limited after the death of herself and her husband, and in default of issue to her right heirs. The Duchess was found a lunatic under a commission issued against her in 1816, and in the same year the usual reference was made to the Master to approve of committees, and to inquire who were her heirs-at-law and next of kin; and also whether it would be fit and proper that a receiver should be appointed of her real estate, and if so, to approve of a proper person. By a subsequent order, advertisements were directed for persons claiming to be heirs-at-law or next of kin of the lunatic, or claiming any estate or interest in reversion or remainder in her estates, to come in before the Master and make their claims. A receiver was appointed. The Master reported that four persons were the co-heirs of the lunatic: claims were made before him on behalf of other persons, particularly by Robert Jackson, who contended that he was the heir-at-law of the lunatic, and went into evidence in support of his claim; it was stated by him that he understood that the decision of the Master as to the claims of the co-heirs would not be conclusive, except with reference to the appointment of committees; and therefore that he took no objections to the report, and suffered it to be confirmed without excepting.

The Duchess died in 1820 without issue; upon which petitions were presented by the persons who had been reported to be her co-heirs, praying that they might be let into possession of her real estates. Jackson was at that time in South America, but the petitions were opposed on his behalf; when it was stated that he would return to England, and prosecute his claim to the estates, although his agents in England were not authorized to undertake legal proceedings for that purpose. The petitions stood over for some time, and Lord *Eldon* afterwards said, that his jurisdiction in the lunacy was gone, but that it appeared that he must consider the persons who had all along been treated as heirs, to be entitled to the possession; and that he had jurisdiction to order the possession to be given up

to them; which he did, declaring that the Court did not think proper to go into the question, whether the one party or the other was entitled. Jackson afterwards returned to England, when a commission of bankrupt issued against him; and, on the petition of him and his assignees, an order was made, directing that they and their agents should have liberty to inspect the title deeds and writings relating to the estates of the lunatic, deposited in the Master's office (u).

Jackson and his assignees, in consequence of certain parish registers being inaccurate and obliterated, afterwards presented a petition, praying liberty to inspect vaults and coffins, as against the persons who had been reported heirs, and that the latter might be restrained from opposing any obstacle to the petitioners in making such inspection. Lord *Eldon* expressed a doubt, whether he had jurisdiction to make such an order, and the petition stood over (v). An order was afterwards made, that the petitioners and their agents, at their own expense, might be at liberty, at all seasonable times within a limited period, to open the vaults or graves of a particular family, and to inspect all the coffins therein, and the plates on the same, and to take copies of the inscriptions as they might be advised or find necessary, and to replace the said coffins in the said vaults; and it was directed, that such inspection should not take place but in the presence of some persons appointed by the parties reported to be heirs, and upon due notice being given to them (w).

The Master, by a subsequent report, found that parts of the property of the Duchess belonged to the persons who had been previously found to be her co-heirs-at-law; and, on the confirmation of such report, the receiver of the estates was ordered to deliver to them as tenants in common, the possession of the estates mentioned in the report, as belonging to them as such co-heirs-at-law; and it was ordered, that the several tenants of such estates should at-

(u) *Ex parte Clarke, In re Duchess*

(v) *Id.* 596.

of Norfolk, Jac. Rep. 593. See *ante*,
pp. 23, 24.

(w) *In re The Duchess of Norfolk*,
5 August, 1822.

torn and pay to the co-heirs the arrears of any rents then due in respect of such estates, in the proportions therein mentioned (x).

Although the Chancellor in lunacy has no jurisdiction after the death of the lunatic to try the right of a party who claims a part of the lunatic's real estate, yet, upon the consent of all parties, a reference has been directed to the Master to decide the question (y). The Master having, in pursuance of such reference, found that the party was entitled to certain parts of the property of the lunatic specified in his report, it was confirmed; and it was ordered, that such party should be let into the possession and receipt of the rents thereof; and the tenants were ordered to attorn and pay him the arrears of rents; and the receiver of the lunatic's estates was ordered to pay to such party the proportion of the rents of the estate to which he was entitled, from the death of the lunatic (x).

After the death of the lunatic, if probate of his will has been granted to his executors, or letters of administration taken out by his next of kin, the fund in Court belonging to the lunatic will generally, upon the petition of the executors or administrators, be ordered to be transferred to them after payment of the costs of the committees and the next of kin of the lunatic.

On the petition of the committees of the estate of a lunatic and production of letters of administration with the will annexed of the lunatic, it was referred to the Master to tax the petitioners and the next of kin of the lunatic their costs, to be paid out of the fund in the Accountant-General's name; and an order was made that the Accountant-General should transfer the stock, or the residue thereof (in case of a sale for payment of costs), into the name of the administratrix of the lunatic, and also pay to her the residue of the cash in his hands, in case the same should be more than sufficient to pay costs, to be applied by the administratrix in a due course of administration. And it was ordered that the bond entered into by the committees should be

(x) *In re* The Duchess of Norfolk, of Norfolk, Jac. Rep. 593.

23 May, 1827.

(z) *In re* The Duchess of Norfolk,

(y) *Ex parte* Clarke, *In re* Duchess 23 May, 1827.

delivered up by the Clerk of the Custodies to be vacated and cancelled (*a*).

And in another case, on the petition of a husband and wife (the committees of the estate of a lunatic), the latter being the sole executrix named in the lunatic's will, and having proved the same, it was ordered that the Accountant-General should transfer into the name of the executrix, the stocks standing in his name on the credit in the matter, and pay to the executrix the dividends to accrue on such stock until such transfers, to be respectively applied by the executrix according to the lunatic's will (*b*).

On the petition of the committee of the estate of a deceased lunatic, being also the residuary legatee and sole executor named in his will, the committee of his person, who had been allowed by the lunatic to retain certain diamonds and jewels in her possession, was ordered to deliver up the same to the committee of his estate, without prejudice to any question as to the rights of any party to the same (*c*).

No order in lunacy can be made upon a petition preferred after the death of the *non compos* by his next of kin, to obtain a distribution of his personal property; but administration must be granted to some person entitled under the statutes (*d*), against whom, as well as the committee, a bill in equity may be filed to compel distribution.

The next of kin of a lunatic deceased preferred a petition to Lord *Bathurst*, for a distribution of the personal property, consisting of Bank Annuities, standing in the name of the Accountant-General in the matter of the lunacy; whereupon his Lordship directed the Master to inquire who were the heirs-at-law and next of kin of the lunatic. The Master having made his report, application was made to Lord *Thurlow* for the funds to be transferred; but his Lordship was of opinion that it was necessary for a bill to be filed to authorize the Court to take an account of the lunatic's debts, and to administer his effects. A bill was accordingly filed, when the Chancellor held that the report in the

(*a*) *In re Perry*, 8 Nov. 1828.

(*c*) *In re Jodrell*, 17 March, 1832.

See forms of petitions and orders in the Appendix.

(*d*) 21 Hen. 8, c. 5; 22 & 23 Car 2, c. 10.

(*b*) *In re Hahn*, 4 Aug. 1829.

lunacy was not a sufficient authority on which to ground a decree, as the Great Seal in respect of lunacy acts as a commissioner under a signet; and, therefore, he ordered the Master to inquire who were the heirs-at-law and next of kin of the lunatic, and to advertize in the Gazette and other papers for them to come in and prove their affinity by a time fixed, or to be excluded, and to make his report in the *cause* (d). So, also, where it was moved on behalf of the committee of a lunatic, that it might be referred to the Master to ascertain who were the next of kin of a lunatic, in order that a sum of money, his property, remaining in the hands of the committee, might be distributed according to the statute—The Lord Chancellor of Ireland refused the reference to the Master, and said, there must be a bill filed by one of the next of kin of the lunatic against the committee, for an account of the property, and then a reference would be made to the Master to ascertain who were the persons entitled to such sum (e).

Upon a bill being filed by the next of kin of a lunatic, for a distribution of his personal property, funds in the hands of the Accountant-General may be transferred to the credit of the cause, on the petition of the executor or administrator of the lunatic (f).

It was formerly held, that, where the Chancellor had allowed the whole income of the lunatic for his maintenance, after his death his committee was not liable to account, unless he appeared to have acted fraudulently.

A bill was filed by the administrator of a lunatic against the administrator of the committee of the lunatic's estate, for an account of the personal estate, and of the rents and profits of the real estate of the lunatic received by such committee. To this was pleaded the several orders in the lunacy, whereby the custody of the lunatic was committed, and particularly an order that £100 *per annum* should be applied out of the lunatic's estate towards payment of incumbrances affecting it, and the residue be allowed towards the maintenance of the lunatic, and the

(d) *Wigg v. Tyler*, 2 Dick. 552.

(f) *In re Machen*, April, 1808;

(e) *Ex parte Gilbert*, 1 Ball & 1 Coll. on Lun. 321.

management of his estate. Lord Chancellor *King* observed that there was no fraud in obtaining the order; it was referred to the Master; pursuant to which a report was made. Where such order had been made for the allowance of the profits of the estate of the lunatic, and so often renewed, it was reasonable to suppose the committee to have been induced to take the less care of the accounts; and that it would be extremely hard, unless some great fraud appeared, to oblige such committee, and much more his representatives, to account or refund. A decree, and much more an interlocutory order, if gained by collusion, might be set aside on petition, and *a fortiori* by bill; but in this case there was no collusion. The plea was allowed to stand for an answer, without liberty to except. The matters in difference being afterwards compromised, the bill was dismissed without costs (*g*).

The authority of the case last cited has been lately questioned by Lord Chancellor *Brougham*, in a case of a similar nature which has been heard before him, and from whose decision there is an appeal now pending before the Privy Council. As the principle involved in it is of considerable importance to persons acting as committees of the estates of lunatics, or for other persons under disabilities, it may be proper to detail the facts of the case at greater length than in other instances has been thought necessary, or is consistent with the general plan of this work.

In the case to which allusion has just been made, the lunatic was the proprietor of large estates situate in various parts of England, and in the West Indies, producing a clear income of about 22,000*l.* a-year. In the year 1823, and shortly after the date of the grant of the custody of the person and estate of the lunatic to his uncles, it was thought fit that the lunatic should reside at his family seat in Dorsetshire, and that a suitable establishment should there be kept up for him; for the maintenance of which, a sum of 4,985*l.* a-year was directed to be made to the committees, without any direction to them to account for the items of expenditure. After the death of the lunatic, an order was made directing an account against the committees of all sums ex-

(*g*) *Sheldon v. Fortescue Aland*, 3 P. Wms. 104, 111, n. (*b*). See *ante*, p. 131.

pended by them in maintaining the lunatic and supporting his establishment, the effect of which was to charge the committees with every sum ordered to be allowed to them, which they might be unable to shew was actually expended by them for the above purposes.

The commission of lunacy in this case was executed in the year 1822, and the usual reference was made to the Master to inquire who were the most proper persons to be appointed committees of the lunatic. The Master reported that the two paternal uncles of the lunatic were the fittest persons to fill that office, and that the sister of the lunatic was his sole next of kin and heiress presumptive. That report was confirmed, and the custody of the person and estate of the lunatic was granted to the two paternal uncles on their giving the usual security; and it was referred to the Master to settle the proper sum to be allowed for the maintenance of the lunatic; a state of facts and proposal as to the sum to be granted for that purpose were carried in before the Master, supported by the affidavit of the confidential agent of the lunatic's father and family, who acted also as receiver of the rents of the greater part of his estates. At the time of these proceedings, the sister, heiress-at-law and only next of kin of the lunatic, was of age, and consented to the appointment of the uncles as committees; and, it was said, even requested them to undertake the troublesome duties and heavy responsibility incident to that office.

The Master adopted the proposal as to maintenance, by his report, which was confirmed by the Lord Chancellor on the 19th April, 1823; when it was ordered, that the sum of 4,985*l. per annum* should be allowed for the maintenance of the lunatic, and for supporting an establishment for him at his family seat, from the 5th April, 1823, and for the time to come, until further order; and the committees were to be at liberty to retain and pay that sum out of the rents and profits of the lunatic's estate; and were to be allowed the same in passing their accounts before the Master, to whom the matter was referred. This order had not been set aside, nor had any application ever been made to the Lord Chancellor to discharge it.

The committees continued to act during the whole lifetime of the lunatic, spared no expense in keeping up the establishment at the family seat, in a style suited to the rank and station of the lunatic and his family; and as to the treatment of the lunatic himself, it was stated that they spared nothing that money and the most anxious and affectionate attention could bestow, to contribute to his happiness and comfort. The lunatic died in the year 1828, leaving his sister his only next of kin and heiress-at-law, to whom letters of administration of his effects were granted. By an order made on the petition of the committees in March, 1830, it was referred to the Master, to take and pass their accounts of the receipts and payments of them and their agents, relating to the lunatic's estates, from the foot of their last account, for such period as the Master should think proper, who in taking such accounts was to make unto the committees all just allowances; and it was ordered, that the directions thereby given should be without prejudice to any proceedings on the part of the next of kin of the lunatic, relating to the said accounts, or to the said lunatic's estate, provided such proceedings were instituted within twelve months from the date of the order. The accounts of the committees were passed up to the 10th October, 1827, but not subsequently to that period.

In December, 1830, the sister and heiress-at-law and administratrix of the lunatic, with her husband, presented a petition to the Lord Chancellor, setting out the proceedings in the lunacy, and stating (amongst other things) that at the time when the commission issued, and until May, 1827, the sister of the lunatic was unmarried, and, not being conversant with business, she allowed her uncles, the committees, to take the whole management of the affairs of the lunatic; and that the same solicitor who acted for the committees acted and appeared for her in the proceedings in the lunacy before and after her marriage, till 1823, when the petitioners employed another solicitor; and having reason to believe that there had been some irregularities in the accounts of the committees, and that the sum allowed for the maintenance of the lunatic had not been properly applied, the solicitor of the petitioners, by their directions, began to take

steps and make inquiries upon the subject, with the view of adopting such proceedings as might be advised. The petitioners further stated, that they had ascertained that the sum allowed for the maintenance of the lunatic was not in fact expended by the committees for the purposes for which the same was allowed, or otherwise, in respect of the lunatic or his establishment; but that the sums of money actually expended by the committees upon the maintenance of the lunatic and the support of his establishment, were in each year very much less than the said sum of 4,985*l.*; and it was further alleged in the petition, that the sums allowed in the accounts of the committees had been overcharged and misapplied by them in many particulars therein enumerated, and particularly that the committees, or one of them, had retained, or applied to their or his own use, a very large part of the said annual allowance of 4,985*l.*, to the amount of no less than 1,400*l.* or 1,500*l.* in each year. The petitioners submitted to the Lord Chancellor that an inquiry ought to be directed as to the expenditure of the said committees upon the maintenance of the lunatic and his establishment, and that they ought to be charged in account with so much of the sums allowed to them for the maintenance of the lunatic, up to the time of passing their last account, as should be found not to have been properly expended; and that, in passing the subsequent accounts of the committees, such sums only ought to be allowed to them as had been properly expended: and the petitioners prayed a reference to the Master, nearly in the words of the order next stated.

Lord Chancellor *Brougham* ordered, that it should be referred to the Master to inquire and certify what had been expended by the committees upon the maintenance of the lunatic and the support of his establishment from time to time, from the confirmation of the Master's report as to maintenance to the death of the lunatic—and the Master was directed to charge the committees with so much of the sum of 4985*l.* allowed to them for such maintenance and support, from the 5 April 1823 to the 5 April 1827, as he should find not to have been expended by them during that period in such maintenance and support: and it was fur-

ther ordered that, for the purposes aforesaid, the Master should, if necessary, review his allowance of such of the accounts of the committees as had been already passed; and that the Master should, in passing the subsequent accounts of the said committees, allow to them for the maintenance of the lunatic, from the 5th April, 1827, till the time of his death, such sum only as he should find to have been expended by them during that period, upon the maintenance of the lunatic, and the support of his establishment—and the Master was to be at liberty, in his report, to be made in pursuance of the order, to state any special circumstances relative to the inquiries thereinbefore directed, as he should think fit; and the consideration of costs was reserved until after the Master should have made his report (g).

There is an appeal from the last-mentioned order, now pending before the King in Council, by which the committees pray that the same may be reversed, altered, or amended (h). The grounds of appeal are, *First*, Because, where the amount of allowance for the maintenance and support of a lunatic and his establishment has been fixed by order of the Lord Chancellor, after a reference to the Master, and has been made for several years to the committees, and where they have provided for the maintenance of the lunatic and the support of his establishment, in a style suitable to the estimate on which the allowance was fixed, it is not only without precedent, but contrary to express authority, to call upon the committees, who were not directed to keep or to render any account of the items on which the allowance was expended, to render such account as directed by the aforesaid order, and to charge the committees with every part of the allowance which they shall not be able to prove as actually expended on his maintenance. The in-

(g) *In re Draz*, 26 March, 1831. It is understood that other petitions have been presented for calling upon committees to render an account of money allowed for the maintenance of lunatics, the hearing of which is

postponed until after the determination of this case by the Privy Council.

(A) See the form of petition in the Appendix.

evitable result of directing such an account, where, as in this case, the committees did not keep, and were not directed to keep, an account of the items of expenditure, must be to inflict upon them a heavy loss (i).

Second, Because the next of kin, the sister of the lunatic, who is now his legal personal representative, and on whose petition the order appealed from has been made, was of full age during the whole of the proceedings, had full information of them, knew that the lunatic and his establishment were maintained in a suitable style, and the allowance was fixed, directed, and continued under orders made with her consent.

Third, Because no case of fraud is proved, or even alleged against the committees as a ground for directing the account which is complained of.

Fourth, Because the order of 19th April, 1823, which directed the allowance to the committees, remains undischarged, and has not been sought to be discharged; and the proper course for obtaining such an account as has been directed, on the petition, if such an account can be obtained, is, as the committees submitted, only by bill in equity, upon a case of fraud or misconduct, regularly stated and proved, and not by petition after the death of the lunatic.

The heiress-at-law and administratrix of the lunatic and her husband maintain that the order ought to be affirmed, because it not being disputed that there has been a very great disproportion between the sums required and actually expended for the maintenance of the said lunatic and the support of his establishment, and the sums which have been directed to be allowed to the committees for those purposes, upon an estimate framed by them, or on their behalf, it is not fit that they should be permitted to obtain for themselves in the character of committees, the very large annual profit which would result from suffering them to retain, without account or inquiry, the whole of an allowance granted under such circumstances.

(i) See *ante*, sect. 7, where the cases on the allowance to committees for trouble are stated.

In a recent case, where a mother had received for the period of 30 years the income belonging to her daughter, who was of unsound mind, and applied part of it in her maintenance and support, and invested part of the surplus in the funds in the daughter's name; an account of the money received and paid by the mother on account of her daughter was decreed against the personal representatives of the mother, on a bill filed by the committees of the daughter, who had been found by inquisition after the mother's death, to have been a lunatic for a period commencing before the testator's death.

In that case, a testator bequeathed to his wife the sum of 2100*l.* in trust for the sole use of his daughter, who was also entitled for life to part of his real estates under his will, and to other parts thereof as one of his co-heirs; and the mother, on the testator's death, entered into the possession, and received the rents of the real estate, to which the daughter was entitled, supported her, and purchased in her name the sum of 10,000*l.* 3¼ *per cent.* Reduced Annuities, but no accounts had been rendered either of the legacy of 2100*l.* or the other surplus income; and on the death of the mother, there was standing in her own name the sum of 47,000*l.* like annuities. Shortly after the death of the mother, the daughter was found to have been of unsound mind, from the year 1795; and a bill was filed on her behalf by her committees against the executors of the mother, for an account of the money she had received in respect of her daughter's estates.

The Vice Chancellor referred it to the Master to inquire and state to the Court what annual sum was proper to be allowed for the maintenance, support, and establishment of the lunatic, from the death of her father to the death of her mother, having regard to the fortune and income of the lunatic during that period, and to all the circumstances of the case; and, having regard to the result of that inquiry, it was ordered that the Master should inquire what portion of the sum of 47,000*l.*, 3¼ *per cent.* Bank Annuities, and of the sum of 4130*l.* which had been laid out in the purchase of lands by the mother, ought to be considered as belonging to the mother of the lunatic, and what part thereof ought

to be considered as belonging to the lunatic; but the same was to be without prejudice to a question of election, which was raised in the case, on account of some benefit given to the lunatic by her mother's will (*k*).

When the wife permits her pin-money to run in arrear for a considerable time, and she is during the whole period supported by her husband, it will be presumed, that, in consideration of such support, she waived her claim to pin-money; and upon surviving her husband, she will only be permitted to claim arrears for one year prior to his death (*l*).

The cases fully establish that there is no difference between pin-money and other separate estate (*m*).

If, therefore, it appears that the wife demanded her pin-money without success, or if she lived separate from her husband, and without any allowance (*n*), she will be entitled to all arrears due at her husband's death; for, against express demands for payment, or where there is neither cohabitation nor maintenance of the wife by her husband, a presumption cannot be raised that she intended to give up her claim to pin-money, so that she will be entitled to all arrears up to her husband's death (*o*).

Such presumption cannot arise where the wife is a lunatic, and therefore incapable of consenting or waiving her right (*p*).

In directing an account against the estate of the husband for pin-money received by him, the Master has been sometimes ordered to take into consideration the extraordinary expense sustained by the husband in consequence of the wife's insanity.

An information filed by the Attorney-General on behalf of a lunatic, stated, that, by a decree at the Rolls made on the 10th May, 1780, it was ordered that several sums of

(*k*) *Gaitskell and Others v. Scott and Others*, Reg. Lib. (A.) 1831. 1213—15. (*m*) *Ex parte Elder*, 2 Madd. Rep. 286, note (*i*).

(*l*) *Townsend v. Windham*, 2 Vez. sen. 7; *Peacock v. Monk*, Id. 100; (*n*) 1 Vez. sen. 267; *Fowler v. Fowler*, 3 P. Wms. 354.

Offley v. Offley, Pre. Ch. 26; *Parkes* (*o*) *Ridout v. Lewis*, 1 Atk. 269.

v. White, 11 Ves. 225. See Roper on (*p*) *Brodie v. Barry*, 2 Ves. & Bea. 39.

Husband and Wife, Chap. xvii. s. 1.

stock should be transferred to the Accountant-General, and the interest and dividends thereof paid to a lady during her life, for her separate use, and on her death all parties interested were to be at liberty to apply to the Court. The lady, by a power of attorney duly executed by her, dated 14th December, 1780, authorized her husband to receive the dividends then due, or which should become due on those funds. The bill further stated, that, before and on the 14th December, 1780, the lady was of unsound mind, and had ever since continued so; that the husband, by virtue of the letter of attorney, received the dividends; that he was since dead, having appointed the defendants executors of his will; that the lady had been found a lunatic by inquisition, without lucid intervals, from December, 1783, and that the defendants had been appointed committees of her person and estate. The bill prayed an account of the dividends received by the late husband under the power of attorney. Lord Chancellor *Thurlow* ordered the parties to proceed to a trial at law on an issue, whether the lady was a lunatic at the time she executed the power of attorney, and that the jury should indorse on the *postea* at what time she became so. After a second trial the jury found that she was a lunatic when she executed the power of attorney.

On the cause coming on for further directions, the Lord Chancellor ordered it to be referred to one of the Masters to take an account of the dividends and interest accrued on the sums of stock and money received by the husband or by any other person by his order or for his use, and to take an account of what sums of money were laid out and expended by the husband for the better and more comfortable support of the lunatic, his wife. And it was ordered, that the said Master should consider whether any and what allowance ought to be made to the estate of the husband in respect thereof. And that what should be so allowed be deducted out of what should be found due from the estate of the husband upon the account, before directed, of interest and dividends received by him (*q*).

(*q*) *Attorney-General v. Parnther*, 3 Bro. C. C. 440; S. C. 4 Bro. C. C. 409; Reg. Lib. A. 1792, fol. 696.

In a recent case it was held, that the personal representative of a lunatic, for whose separate use annuities had been provided, but which had been retained by her husband, was entitled to recover all the arrears of them.

It appeared, that, by a settlement made in the year 1771, previously to the marriage of the late Duchess of Norfolk, certain estates belonging to her were conveyed to trustees for raising annuities upon trust to apply and dispose of the same to such persons only, and for such purposes, as the late Duchess by any writing signed with her hand, notwithstanding her coverture, should appoint; and in default of such appointment for her separate use in exclusion of her husband. The estates were limited (subject to the annuities) to the Duke for life, with remainder to the issue of their marriage in strict settlement. By a subsequent deed the Duke covenanted to settle an additional rent-charge for the separate use of the Duchess. The rent-charges provided for the Duchess were not paid or set apart for her separate use; and the Duke, who had an enormous income, appeared to have maintained her at his own expense, not according to her dignity, but having regard to the situation in which she was placed by her unfortunate malady. The Duke died in 1815, having received the rents of the estates upon which the annuities were charged. By an inquisition of lunacy, taken in 1816, the Duchess was found to have been a lunatic, without lucid intervals, from 1782. The Master, by his report made in the lunacy, had stated that no arrears of the annuities could be recovered out of the personal estate of the Duke, he having wholly maintained the Duchess during his life, and it not appearing that she, when of sound mind, demanded payment of them. But on a further petition being presented by the committees of the estate of the Duchess, it was ordered that they should be at liberty to institute a suit in the Court of Chancery against the executor of the late Duke and all other proper parties for the recovery of the arrears of such pin-money (r). A bill was accordingly filed

by the administrator of the late Duchess against the executor of the late Duke, to recover the amount of arrears of pin-money which had been withheld from her from the time she became a lunatic to the period of her death.

The defendant contended, that he had applied not only the separate income of the Duchess, but also additional sums of money to a large amount, for supporting an establishment suitable to her rank, and that if the Duchess enjoyed lucid intervals, it ought to be presumed that, during such intervals, she consented to the application of her separate estate by her husband. The decree stated, that it had been agreed, for the purposes of discussion, that the Duchess should be considered to have been a lunatic from 1782, but, without prejudice to the defendant's going into evidence to prove lucid intervals, if the Court should be of opinion that the rights of the parties would be affected by such proof; and the plaintiff having alleged that the money expended upon the establishment of the Duchess was much less than the amount of her separate income, and the defendant having alleged that it considerably exceeded it, and it having been agreed, for the purposes of discussion, that the fact of such deficiency or excess should not be assumed either way, but that a reference should be made to the Master to inquire into that fact, if, in the opinion of the Court, the rights of the parties would be affected by the proof of such fact either way; and it having been admitted that no direct payment had been made to her separate use according to the strict provision of the settlement—The Vice-Chancellor decreed that the arrears of the annuities of 700*l.* and 300*l.*, from December 1782, till the death of the Duke in 1815, were due to the estate of the Duchess, and that it should be referred to the Master to compute such arrears, and to tax the plaintiff's costs, which were ordered to be paid by the defendant out of the assets in his hands to the plaintiff (s).

(s) *Earl Digby v. Howard*, Reg. An appeal against this decree is now pending in the House of Lords.
Lib. A. 1831, fol. 289, 291.

SECTION XIII.

Of the Conversion of the Real and Personal Estates of Lunatics, as between their Heirs and Personal Representatives.

THE claims arising after the death of lunatics between their heirs and personal representatives, in consequence of the alteration or investment of their property by their committees, have occasioned several decisions, all of which cannot be reconciled with each other.

In cases of lunacy, the first care of the Court is the maintenance of the lunatic, and, after that, it is a rule not to vary or alter the property of the lunatic, so as to affect the right of succession to it (f).

In the orders made by persons charged with the custody of lunatics, there is one general principle, though not without some possible deviation, that the general object of the attention of the administrator is solely and entirely the interest of the lunatic himself; and with regard to the management of the estate solely and entirely the interest of the owner, without looking to the interest of those who, upon his death, may have eventual rights of succession; and nothing could be more dangerous or mischievous than for him to consider how it would affect the successors. There will always be among them an emulation of each other, and their speculations, if the administrator were to engage in them, would mislead his attention, and confine his observation as to the interest of the only person he is bound to

(f) *Ex parte Annandale*, 1 Ambl. 81. See *ante*, pp. 184, 185, 188.

The law of Scotland, on this point, seems conformable to that of England, for the tutor of an idiot cannot by his mode of investing the funds, or by leading an adjudication, alter the rule of succession. Moveable property invested by him in heritage,

continues to be regarded as personal *quoad* succession, and *vice versa*.

Ross, 31 Jan. 1793; Mor. p. 5545; *Graham and Others v. Hopetown*, 6 March, 1798, Mor. 5599; *Morton v. Young*, 11 Feb. 1813; Fac. Coll. See 1 Stair's Inst. by Brodie, p. 55, n. (g).

take care of. The next of kin would contend for a short allowance. The heir-at-law would have no interest to contend for a small allowance out of the rents and profits, but might have an emulatio against the next of kin; and, therefore, where the next of kin would contend for a narrow allowance, the heir would insist on a large one. Therefore, the Court has always shut out of view all consideration of eventual interests, and considers only the immediate interest of the person under their care (u). But, whatever tends towards ordinary improvement, it is strictly the duty of the administrator to do, considering only the immediate interest of the proprietor of the estate; but great care must be taken that nothing extraordinary is to be attempted; as, estates to be bought, or interests to be disposed of. Alteration of property is as far as possible to be avoided consistently with the idea of preserving the interest of the proprietor (v).

The committee is not authorized to purchase real estate with savings, and so alter the nature of the property; for, land so purchased will be considered as personalty. Thus, where the committee of a lunatic, out of the rents and profits of the real estate, purchased lands, which were conveyed to the lunatic, on whose death a question arose between the heir and administrator, who was to have the benefit of the purchase—the Court decreed an account of the personal estate, and the lands purchased to be sold, and the money to be divided as personal estate amongst the next of kin (w).

Though it be very true, that the Court of Chancery will not order the personal estate of a lunatic to be turned into real estate, yet there have been applications to that Court to lay

(u) *Ozenden v. Lord Compton*, 2 Ves. jun. 72.

(v) *Id.* 73.

(w) *Awdley v. Awdley*, 2 Vern. 102; *S. C.* 2 Freem. 114.

The decree declared, "that it was not in the power of any committee to alter the nature of a lunatic's es-

tate." But it does not appear that the decree ordered the lands to be sold; the plaintiff was to have his share paid so far as there was personal estate to pay, and the purchased lands were to stand charged with the remainder. *Reg. Lib.* 1690, A. fol. 69.

out part of his personal estate in repairs, or even upon improvements of his real estate; and the Court has allowed it, if the next of kin at that time, who, if he were dead, would be entitled to his personal estate, do not shew any reason against it; and such an order of the Court has been even held binding upon other persons who did not consent to it at the time it was made, but happened to be the next of kin of the lunatic at his death (*x*).

But, whenever personal estate is laid out in improvements on the real estate, it is necessary that the committee should first obtain an order of the Court (*y*).

Where a committee or guardian is entrusted with the care of an estate, and has abused that trust with a view of changing the quality of the estate, to serve his own interest, there arises an equity to undo the act tortious in that way; there is no rule of equity upon a less ground than that. Perhaps the Court, where guardians or committees have, without order, taken upon themselves to change the property, will, particularly where there is a cause in Court, consider it as a matter of fraudulent management, for that is the ground upon which the Court must proceed (*x*). Thus, where the committees of the estate of a lunatic, who were entitled to the real property upon his death, purchased timber for repairs, notwithstanding there was sufficient timber on the estate proper for the purpose. Lord Chancellor *Hardwicke* observed, that committees of the real estate of a lunatic might exercise the same power over it, in regard to cutting timber for repairs as any discreet owner might do, but in that instance, they appeared to have acted merely with a view to their own interest; and he therefore ordered them to make good the amount to the personal estate (*a*). It is clearly established, that where a person is acting *bonâ fide* for a lunatic or an infant, without any intention to prefer either representative, there is no equity between them; there is no rule in equity to undo the act, unless there has been a

(*x*) *Sergeson v. Sealey*, 2 Atk. 413. (*x*) *Ex parte Bromfield*, 1 Ves.

(*y*) *Ex parte Marton*, 11 Ves. 397; jun. 462; *S. C.* 3 Bro. C. C. 510.

Ex parte Hilbert, *Id. Anon.* 10 Ves. (*a*) *Ex parte Ludlow*, 2 Atk. 407; 104. See *ante*, pp. 201, 202. *ante*, p. 202.

breach of trust in the committee or guardian; therefore, where a stranger had cut down timber tortiously, it was refused to be restored to the estate, because there was no abuse of confidence (*b*).

There is no equity for the heir, as against the personal representatives, to have the surplus money arising from the sale of timber felled by the order of the Court, restored after the death of the lunatic. Thus, where timber, growing on the estate of a lunatic, was cut under an order of the Court, founded on the Master's report, that it would be for the benefit of the lunatic, and was sold, and the produce was paid into the Bank on account of the lunatic, but there was no direction as to the future application. After the death of the lunatic, the heir-at-law petitioned for the money, and was resisted by the next of kin. Lord Chancellor *Thurlow* said, that the Court ought to be very reserved in changing one species of property into another, and to do it only on pressing occasions; and when it is done, the only ground upon which it can be given out to the one party or the other, must be an equity so distinct, as to govern it upon the proper rules of law. The jurisdiction in lunacy not being the *forum* that ought to decide in nice cases, on account of the difficulty of getting the decision reversed, his Lordship said, that the question should come before the Court by bill, drawn like a case, and the answer in the same way, merely stating the sum raised by timber, the order under which it was cut, and that an equity arose for the heir to have the produce paid to him (*c*).

A bill having been accordingly filed by the heir-at-law of the lunatic, against his next of kin, it was decided, that the heir had no claim to the surplus produce above the purposes for which the timber was felled, there was no equity between the real and personal representatives, since both claimed as volunteers; and the legal right ought therefore to decide to whom the property belonged (*d*).

(*b*) 2 Eden, 154, note; 1 Ves. jun. Dick. 762.
462.

(*d*) *Ozenden v. Lord Compton*, 2

(*c*) *Ex parte Bromfield*, 1 Ves. Ves. jun. 69; *S. C.* 4 Br. C. C. 231, jun. 453; *S. C.* 3 Bro. C. C. 510; 2

There is no equity between the representatives even in a case where what was done under the order turned out to be clearly wrong. Thus, where so much of an estate was to be sold as would pay debts, and the bulk was sold, and there was a surplus, which, if the order had been strictly pursued, would never have been money, but real estate; it happened that by the order not being followed distinctly, or guarded sufficiently in the execution, that which would have been land was in fact money. Lord *Camden* thought, nothing arose upon that, but that the parties ought to take their respective rights as they find them (e).

Where the produce of timber cut from the lunatic's estate had been applied in redeeming the land tax, it was decided, that there was no equity on the part of the next of kin to be repaid the money. Upon the petition of the heir-at-law, and one of the next of kin of a lunatic, it was ordered, that the petitioner should be at liberty to contract for the redemption of the land tax on the lunatic's estate: the land tax was redeemed accordingly; the consideration being stock transferred out of the fund in Court, arising principally from the sale of timber which had been cut under a former order, and constituting part of the lunatic's personal estate. A petition which was presented by some of the next of kin of the lunatic after his death, stated, that his personal estate had been diminished by the sum transferred to the commissioners; and, as in the orders, authorizing such transfers, no direction was contained, that the land tax so redeemed should merge in the estates on which it was charged, the land tax, having been purchased out of the personal estate, ought to be considered as such, and divisible among the next of kin; and it prayed, that the land tax so redeemed might be declared a charge upon the real estate, for the benefit of the petitioners and the other next of kin. Lord Chancellor *Eldon* said, the opinion he expressed must be subject to a bill, if the party thought proper to file one, as he had no direct jurisdiction; and he dismissed the petition, repeating his offer of a bill, which, being declined, his Lordship added, for the satisfaction of the parties, that (e) *Flanagan v. Flanagan*, cited 1 Bro. C. C. 500, 512; and see 2 Ves. jun. 77.

there could be no chance upon a bill of an alteration in his opinion (*f*). But Lord Chancellor *Hart* said, that he conceived that Lord *Eldon* would have come to a different result if the money to be paid for the land tax had been a fund of general personalty; for it appeared, that soon after the passing the land tax act, a standing order was made in matters of lunacy, whereby it was directed—"That, in all cases of redeeming the land tax, the order shall be accompanied by a declaration of trust, that the land tax redeemed shall be considered as personal estate of the lunatic; and transmissible as such (*g*)."

Where a committee had entered into contracts for the redemption of land tax charged on the lunatic's estates, which the Court ordered to be carried into execution, and the Accountant-General to make the necessary transfer of part of the stock belonging to the lunatic for the purpose; and by such order it was declared, that the land tax redeemed should be considered personal estate of the lunatic, to the amount of the value of the stock directed to be transferred on the day of transfer; and that the same should be transmissible as such, and not of the nature of real estate; and the committee had executed a deed, by which it was declared, that his name was used in such contracts in trust only, for the lunatic; and that the committee should stand possessed of the land tax in trust only, for the lunatic, his executors, administrators, and assigns, as part of the personal estate of the lunatic, for the amount of the value of the stock transferred. After the death of the lunatic, the declaration of trust was ordered to be delivered to his administrators, and the committee of his estate was ordered to deliver to his next of kin and administrators the several contracts and certificates for redemption of land tax charged on the lunatic's estates, and to execute to their nominees a proper assignment of the benefit and advantage of such contracts, in respect of the

(*f*) *Ex parte Phillips*, 19 Ves. 811; and see *Ware v. Polhill*, 11 Ves. 257. appear that the standing order alluded to was made; although particular orders to the same effect have been

(*g*) 1 Beatty, 275. On inquiry at the Lunatic Office, it does not ap- made. See *ante*, pp. 187, 188.

consideration for redemption, and of the yearly sum equal to the amount of the land tax redeemed, and of all arrears thereof, from the lunatic's death (*h*).

In one case, after the death of a lunatic, a reference was directed to the Master to inquire what proportion of the fund in Court had arisen from the sale of the freehold and copyhold estates of the lunatic, and what proportion thereof constituted a part of his personal estate, and to distinguish what part thereof had arisen from the rents of the estates, and from the timber felled thereon, and what had arisen from the sale of the leasehold estate of the lunatic (*i*)—the Master reported, that the whole was personalty; whereupon it was ordered to be transferred to the administratrix of the lunatic (*k*).

Where a lunatic, being seised *ex parte paternâ* of estate A., and *ex parte maternâ* of estate B., the latter being subject to a mortgage; and the produce of timber cut upon A. had been applied in discharge of the mortgage upon B., it was held, upon a question between the heirs, that A. was not to be recouped (*l*). And it was held in another case, that a charge on a lunatic's estate, falling in to him as representative of his sister, should sink for the heir-at-law (*m*).

It is very clear, that a person, becoming entitled to an estate subject to a charge for his own benefit, may, if he chooses, at once take the estate, and keep up the charge. Upon this subject, a Court of Equity is not guided by the rules of law. It will sometimes hold a charge extinguished, where it would subsist at law; and sometimes preserve it, where at law it would be merged. The question in ordinary cases is upon the intention, actual or presumed, of the person in whom the interests are united. In most instances it is, with reference to the party himself, of no sort of use to have a charge on his own estate; and, where that is the case, it will be held to sink, unless something has been done by him to keep it on foot. Where no intention is ex-

(*h*) *In re Cotton*, 20 June, 1827. *Phillips*, 19 Ves. 123.

(*i*) *In re Hucks*, 24 Jan. 1815. (*m*) *Compton v. Lord Oxenden*,

(*k*) *Id.* 25 July, 1815. 4 Br. C. C. 397.

(*l*) *Per Lord Eldon in Ex parte*

pressed, or the party is incapable of expressing any, the Court, if called upon to exercise a discretion, will probably consider what is most advantageous to him (n).

It seems to be the principle of the Court, to do nothing wantonly, or unnecessarily, to alter the lunatic's property, but, on the contrary to take care, for his sake, that, if he recover, he shall find his estate as nearly as possible in the same condition as he left it, applying the property in the mean time, in such manner as the Court thinks it would have been wise and prudent in the lunatic himself to apply it in case he had been capable (o). In conformity with the above principles, where the personal estate of a lunatic has by the order of the Court been applied for the benefit of, or to discharge incumbrances on, his real estate, directions have been usually given to preserve the money so applied as personally. Thus, where a lunatic held a lease for lives subject to a mortgage made by his ancestor, and the Master had reported that it would be for the benefit of the lunatic, that the committee should pay off the mortgage out of the personal estate—Lord Chancellor *Hardwicke* ordered that the committee should pay off the mortgage out of the estate of the lunatic, and that the mortgagee should assign over the mortgage in trust for the lunatic, his executors, administrators, and assigns, and that such trustee should declare the trust accordingly (p).

The Dowager Duchess of *Norfolk*, before her lunacy, by virtue of a power contained in her marriage settlement, charged the estates comprised in it, by way of mortgage, with a sum of 5000*l.*, and created a term of years for securing it: the money was paid to a trustee, and directed to be held for her separate use. In consequence of the death of her husband without issue, the estates, which belonged to the Duchess before her marriage, stood limited by the settlement to herself for life, with the usual limitation to trus-

(n) *Forbes v. Moffatt*, 18 Ves. 345, 369; 1 Sim. 298.

390. See *Price v. Gibson*, 2 Eden, (o) *Ex parte Whitbread*, *In re* 115; *Donisthorpe v. Potter*, Id. 162; *Hinde*, 2 Mer. 102.

S. C. Ambl. 600; *Wyndham v. Earl* (p) *In re Degge*, March, 1743, of *Egremont*, Id. 753; 2 Sim. & Stu. stated in 1 Beatty, 270.

tees to preserve contingent remainders, remainder as she should appoint, remainder to the heirs of her body, remainder to her right heirs.

The Master, upon a reference to him, had reported that it would be proper that the charge of 5000*l.*, as it bore a higher rate of interest than could be made of the surplus rents of the lunatic's estate, should be paid off, and the terms securing it assigned to a trustee, to be disposed of as the Lord Chancellor, during the lunacy, should direct, and subject thereto in trust for the lunatic and her heirs, and to attend the inheritance. The presumptive heirs-at-law of the Duchess presented a petition to confirm this report. Another petition was presented by the persons who, in the event of her death, would be her next of kin, praying that the charge might be kept on foot as personal estate, without prejudice to the question by whom, or out of what fund the same should be ultimately paid—Lord Chancellor *Eldon* said, this question cannot be determined during the life of the lunatic, it may never arise. The term must be assigned to a trustee, in trust to attend the inheritance, or for the lunatic, her executors, administrators, and assigns, as shall hereafter be determined in the matter of the lunacy, or in any suit to be instituted for that purpose (*g*). On the death of the Duchess, it was agreed that the petitions should be brought on again by consent, for the purpose of taking the opinion of the Court, on the question whether the mortgage was to be paid off for the benefit of the heirs. And it seems to have been decided, that, as the charge was not a personal debt of the Duchess, that the heir-at-law was not entitled to be relieved from it; and even, admitting that the sum borrowed, was a debt as against the separate estate of the Duchess (she having entered into a covenant for payment (*r*), and that she had died possessed of any separate estate, yet it would depend upon whether the personal security was meant to be the primary security, or only collateral (*s*).

(*g*) *Ex parte* Earl Digby, *In re* 365; *Stuart v. Viscount Kirkwall*, Duchess of Norfolk, 1 Jac. & Walk. 3 Madd. 387.

640.

(*s*) *Ex parte* Digby, *In re* Duchess

(*r*) See *Bullpin v. Clarke*, 17 Ves. of Norfolk, Jac. Rep. 235.

Where part of the lunatic's personal estate was directed to be applied in payment of a mortgage on his real estate—Lord *Eldon* ordered, that the term should be assigned to a trustee, without prejudice to the claims of the real and personal representatives; but said, that there was no doubt that it would be deemed personalty on the lunatic's death (f).

In another case, an order was made for sale of sufficient stock standing in the Accountant-General's name in the matter of a lunacy for discharging a mortgage on the lunatic's estate, and for payment of the sum due to the mortgagees upon their executing a reconveyance, such payment to be without prejudice to the persons by whom, or the estates out of which, the same should be ultimately borne or paid (u).

Where a real estate had descended on a lunatic, subject to a mortgage which was exonerated by application of the lunatic's personalty, in no way derived from or connected with the descended estate, it was held, that the mortgage money was a charge on the real estate, for the benefit of the next of kin. An estate subject to a mortgage, having descended to a lunatic, and a bill of foreclosure having been filed by the mortgagee, an order was made in the matter of the lunacy, on the petition of the committee, that it should be referred to the Master, to inquire and report, whether it would be for the interest of the lunatic that the mortgage debt, with interest and costs, should be paid, taking an assignment of the same, so as to prevent the property of the lunatic being altered; and if so, to report what was due thereon for principal, interest, and costs. The Master afterwards reported, that it would be for the interest of the lunatic that the mortgage should be paid off, which, with interest and costs, was afterwards done by the committee, out of a fund in Court belonging to the lunatic, and the mortgage premises were conveyed to the committee, her heirs, executors, and assigns. After the death of the lunatic, a bill was filed by the next of kin and administrator of the lunatic, against the defendants, her heirs-at-law, for an account of the personal

(f) *Ex parte Hinde*, June, 1822; (u) *In re The Earl of Lisburne*, 4 Ambl. Rep. 706, note by Blunt. November, 1815.

estate, and that the mortgage might be declared to be part thereof, and be raised and distributed accordingly. Lord *Manners* decreed, that the assignment of the mortgage, made to the committee of the lunatic, was in trust for her co-heirs, the defendants, and that the bill should be dismissed as to the mortgage and assignment. But, on a petition of rehearing, Lord Chancellor *Hart* reversed that decree, so far as it dismissed the bill of the next of kin, and declared, that they were entitled to have so much of the lunatic's personal estate, as was applied in discharge of the mortgage, considered as a *lien* on the real estate, and raised accordingly. An account was directed of the amount of the principal sum paid in satisfaction of the mortgage, with interest from the death of the lunatic (*x*).

So also where a lunatic being possessed of a freehold lease for lives, and one of the lives having dropped, an order to renew and pay the fine and charges out of the personal estate was made; directions were also given, that if the lunatic should die during his lunacy, the remaining interest in the new lease, after the determination of the lives then subsisting, should be considered personal estate for the benefit of the next of kin. And a similar order was afterwards made upon the dropping of another life (*y*).

Where a lunatic was entitled to the equity of redemption of an estate subject to two mortgages for terms of years, which were paid off in his lifetime out of the savings of his estate, and the terms were, by the order of the Lord Chancellor, assigned to attend the inheritance: on the petition of the next of kin, after the death of the lunatic, the Court declared the trustee to whom the terms had been assigned, a trustee for the next of kin of the lunatic, to the extent of the mortgage money and interest, and directed an account accordingly; but, on a petition of rehearing by the heirs-at-law of the lunatic, that order was reversed (*x*). But the ultimate decision in this case seems contradictory

(*x*) *Weld v. Tew*, 1 Beatty, 266. (*x*) *Ex parte Grimstone*, Ambl.

(*y*) *Ex parte Degge*, 4 Bro. C. C. 706; and see 4 Bro. C. C. 234.
235, note (*a*).

to all former decisions; and its authority has been lately denied by Lord Chancellor *Hart* (a).

It is a well established principle in Courts of equity, that money directed to be employed in the purchase of land, and land directed to be sold and turned into money, are to be considered as that species of property into which they are directed to be converted; and this, in whatever manner the direction is given: whether by will, by way of contract (b), marriage articles (c), settlement, or otherwise, and whether money is actually deposited, or only covenanted to be paid, and whether the land is actually conveyed, or only agreed to be conveyed (d). The quality of real or personal estate thus impressed by the instrument, will continue unless the possession was united with the absolute title under the uses of the instrument in a proprietor *competent to elect*, under whom both representatives claim; or, if standing out in a third person, the *cestui que trust* has by declaration or some act indicated an intention to keep it as it is, for which purpose a very slight act is sufficient (e). It is obvious that persons under disabilities are incapable of making any election; and if the interest of the lunatic should not require an election, the Court will not make any, merely to favour that class of representatives who would be benefited by it; thus, where an estate devolved upon a lunatic, under the will of a testator who intended it to pass as money only, under a direction to sell; although a party competent to act for himself might have elected to take the property as land, yet

(a) See *Weld v. Tew*, 1 Beatty, 276. 388; 8 Ves. 235; *Thornton v. Hawley*, 10 Ves. 129; *Ware v. Polhill*, 11 Ves. 257; *Biddulph v. Biddulph*, 12 Ves. 161; *Kirkman v. Miles*, 13 Ves. 338; *Triquet v. Thornton*, Id. 345; *Shard v. Shard*, 14 Ves. 348; *Walter v. Maunde*, 19 Ves. 424; *Stead v. Newdigate*, 2 Mer. 521; *Langley v. Sneyd*, 1 Sim. & Stu. 45; *Attorney-General v. Halifax*, 1 Price, 426; *Amphlett v. Parke*, 1 Sim. 275; *Burton v. Hod-*

(b) *Stead v. Newdigate and Others*, 2 Mer. 521.

(c) *Ripley v. Waterworth*, 7 Ves. 435.

(d) See *Fletcher v. Ashburner*, 1 Bro. C. C. 499. See *Smith v. Claxton and Others*, 4 Madd. 484.

(e) *Pulteney v. Lord Darlington*, 1 Br. C. C. 223; 7 Br. P. C. 530; *Fletcher v. Ashburner*, 1 Br. C. C. 497; *Hickman v. Bacon*, 4 Br. C. C. 333; *Wheldale v. Partridge*, 5 Ves. 388; 8 Ves. 235; *Thornton v. Hawley*, 10 Ves. 129; *Ware v. Polhill*, 11 Ves. 257; *Biddulph v. Biddulph*, 12 Ves. 161; *Kirkman v. Miles*, 13 Ves. 338; *Triquet v. Thornton*, Id. 345; *Shard v. Shard*, 14 Ves. 348; *Walter v. Maunde*, 19 Ves. 424; *Stead v. Newdigate*, 2 Mer. 521; *Langley v. Sneyd*, 1 Sim. & Stu. 45; *Attorney-General v. Halifax*, 1 Price, 426; *Amphlett v. Parke*, 1 Sim. 275; *Burton v. Hod-*

it was held to go to the lunatic's representative as personally, and as if it had been actually converted (*f*).

In another case, where a testator by will gave to his wife all his ready money and bank notes which he should have about his person, or at his residence, at his death, and gave specifically to others his exchequer bills, stock, &c., and became insane two months before his death, and during that time two large sums of money which had been paid at his house, were laid out for him in stock and exchequer bills—The Vice Chancellor said, that it was the duty of those who managed the testator's affairs, during his incapacity, to act as a provident owner would do, and not to leave large sums of money unemployed. That there was no equity between legatees; and, as between them, property duly converted must be taken in the same state and character in which it is found at the death of the testator (*g*).

The principle of not altering the right of succession to the property of a lunatic has been adopted in several enactments of the Legislature. By the statute 11 Geo. 4 & 1 Wm. 4, c. 65, s. 21—it is provided, that, upon the death of the lunatic all such sums of money arising by fines or premiums on the renewal of leases of the lunatic's property, or so much thereof as shall remain unapplied for the benefit of such lunatic at his death, shall, as between the representatives of the real and personal estates of such lunatic, be considered as real estate, unless such lunatic shall be tenant for life only, and then the same shall be considered as personal estate. The statute of 11 Geo. 3, c. 20, (which is repealed by the above statute) contains a similar provision (*h*). And, by the statute of 11 Geo. 4 & 1 Will. 4, c. 65, s. 29, it is enacted, that on any sale, mortgage, charge, incumbrance, or other disposition which shall be made in pursuance of that act, the person whose estate shall be sold, mortgaged, charged, incumbered, or otherwise disposed of, and his or her heirs, next of kin, devisees, legatees, execu-

(*f*) *Ashby v. Palmer*, 1 Mer. 301. *bridge and Others*, 4 Madd. 495.
See *Van v. Barnett*, 19 Ves. 102; (*h*) See *post*, Chap. viii. a. 1; 4 Br.
Seeley v. Jago, 1 P. Wms. 389. C. C. 235, n.

(*g*) *Browne and Others, v. Groom-*

tors, administrators, and assigns, shall have the like interest in the *surplus* which shall remain, after answering the purposes therein mentioned, of the money so raised, as he, she, or they would have had in the estate by the disposition of which such monies shall be raised, if no such disposition had been made; and such monies shall be of the same nature as the estate so disposed of: and power is given to the Lord Chancellor to make orders for the due application of such surplus monies. The statute 9 Geo. 4, c. 78, s. 2 (which is repealed by the last mentioned act) contains a similar provision, and by the 43 Geo. 3, c. 75, s. 2, which is in like manner repealed, it is provided that any surplus of money to be raised by any sale under that act shall be applied and disposed of in the same manner as the estate sold would have been applied (i).

It is conceived, that some important and difficult questions may arise under the acts of Parliament last cited, for it often happens that a person previously to becoming a lunatic, has made a will disposing of different estates to different individuals, and, during the lifetime of the lunatic, judicial notice cannot of course be taken of the contents of his will, for the lunatic may recover and revoke it, or it may never be established, and if there are several testamentary papers it may not be known which is his will. Suppose, therefore, that a particular estate devised to one individual, should be sold or charged by the Lord Chancellor's order for discharging the lunatic's debts, or for paying the expenses incurred in the lunacy, or for any purposes for the general benefit of his estate, would the party to whom the estate sold or charged had been devised in the event of the lunatic's will being established after his death, be entitled to call upon the other devisees or heir of the lunatic, to make any contribution out of the other parts of the lunatic's estates remaining unsold, for the benefit of the party, whose interest had been defeated by such sale or mortgage.

It may be doubted whether the statute (k) in question authorizes the Lord Chancellor to qualify his order for sale or

(i) See *post*, Chap. viii. s. 2.

(k) 11 Geo. 4 & 1 Wm. 4, c. 65, ss. 28, 29.

mortgage, by inserting a declaration in it, that such sale or mortgage shall not, as between the person who would otherwise have become entitled to the estate sold or mortgaged, and the persons who shall, on the lunatic's death, become entitled to the other parts of his estates, prejudice the former beyond the proportion which he ought to bear of the sum raised; and that the persons who shall become entitled to the other parts of the lunatic's estates shall pay their proportions of the sum raised. Assuming that the Lord Chancellor has no power to make such a declaration, or having it, that he omits to do so (*m*), the question would be, whether the disappointed devisee or heir could compel, by a bill in equity, the persons who became entitled, on the lunatic's death, to the other parts of his estate, to contribute any and what proportions of the money which had been so raised, for the purpose of giving to the disappointed devisee or heir some equivalent for the interest devised to him, and sold or charged.

The decisions establishing the general rule in equity, that if a person has two funds to which he may resort, he shall not disappoint another person who can only resort to one of the funds (*n*), appear to have some analogy to the case now under consideration. Contribution is even allowed at law in some cases, upon the principle that one has paid that to which all are liable (*o*).

The right and duty of contribution is founded on doctrines of equity, and does not depend upon contract (*p*).

It may be assumed, in the absence of proof to the contrary, that all the devisees named in a will are equally the objects of the testator's regard, although the benefits conferred on them are unequal; and, if his presumed intention be allowed any weight, it should seem, that the principle of

(*m*) 11 Ves. 278.

Cress. 688.

(*n*) *Aldrich v. Cooper*, 8 Ves. 382; *Trimmer v. Bayne*, 9 Ves. 209; *Carter v. Barnadiston*, 1 P. Wms. 505; *Henningham v. Henningham*, 2 Vern. 355; and see 1 Eq. Cas. Abr. 113—117.

(*p*) *Lawson v. Wright*, 1 Cox, C. C. 275; *Dering v. Earl of Winchelsea*, Id. 318; 2 Boa. & Pull. 270. See 3 Bligh, 590; *Walker v. Preswick*, 2 Ves. sen. 622; and Suppl. by Belt, p. 449. See 3 Rep. 12 b; Vin. Abr.

(*o*) *Collins v. Prosser*, 1 Barn. &

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contribution ought to be applied to the case under consideration; for it would be hard that one only should, at the option of a third party, bear the whole burthen which the testator probably would have divided amongst all the objects of his bounty; but at the same time it must be admitted, that some of the cases stated in the previous part of this section are against the admission of such a principle.

It is quite clear that a sale (*q*) or mortgage (*r*), or even a contract (*s*), made by a testator when of sound mind, defeats his will *pro tanto*; but whether the order of the Lord Chancellor acting under an act of Parliament on behalf of a lunatic, will have the same effect as an alienation by the testator himself, is a question which probably has not yet been the subject of judicial consideration.

(*q*) *Sparrow v. Hardcastle*, Ambl. C. 154.

224; 3 Atk. 799; *Arnald v. Arnald*, (*s*) *Ryder v. Wager*, 2 P. Wms. 1 Br. C. C. 401; 2 Dick. 645. 328; *Cotter v. Loyer*, Id. 622; *Ben-*

(*r*) *Hall v. Dunch*, 1 Vern. 329, *nett v. Earl of Tankerville*, 19 Ves. 342; *Earl Lincoln's case*, 1 Eq. Cas. 170.

Abr. 411; 2 Freem. 202; *Show. P.*

CHAPTER VI.

OF THE ALIENATION OF ESTATES BELONGING TO
LUNATICS.

SECTION I.

Of Alienation by Matter of Record.

IT may probably be assumed, that by the laws of every civilized country, in theory if not in practice, the consent of the parties to every private contract is a necessary ingredient.

In order to ascertain what persons possess a moral power of binding themselves by contracts, it is necessary to consider the nature of consent, which is the essence of every contract, and implies physical power and a moral power of consenting, as well as a deliberate and free use of such powers (a). Therefore, the absence of any of those capacities in either of the parties to a contract renders it void. It is obvious, that all persons, either totally destitute of reason, or so far bereft of it as not to have a will governed and directed by reason, or who are incapable of comprehending the nature of obligations, have no power, during the continuance of their infirmities, of giving a deliberate consent, and consequently of contracting by their own acts.

On these grounds, idiots and lunatics are incompetent to

(a) Puffendorf's Law of Nature and Nations; Barbeyrac's note 1, B. iii. c. 6, s. 3; Grotius de Jure Belli et Pacis, Lib. 2, c. 11, s. 5. See Pothier on Obligations, by Evans, 1 Vol. p. 29.

contract by the law of England, which, in this respect, is conformable to the civil law. "*Furiosus nullum negotium gerere potest, quia non intelligit quod agit*" (b).

On account however of the importance which Courts of justice attach to their own records, some matters of record, which idiots and lunatics have been allowed, however improperly, to execute, are considered binding, because the Courts will not permit the records of their own proceedings to be called in question.

Idiots, lunatics, and generally all persons of nonsane memory, are incapable of levying fines, and the statute *de modo levandi fines*, (18 Edw. 1, st. 4), requires the parties to a fine to be of full age, of whole memory, and out of prison; and another statute (15 Edw. 2,) expressly directs that, before fines are passed, the cognisors shall appear personally before the Judges or commissioners, in order that the age, idiocy, or other default of such parties, may be judged and discerned by them. But still, if the Judges or commissioners allow them to levy a fine, it can never afterwards be reversed by an averment, that the cognisors laboured under any of those disabilities; because, the record and judgment of the Court being the highest evidence in the law, the cognisors must be presumed to have been capable of contracting at the time; therefore, no averment can be admitted to the contrary. If an idiot or lunatic is permitted to levy a fine, or suffer a recovery, he may declare the uses of it (c). The caption of a fine is conclusive evidence of the capacity of the party, not because the law permits a person who wants understanding to do any act, but, because having empowered a person after a previous examination to take the fine, it gives sufficient credit to his certificate, and permits it to be recorded; and the caption of the fine, when recorded, becomes, by fiction of law, conclusive evidence of the legal capacity of the cognisor to support the fine itself, but not for any other purpose (d).

An idiot was taken from his guardian, and carried to a

(b) Inst. Lib. 3, tit. 20, s. 8. (c) 10 Co. 42 b; Hob. 224; Winch. 106.

(d) 1 Ridg. P. C. 106, 276.

place unknown, where he was kept until he had acknowledged a fine of his lands, before a Judge, to another person, and declared the use of the fine to him and his heirs. The cognisor was afterwards found by inquisition to have been an idiot *a nativitate*, and, upon an action by a person who claimed under the fine, the Judges, upon inspection of the idiot, said, that the Judge who took the fine was not worthy to take another: but, notwithstanding, and although the monstrous deformity and idiocy of the party was apparent, yet the fine stood good (e).

The declaration of the uses of a fine levied by an idiot was held good, on the ground that it was merely necessary to the fine; and a fine and declaration of uses, after an idiot had been so found by inquisition, was held good, as both the idiot and his heirs were estopped from saying that he was so; for the Court would rather judge the inquisition void, than allow the judicial act and judgment of the Court which accepted the fine to be called in question (f).

Where a rule had been granted by the Court of Common Pleas, on a complaint of the heir-at-law, to shew cause why a fine should not be vacated, on the ground that one of the cognisors was a lunatic at the time when it was levied, and the party upon examination by the Court appeared to be a person of good capacity, and able to understand very well the intent of the fine, and the deed declaring the uses, the Court discharged the rule with the costs of the application (g).

Where one of several deforciantes had become insane, the Court ordered the fine to pass as to all the other parties, notwithstanding the omission of the name of the lunatic in the proceedings (h).

Where the estate of a married woman had been regularly sold with the consent of the husband, when of perfectly sound mind, and the conveyance was executed by him, and

(e) *Manfield's case*, 12 Rep. 124.

(g) *Lister v. Lister*, Barnes, 218.

(f) *Hugh Lewing's case*, 10 Rep. 42; Winch. 106; 2 And. 193; Fig-
got on Recoveries, p. 72.

(h) *James*, plaintiff, and *Fletcher*
and Others, deforciantes, 2 Moore &
Payne, 265, n. (a).

the purchase-money paid, and some difficulty was subsequently made in allowing a fine to pass, on account of the cognisor being a *feme covert*, and her husband at that time in a state of mental incapacity, the Court on application refused to make any order on the subject; but intimated that there was no objection to the acknowledgment of the fine being taken; adding, *valeat quantum valere potest* (i). A person found *non compos* upon inquisition, but alleged to have become of sound mind, was ordered by the Court of Chancery, if he made a settlement, to do so by fine, that a Judge might examine him (k).

The rule of Court, which requires an affidavit of one of the commissioners, before whom a fine is acknowledged, that the parties are of age and competent understanding, has afforded some protection against the frauds formerly practised in obtaining fines from persons under mental disabilities (l).

The statute of non-claim on fines, 4 & 5 Hen. 7, c. 24, enacts, that the proclamations thereby directed to be made, shall conclude as well privies as strangers to the same, except women covert, (other than parties to the said fine); and every person then being within age of twenty-one years, in prison, or out of this realm, or not of *whole mind* at the time of the said fine levied, not parties to such fine. If the persons, at the time any right or title accrued or descended to them, be not of *whole mind*, then it is ordained that their action, right, or title be reserved and

(i) *Stead v. Izard*, 1 Bos. & Pull. New Rep. 312. See *Compton v. Collinson*, 1 H. Bl. 334, and *Moreau's case*, 2 Sir W. Bl. 1205.

By the bill now (May, 1832,) before Parliament, for abolishing fines and recoveries, it is proposed to give to the Court of Common Pleas power to dispense with the concurrence of the husband being a lunatic, whether found so by inquisition or not, and incapable of executing a deed, in order to enable his wife alone to do certain acts for passing her inter-

ests in land and other property.

(k) *Eliot's case*, Carter, 53. See *Ex parte Wright*, 1 Vern. 154.

(l) Hilary Term, 17 Geo. 2; and Hil. Term, 26 & 27 Geo. 2. See Wils. Rep. 85, 89; Cruise's Dig. tit. 35, c. 4, s. 46—48.

In an old case, the commissioners were fined for taking a fine of an infant, to whom a guardian was assigned by the Court, with instructions to bring a writ of error to reverse it. *Petty's case*, Freem. Rep. 78. See Dyer, 221 a, 246 b, pl. 68.

saved to them and their heirs, unto the time they come and be of *whole mind*, so that they or their heirs take their said actions, or their lawful entry, according to their right and title, within five years next after that they *be of whole mind*, and the same actions pursue, or other lawful entry take, according to the law: and it is ordained, by the same statute, that all such persons as be under the aforesaid disabilities, *or not of whole mind* at the time of the said fines levied and engrossed, and by that act before excepted, having any right or title, or cause of action, to any of the said lands and other hereditaments, that they or their heirs inheritable to the same, take their said actions or lawful entry, according to their right and title, within five years next after they be of full age of twenty-one years, and *of whole mind*, and the same actions sue, or their lawful entry take and pursue, according to the law.

Though the issue of a tenant-in-tail, who has levied a fine, be *non compos mentis*, yet, being privy, he is barred, not coming within any of the savings in the statute (*m*). But, a fine levied by the uncle of an idiot, of lands to which the latter was entitled in fee, was held not to bar the descendant of the uncle claiming as heir of the idiot, for his title as such heir was made through the uncle, who levied the fine, by way of pedigree only (*n*).

If a man of unsound mind makes a feoffment in fee, and the feoffee levies a fine, the heir of the feoffor has five years from the death of the latter, as the person on whom the right first descended after the fine had been levied (*o*).

If there are several disabilities existing in the same person at one and the same time, or there are several disabilities arising at different periods, and one of them succeeds the other without any interval, the fine will not run while any one of these disabilities continues (*p*).

(*m*) 3 Rep. 91 a.

Couns. 57, 76; Shepp. Touchst. 33.

(*n*) *Edwards v. Rogers*, Cro. Car. 524; *S. C.* Sir W. Jones, 456; 1 Vent. 418.

(*p*) *Stowel v. Lord Zouch*, Plowd. 375; Dyer, 133; Shepp. Touchst. 32.

(*o*) Plowd. 374; Shep. Pract.

On the words of the statute of fines, and on the uniform construction of all the statutes of limitation, it has been decided, that if every disability of the party be once removed, the time must continue to run, notwithstanding any subsequent disability (q). And in a case where a fine was set up in order to bar the plaintiff's title, and it appeared in evidence that the person under whom the lessors of the plaintiff claimed, and to bar whom the fine was set up, was of sane mind when the fine was levied, but that he became insane about two years afterwards; it was held, that the time continued to run against him whilst he was in that state (r). But it seems that a party, who becomes disabled before the last proclamation of a fine, is within the saving of the act (s). In *Dillon v. Lemon* (t), it was held by the Court, that the exception in the first branch of the 4 Hen. 7, and the proviso at the end of it, were to be taken together; that being so taken, they did not amount so much to an exception as a saving; the true meaning of which was, that the rights of those persons who were under disabilities, and of their heirs, were saved, as long as the disabilities continued, and five years after, but no longer; and that an heir not being himself disabled, was barred, unless he pursued his right within the five years after it accrued by the death of his ancestor dying under a disability.

Any person who has capacity to take by grant, may be a conusee in a fine; and fines levied to idiots or lunatics are valid (v).

Idiots and lunatics are disabled from suffering recoveries, as well as from levying fines; though, if an idiot or lunatic suffer a common recovery in person, no averment can afterwards be made that he was an idiot or lunatic, for the same reason, that such averment is not admissible against

(q) *Doe d. Durours v. Jones*, 4 Term Rep. 300; 4 Taunt. 829. See *post*, Chap. ix.
 (r) *Doe d. Griggs and Another v. Shane*, 4 Term Rep. 306, notes. See Shepp. Touchst. 30.
 (s) *Stowel v. Lord Zouch*, Plowd. 375; Shepp. Touchst. 31.
 (t) 2 Hen. Blackst. 584.
 (v) Shepp. Touchst. p. 7; Vin. Abr. tit. *Fine* (D. 9).

a fine. But, if an idiot or lunatic be vouched by attorney, such an averment would be admitted, upon the same principle, that an averment of infancy may be made against a warrant of attorney, acknowledged by an infant, for the purpose of suffering a common recovery; as the fact of idiocy or lunacy may be tried by a jury, as well as that of infancy (*w*).

(*w*) *Beverley's case*, 4 Rep. 126 b; Cro. Eliz. 187; *Hume v. Burton*, 1 Ridg. P. C. 16.

The effect of fines and recoveries by lunatics attracted the attention of the commissioners appointed to inquire into the law of England respecting real property; who made the following observations upon the subject:—

“ Courts of justice attach so much importance to the records of their proceedings, that they will not allow any averment or evidence to contradict them. Although this principle may be perfectly correct in real adversary suits, yet its application to fines and recoveries, which are now regarded by the Courts as common assurances, has, as we shall proceed to shew, produced a strange anomaly, by rendering them conclusive, so far as respects the capacity of parties, where other common assurances would not be so. If an infant levy a fine, or in person suffer a recovery, such fine or recovery is conclusive on all persons, unless avoided during his minority, upon inspection of his person by the Judges, or unless his minority be found by the inspection of his person by the Judges, and recorded before he attains twenty-one.

“ If an infant suffer a recovery by attorney, it may be avoided, either during his minority, or after he comes of age; because the appoint-

ment of an attorney by an infant is void, and that fact may be tried by a jury. If a lunatic levy a fine, or in person suffer a recovery, such fine or recovery is of itself considered conclusive evidence of his capacity, and, therefore, cannot be avoided.

“ If a lunatic suffer a recovery by attorney, the recovery may be avoided for the same reason as stated with regard to an infant. In every case, in which an infant or lunatic levies a fine, or, in person, suffers a recovery, the fine or recovery is *prima facie* evidence of his capacity, by deed, to declare the use of it; because it is held, that the fine or recovery is conclusive as to the lunatic; and also as to the infant, in case he should not avail himself of the term given him for avoiding it. If a recovery should be suffered, either in person or by attorney, by an infant or lunatic, tenant-in-tail in possession, who should make the tenant to the *præcipe* by any other deed than a feoffment, with livery of seisin in person; in that case, the deed, being the principal, would, if the fact of the infancy or lunacy of the party were found by a jury, be void; and the recovery, being the accessory, would be set aside, on the ground of there being no tenant to the *præcipe*. So that the recovery, although it could not be directly questioned, might be indirectly avoided

Although no averment of idiocy or lunacy can be made against a recovery, where the parties appear in person, yet evidence of weakness of understanding has been admitted to invalidate a deed to make a tenant to the *præcipe* for suffering a common recovery: and the recovery has in that way been set aside (x).

And although an averment of idiocy may be made against a vouchee who appears by attorney, yet neither an inquisition finding that a vouchee was not an idiot, or of unsound memory; nor the caption of a warrant of attorney to suffer a common recovery, appearing upon record to have been taken by the Chief Justice of the Common Pleas out of Court; nor a fine acknowledged before the same Chief Justice on the same day with the warrant of attorney, for the purpose of making a tenant to the *præcipe*, are conclusive evidence of the sanity and capacity of the vouchee (y). There is an essential difference between the caption of a

by invalidating the deed for making the tenant to the *præcipe*. But, if the tenant to the *præcipe* were made by a fine, and a deed declaring the use to the tenant, or by a feoffment, with livery of seisin in person, the recovery could not be set aside for want of a good tenant to the *præcipe*, although the fine, in case of the infant, or the feoffment, in the case of the infant or lunatic, should be avoided. If a recovery should be suffered by a lunatic in person, evidence would not be admitted to shew his incapacity. But, if he should make the tenant to the *præcipe* by deed alone, and not by fine and deed declaring the use to the tenant, evidence would be admitted to shew his incapacity to execute the deed, though it may have been executed on the same day on which he appeared in Court, so that he would

be considered as having, on one and the same day, sufficient sense to suffer a recovery, but not to execute a deed.

“The Court may be imposed upon, and instances of such imposition are to be found in our Law Reports, and occasionally occur in practice; and there is no redress, unless equity can interfere on the ground of fraud.” —First Report of Commissioners on the Law of Real Property, ordered by the House of Commons to be printed, 19 May, 1829, pp. 27, 28.

A bill is now before Parliament, which proposes to abolish fines and recoveries, and to substitute deeds of conveyance, which are to have the same effect.

(x) *Wentworth v. Cholmley*, cited 3 Atk. 313; 1 Ridg. P. C. p. 549.

(y) *Hume v. Burton*, 1 Ridg. P. C. 204.

fine and a warrant of attorney for suffering a recovery; in the former, the law requires a previous examination into the age, condition, and mental capacity, but no examination is by law required previously to the caption of the warrant, although in practice it is done; but the warrant of attorney is the act of the party, a matter *in pais*, and triable by a jury (s).

Where a vouchee had executed a warrant of attorney whilst sane, but, before the passing of the recovery, his intellects became impaired, the Court would not allow the recovery to pass; for, if the vouchee had been restored to his reason, he might have revoked such warrant before the passing of the recovery (a). But, if one of several vouchees becomes insane, after having executed a joint warrant of attorney, but before the perfecting of the recovery, it may pass as to all the parties except the lunatic (b).

Recognizances and statutes entered into by a *non compos*, being matters of record, and equivalent to judgments of the superior Courts, can be avoided neither by the parties nor their heirs, executors, or administrators (c).

The statute of the 10 & 11 Will. 3, c. 14, after reciting that theretofore fines, common recoveries, and ancient judgments, were reversible at any time without limitation, for error, enacted, that no fine, or common recovery, nor any judgment in any real or personal action, should thereafter be reversed or avoided for any error or defect therein, unless the writ of error, or suit for the reversing such fine, recovery, or judgment, be commenced or brought and prosecuted with effect within twenty years after such fine levied, or such recovery suffered, or judgment signed or entered of record. This statute contains the proviso, "that, if any person who shall be entitled to any such writ of error as aforesaid, shall, at the time of such title accrued, be

(s) *Thompson v. Leach*, 1 Lord Raym. 313; *Stokes v. Oliver*, 5 Mod. 209; *Ex parte Roberts*, 3 Atk. 308; 264.

(b) *Vale and Others, Vouchees*, 5 Bing. 76; *S. C.* 2 Moore & Payne, 10 Rep. 124 a; 10

(a) *Walcott, Vouchee*, 11 J. B. Rep. 42 b; 2 Inst. 483; *Bac. Abr.* Moore, 307; *S. C.* 3 Bing. 423. See tit. "Idiot and Lun." (F).

1 Burr. 410.

within the age of twenty-one years, or covert, *non compos mentis*, imprisoned, or beyond seas, that then such person, his or her heirs, executors, or administrators (notwithstanding the said twenty years expired) shall and may bring his, her, or their writ of error for the reversing any such fine, recovery, or judgment, as he, she, or they might have done in case that act had not been made, so as the same be done within five years after his or her full age, discoverture, *coming of sound mind*, enlargement out of prison, or returning from beyond the seas, or death, but not afterwards or otherwise." It has been held, under this statute, that a writ of error cannot be brought by the reversioner after twenty years, although his title had not previously accrued (*d*).

Persons born deaf and dumb will be allowed to levy fines and suffer recoveries, if, upon examination by the Judges, it appears that they possess sufficient sense to understand the nature and effect of such assurances; and persons so affected may also enter into other contracts (*e*).

Although, if an idiot or lunatic has by any neglect or contrivance been permitted to levy a fine, his declaration of the uses thereof will be good at law so long as the fine remains in force; and, if the fine is never reversed, his declaration of the uses will be binding and conclusive on him and his heirs for ever: yet, as the Court of Chancery has, in many instances, compelled persons who have obtained estates under a fine in a fraudulent manner, to reconvey them to those who were really entitled, so that Court will interpose its authority in cases of this kind, and not suffer the declaration of uses of a fine levied by an idiot, or lunatic, to bar his heirs, as no species of fraud can be more evident than that of obtaining a conveyance from a person of this description.

Thus, where a party had been found by two inquisitions a lunatic without any lucid interval, and the defendant had obtained a mortgage, and at last an absolute conveyance

(*d*) *Lloyd v. Vaughan*, 2 Str. Abr. tit. "Fine," (D. 10.) pl. 9, 10; 1257. *Griffin v. Ferrers*, Barnes, 19; *Keys*

(*e*) *Elliot's case*, Carter, 53; *Vin. v. Bull*, Id. 23.

at a great undervalue, by deeds, fines, and recoveries. The Court set aside the purchase, and decreed that the defendant should be allowed what he should prove had been paid by him for the use of the lunatic (*f*).

Where fines and recoveries have been obtained by fraud and circumvention from idiots or lunatics, the party taking the benefit of them will be compelled to reconvey to them (*g*), or to their heirs (*h*), on payment of the consideration really advanced. And a settlement by recovery obtained from a person deaf and dumb by his uncle who took an interest under it, was set aside, although reasonable in itself, the party conveying not having had the assistance of an able and faithful relation (*i*).

In another case, the Court relieved against a fine levied upon a possession obtained under a forged deed (*k*). And Lord *Hardwicke* observed, though a fine has been levied, yet, if it has been under circumstances of fraud, the Court ought to prevent the stealing away an estate in that manner (*l*).

Where the Court entertains a doubt as to the capacity of a party at the time a fine was levied or recovery suffered, an issue will be directed to try that fact. Thus, where a lunatic settled his property on himself and his family by deed, fine, and recovery, and a bill was filed for relief against the settlement, and the evidence as to capacity was not satisfactory; the Court directed an issue to try whether the grantor was a lunatic at the time of the execution of the settlement, and whether with lucid intervals; and, if so, whether the settlement was made in a lucid interval (*m*).

In a recent case, it appeared, that, by a marriage settlement made in the year 1776, estates were conveyed and settled to the use of the father and mother of the lunatic, for

(*f*) *Addison v. Dawson* and Others, 2 Vern. 678. (*k*) *Cartwright v. Pultney*, 2 Atk. 381.

(*g*) *Welby v. Welby*, Toth. 164; (*l*) *Baker v. Pritchard*, alias *Hosier*, 2 Atk. 381.
Wright v. Booth, Id. 166.

(*h*) *Coleby v. Smith*, 1 Vern. 265. (*m*) *Clerk v. Richards* and Another, 2 Vern. 412.

(*i*) *Ferres v. Ferres*, 2 Eq. Cas. Abr. 695.

their lives and the life of the survivor, with remainder to their first and other sons in tail general, with remainder to their first and other daughters in tail general, with remainders over. There was issue of the marriage, one son, the lunatic, and a daughter, who afterwards married and was the mother of the plaintiff. The father survived his wife and married again, and died in 1815, leaving the defendant, his son. The lunatic died intestate and without issue on the 28 May, 1823. The defendant claimed to be entitled to the estate under indentures of lease and release, dated Aug. 1801, from the lunatic, and a recovery suffered by him in pursuance thereof. A bill was filed by the grandson, charging that such indentures of lease and release and recovery were altogether fraudulent and void, and ought to be set aside, for that the lunatic, who was tenant in tail of the estate, was of such weak and imbecile mind and understanding, that he was by law incapable of being a party to such indentures or recovery, and that he was induced to become a party thereto by fraud, duress, and imposition; and, as evidence of such weakness and imbecility of mind, the plaintiff charged that the lunatic from his birth was an idiot, or so nearly so that he never could count 20*s.* correctly, and never had any idea of the value of property, and was wholly incapable of understanding the nature of his rights to the said estates, or the nature and effect of the indentures and recovery; and that the said lunatic was fraudulently and improperly made a party to the said recovery. The bill prayed that the plaintiff might be declared entitled to the estate and the rents thereof from the death of the lunatic, and that the defendant might be decreed to deliver up possession, and to account for such rents, or that an issue might be directed to try the title to the estate, and the defendant restrained from setting up any outstanding legal estate upon the trial of such issue (n).

The defendant contended that the rights of the lunatic, as tenant in tail, were barred by the said indentures and recovery, and that he was perfectly of sane mind, and

(n) *Jones v. Roberts*, 18 June, 1830, Reg. Lib. A. 1829, fol. 2147.

of good understanding, and that he was capable to count 20s. correctly, and that he always had an idea of the value of property, and had generally speaking a competent knowledge thereof; and denied that he was wholly or in any degree incapable of understanding the nature of his right to the said estate, or the nature and effect of the said indentures and recovery; and that as such indentures and recovery were executed and suffered more than twenty years ago, the defendant submitted, that, after such length of time, the plaintiff should not be aided by a Court of Equity—The Vice Chancellor directed the following issue—Whether, at the time of suffering the recovery in question, and also at the time of executing the indentures of lease and release, the lunatic was incompetent to understand their nature and effect. At the trial of such issue, the jury found, that, at the time of suffering the said recovery, and executing the said indentures of lease and release, the lunatic was incompetent to understand the nature and effect of the same. The cause having come on for further directions, the Master of the Rolls decreed that the said indentures of lease and release, and the common recovery suffered in pursuance thereof, were fraudulent and void; and that the plaintiff was entitled to the estate and premises in the pleadings mentioned, and to the rents and profits thereof from the death of the lunatic, as the tenant in tail, under the limitations of the settlement; and that the defendant should deliver up to the plaintiff the possession of the estate, and all the title deeds in his possession or power relating thereto: and it was referred to the Master to take an account of the rents of the estate since the death of the lunatic, which had been received by the defendant, or for his use. And, if it should appear that the defendant had been in the occupation of the premises, or any part thereof, during the whole or any part of such time, the Master was to set an annual value by way of rent on the said premises during the time that the said defendant had been so in possession. And it was ordered that the said defendant should pay unto the plaintiff what the said Master should find due in respect of such rents as he should direct; and the defendant was ordered to pay

unto the plaintiff his costs of the suit, to be taxed by the Master (o).

SECTION II.

Of Alienation by Deed.

EVERY alienation and contract affecting the rights of a party ought to be performed with sound judgment, and the acts of the will which are expressed in certain instruments made for evidencing intention, must be understood to be those of a mind endued with sufficient reason to understand their nature and effect, otherwise, they are either absolutely void or voidable only (p).

The feoffment of an idiot or lunatic in person is not void, but voidable (q); but it cannot be avoided by the party himself on his recovery, and the reason given in the books is, because no man is permitted by law to disable himself (r).

The reason why feoffments of infants and persons *non compotes mentis* are voidable only, proceeds from the solemnity of livery of seisin, which was anciently transacted *coram paribus curtis*, who signed their attestation to the same, which the law presumed they would not have done, had the incapacity of the party been apparent (s).

(o) *James v. Roberts*, Reg. Lib. A. 1830, fol. 397.

(p) The law of England, upon this subject, seems to have been nearly the same in the time of our earliest legal writers, as at the present day. *Generaliter tamen tenendum est, quod mutus donationem facere non potest, quia donationi consentire non potest; sicut nec furiosus, nec mente captus, nisi lucidis gaudeat intervallis.* Cowell's Instit. Juris. Angl. Lib. 2, tit. 7, s. 4; Fleta, Lib. 3, c. 3, s. 10; *Mirroure of Justices*, c. 2, s. 27.

Furiosus autem stipulari non potest, nec aliquod negotium agere, quia non intelligit quid agit. Eodem modo, nec infans, vel qui infanti proximus est, et qui multum a furioso non distat, nisi hoc fiat ad commodum suum et cum tutoris autoritate. Bract. Lib. 3, c. 2, s. 8; Fleta, Lib. 2, c. 56, s. 19.

(q) 2 Roll. Abr. 2, (E.) pl. 3; Shepp. Touchst. 204.

(r) Litt. sa. 405, 406; Co. Litt. 247. b.; 4 Rep. 126, 127.

(s) *Thompson v. Leech*, Carth.

If a man, when of sane memory, makes a feoffment with power of attorney to deliver seisin, which is delivered by the attorney after the feoffor has become *non compos mentis*, it is good, having relation to the time when the authority was given (*t*). But, if a lunatic makes a feoffment with letter of attorney, and livery is made after he has recovered his understanding, but without his further assent, the feoffment is void (*u*).

It has been said that an exchange made between a man of unsound mind and another person, is not void but voidable, and that it is good against the former, although his heir may avoid or confirm it at his election (*v*). But, whether such a transaction be void or voidable only must, it should seem, depend upon the nature of the deed by which it has been effected.

By the common law a writ lay for compelling a partition of lands belonging to coparceners, and by the statutes 31 Hen. 8, c. 1, and 32 Hen. 8, c. 32, the same remedy was extended to joint-tenants and tenants in common. It is said, that, if parceners of nonsane memory make partition, unless it be equal, it shall only bind the parties themselves, but not their issue; and the reason given is the same as that why all other contracts bind them, *vis.* because no man is admitted to stultify himself; but the issue may avoid such partition for the same reason as all other contracts made by such ancestors during their insanity, as they may be admitted to shew the incapacity of their ancestors for avoiding all acts done by them during that time (*w*). By statute 8 & 9 Wm. 3, c. 31 (*x*), an easier method of carrying on the proceedings in a writ of partition of lands held either in joint-tenancy, coparcenary, or in common, than was

435; *S. C.* 2 Salk. 427; 3 Mod. 301; Exchange 9; See Perk. c. 4, s. 198. Comb. 468; 3 Lev. 284; Show. P. C. Co. Litt. 51, b.

152.

(*w*) Co. Litt. 166. a.; 4 Rep. 125;

(*t*) *Jennings v. Bragg*, Cro. Eliz. 446; Perk. c. 1, s. 22.

Bac. Abr. tit. "Idiots and Lun." (F.)

(*u*) Perk. c. 1, s. 23; 2 Roll. Abr. 2, (E.) pl. 5.

(*x*) This statute was made perpetual by 3 & 4 Anne, c. 18, s. 2. See 41 Geo. 3, c. 109, s. 16; *ante*, p.

(*v*) Shepp. Touchst. 291; Bro. 186.

used at the common law, is chalked out and provided. By the second section of that act it is declared, that if the tenant or other person, against whom judgment on a partition shall have been given, shall be *non sanæ memoriæ*, then such person may, within one year after the removal of his inability, shew cause on motion against such judgment, and the Court may award a new partition. But resort is now seldom had to the common law mode of compelling partitions of land, but they are effected by means of a bill in equity (y).

The release, surrender, letter of attorney to give livery, warranty, or any other deed or writing obligatory, though it is said, that, at law, they bind the *non compos*, are mere *nullities* with respect to others, and differ from a feoffment in person, which is a matter of greater solemnity. Therefore, where a *non compos*, (being tenant for life, remainder to his first and other sons, with remainder over), did by deed, before the birth of any son, surrender to the remainderman, with the intent to destroy the contingent remainders, and died leaving issue a son, it was held that the surrender was void *ab initio*, and not barely voidable; for, had the surrender been voidable only, yet, if at any time it had been effectual to merge the estate for life before the birth of the son, it could not have been revived again by any act *ex post facto*; and that, the surrender being void *ab initio*, the son, though he did not claim as heir, *but by way of remainder*, might take advantage of it; and in this case a distinction was established between a feoffment with livery *propriis manibus* of a *non compos*, and his bare execution of a deed by *sealing and delivering*, as in cases of surrenders, grants, releases, &c., the former being voidable, the latter absolutely void *ab initio* as to third parties (z).

It has been decided in a recent case, that a man, by bare execution of an instrument, does not make it his deed, if, at

(y) 2 Ves. jun. 125; Cruise Dig. 284; 2 Vent. 198; Show. Parl. Cas. 2 Vol. 547; Mitf. Pl. pp. 119, 120, 152. See Perk. s. 21; Bryd. 46; 122, 123, 4th ed. Noy's Maxims, p. 145, Bythewood's

(z) *Thompson v. Leach*, Carth. ed.; Bac. Abr. tit. "Idiots and Lun." 435; S. C. 2 Salk. 427; 3 Mod. 301; (F). 12 Mod. 173; Comb. 468; 3 Lev.

the time, he was so weak in mind as to be incapable of understanding it, if explained to him, although he might not fall within the strict legal definition of an idiot.

In an action of ejectment, the title of the lessor of the plaintiff was, under a remainder in tail, limited by a deed, dated the 10th July, 1762. The title of the defendant depended upon a fine levied, and a recovery suffered, by one John Shenton Ball, (who held the first estate tail under the deed of 1762), and a deed, executed by him in October, 1785, leading the uses of the fine and recovery, in which recovery he was vouched and appeared by attorney. The sole question between the parties was, whether the deed of 1785 was, or was not, valid at law, as the deed of J. S. Ball. Witnesses on the part of the plaintiff deposed that he, at the time of his executing such deed, was not, in their opinion, competent to execute the same; and further deposed to his acts and conduct as evidencing his mental incapacity. Witnesses for the defendant swore, that, in their opinion, J. S. Ball, at the time of the execution of the deed, was competent to execute it, and further deposed to his acts and conduct evidencing his mental capacity; and that he was certainly *not an idiot*. It was admitted by both parties, that the alleged incapacity of J. S. Ball did not arise from lunacy, no evidence of his lunacy having ever been given. The learned Judge, in charging the jury, told them, "that the question for them to try was, whether J. S. Ball was a person of sound mind or not; and that, to constitute such unsoundness of mind as would avoid a deed at law, the person executing such deed must be incapable of understanding and acting in the ordinary affairs of life; that it was not necessary that he should be without a glimmering of reason, but that it was sufficient if he was incapable of understanding his own ordinary concerns; that, as one test of such incapacity, the jury were at liberty to consider, whether he was capable of understanding what he did, by executing the deed in question, when its general import was explained to him."—On the part of the defendant, a bill of exceptions was taken to this charge, the defendant's counsel insisting, that, in order to avoid the said deed at law, the

unsoundness of the mind of J. S. Ball must amount to that degree of unsoundness which constituted idiocy, according to the strict legal definition of an idiot. Upon the argument of the bill of exceptions, it was held, that the charge of the Judge was right, and that a man, by putting his seal to an instrument, does not make it his deed, if, at the time, he was so weak in mind as to be incapable of understanding it, if explained to him, although he might not fall within the strict legal definition of an idiot (a).

It was observed by Chief Justice *Bushe*, in the case last cited—"There does not seem to be in principle any foundation for the assertion, that the perpetual infirmity of mind which constitutes idiocy is the only incompetence by which a deed can be avoided at law, in a case in which neither lunacy, or drunkenness, or a sudden visitation of God, are alleged as the causes of incompetence. On the contrary, the proceedings in Chancery furnish an analogy, which points to a different conclusion; and when the law as to lucid intervals is considered, and when we recollect that a plea of *non est factum* is supported by shewing that the party was blind (b) or illiterate, and that the deed was misread to him (c), or that he was so drunk as not to know what he did, the principle would rather seem to be, that incapacity at the time to understand the act is the criterion of unsoundness of mind upon such a plea, and not the perpetual infirmity of mind described in the strict legal definition of an idiot (d)." A writ of error was brought in the last case to the Court of Exchequer Chamber in Ireland, and the twelve Judges were equally divided on the bill of exceptions; and, on appeal to the House of Lords, the judgment of the Court below was affirmed (e).

In one case, where a deed contained false recitals and erasures, and it appeared by evidence in the cause, that,

(a) *Mannin d. Ball v. Ball*, 1 tit. "Fait" (B. 2).

Smith & Batty, 183.

(d) 1 Smith & Batty, 198.

(b) 2 Rep. 3; 12 Rep. 89.

(e) *Ball v. Mannin*, 1 Dow's P. C.

(c) 2 Rep. 9; 1 And. 129; Kelw. New Ser. p. 380; S. C. 3 Blyth, New Rep. 70 b; 1 Sid. 312. See Skinner, Ser. 1; 1 Smith & Batty, 454.

159, pl. 6; 2 Atk. 327; Com. Dig.

before the date of such deed, the grantor was of a weak constitution, and subject to a malady which clouded his intellectual faculties, and that he was a man of very improvident habits, the Court of Chancery in Ireland would not act on the deed, without first sending it to a jury (*f*).

The acts of lunatics during their lucid intervals bind them (*g*). Deeds executed by lunatics during their lucid intervals are valid; but it will be incumbent upon the party claiming under such deeds, to prove that they were executed during a lucid interval (*h*). A deed executed by a party, whilst under confinement in a lunatic asylum, has been held good. Lord Chancellor *Eldon* mentioned the case of a gentleman, who, being confined in a lunatic asylum, had a lucid interval, and made a disposition of his property by deed, which was exactly that which he ought to have made, having regard to the circumstance that he had before provided for some, and not for other members of his family; and that which he, before his insanity, communicated to a friend, he intended to make; and he did it under a sense of his situation, and the impression that no time was to be lost, and to protect himself against a relapse. The deed executed under such circumstances was held good (*i*).

The Court of Chancery generally directs an issue to try whether a particular deed or contract was executed during a lucid interval, when that is the point in issue (*k*).

It has been already shewn (*l*), that an inquisition of lunacy is not conclusive as to third parties claiming under instruments previously executed by the lunatic, and the King, before the inquisition, cannot avoid the alienation of an idiot or lunatic; but afterwards a *scire facias* may be sued out at the suit of the Crown against the person in possession,

(*f*) *Burke v. O'Malley*, 1 Beaty, 96.

(*g*) 4 Rep. 25 a. See *post*, Chap. vii. s. 5.

(*h*) *Attorney-General v. Parnther*, 3 Bro. C. C. 441; *ante*, p. 223. See 1 Preston, Abst. p. 331.

(*i*) 5 Dow, P. C. 236.

(*k*) *Attorney-General v. Parnther*, 3 Br. C. C. 441; *Hall v. Warren*, 9 Ves. 605; *Clerk v. Richards and Another*, 2 Vern. 412.

(*l*) See *ante*, Chap. iii. s. 15.

or the alienee, of a lunatic's estate (*m*), which writ may be traversed (*n*). The King, however, can only recover the profits from the time of the office found (*o*); but conveyances by an idiot or lunatic, by matter of record, cannot be avoided by the King (*p*).

It does not appear to have been the practice for a considerable time to issue a *scire facias* at the suit of the Crown, for the purpose of trying the validity of deeds executed by idiots or lunatics.

The Lord Chancellor sitting in lunacy has sometimes directed an issue, to try the validity of deeds, which had been executed by the lunatic prior to the issuing of the commission of lunacy, but subsequently to the time at which the jury had found the lunacy to have commenced.

It appeared, by the petition of persons claiming under certain deeds, that a man, in June, 1826, before he had been found a lunatic, entered into three bonds for securing the payment of money to the petitioners, and by indentures of lease and release, dated the 9th and 10th June, 1826, conveyed freehold property, for the purpose of securing the payment of the money due on such bonds. That, two years after the execution of such securities, a commission of lunacy was issued against the party, under which he was found to have been of unsound mind, from the 5th March, 1826. The petitioners stated, that the finding of the inquisition was erroneous, in so far as it declared, that the lunatic had been of unsound mind from the 5th March, 1826, and that they believed that they could establish the validity of the said securities beyond all doubt, if allowed the opportunity of doing so. The petition prayed that an issue might be directed to inquire of the state of mind of the lunatic, on the 12th day of June, 1826, when the deeds and bonds were executed; or, that the petitioners might be at

(*m*) F.N.B. 106; *Leach v. Thompson*, Show. P. C. 152; *S. C. Comb.* 468. (*o*) Staunf. Pr. Reg. 34; 8 Rep. 170 b; *ante*, p. 11.

(*p*) Crompt. on Courts, 117 a; 4

(*n*) 50 Ass. pl. 2, Br. Abr. tit. Rep. 126 b.

"Idiots," 4 Rep. 59.

liberty to traverse the inquisition. The Lord Chancellor ordered that issues should be tried in the Court of King's Bench in the city of London, before a special jury of the city, to inquire whether the lunatic was a person of unsound mind, so that he was not sufficient for the government of himself, his manors, &c. at the time when he executed the indentures of the 9th and 10th June, 1826, and the bonds; and if he was not at that time a person of unsound mind as aforesaid, whether the said indentures or bonds were invalid; and it was ordered, that the petitioners should be plaintiffs in the said issues, and the committee of the estate of the lunatic defendant; and the consideration of further directions and costs was reserved until the return of such issues (q).

There is an instance, however, of a Court of equity having decided on the insanity of a party, upon the testimony of witnesses, without a trial at law. Thus, in a case, where an assignment of a lease had been obtained by undue influence, and for an inadequate consideration, from a person who was afterwards found a lunatic by inquisition, the Court of Chancery in Ireland set aside the transaction, on the ground of the insanity of the party, without a trial at law; and this decree was affirmed on appeal to the House of Lords (r).

It is laid down by Lord Coke, that if an idiot or lunatic make a feoffment in fee, it cannot be avoided by the party's pleading that he was an idiot or a lunatic when the feoffment was executed. But, upon office found for the King, the King shall avoid the feoffment for the benefit of the *non compos*; for, although the parties themselves cannot be received to disable themselves, yet a jury, upon their oaths, may find the truth of the matter (s).

It is said, however, in *Fitzherbert* (t), that the writ of *dum fuit non compos mentis* lies for him who has aliened

(q) *In re Humpleby*, 1st June, Shepp. Touchst. 289. 1829.

(t) Fitz. N. B. 504, 2 vol. p. 202,

(r) *Evans v. Blood*, 3 Bro. P. C. ed. 1794. See Booth on Real Actions, p. 189.

(s) Co. Litt. 247. a.; 4 Rep. 127 a;

his land in fee simple, tail, for life or years, whilst he was of unsound mind; but this cannot be reconciled with the maxim, that a man shall not stultify himself. It is clear, that the heir of the *non compos* may have this writ in case of any alienation of his ancestor by matter *in pais*, but not by matter of record, or he may enter, and, consequently, maintain an ejectment, which, of course, is the remedy adopted in modern practice (u).

It is not necessary for the heir to have a *scire facias* to avoid the feoffment of his ancestor made during his lunacy, for he may enter without it; because, by the death of the ancestor, the title which the feoffee claimed under him is determined; but, the King cannot, during the life of the *non compos*, avoid the feoffment, without a *scire facias* (v).

Although at law a person of non-sane mind is not allowed to plead his own incapacity, yet, there are two classes of persons who, at his death, may avoid his deeds, by shewing his insanity, *vis. privies in blood*, as heirs, and *privies in representation*, as executors or administrators, who represent the person of the testator and intestate; the former may shew the disability of their ancestor, the latter the infirmity of their testator or intestate. But this privilege is not allowed to *privies in estate*, as donee in tail and reversioner, or remainder-man in fee, nor to *privies in tenure*, as lord by escheat (w). And, therefore, if donee in tail, being *non compos mentis*, make a feoffment in fee, and die without issue, the reversioner or remainder-man cannot enter, nor take advantage of the disability of the donee; so also, if *non compos* make a feoffment in fee, and die without an heir, the lord claiming by escheat cannot avoid it (x). This distinction made by Lord Coke was said (y), in argument, to have been only an extrajudicial opinion, founded on no authority; for there is no reason to be given, why *privies in estate* should not avoid such acts done by their ancestors as well as *privies*

(u) Litt. s. 405; Co. Litt. 247. b.; (w) *Beverley's case*, 4 Rep. 124 b; Booth on Real Actions, p. 189; 1 8 Rep. 43 b, 44 b.

Roscoe on Real Actions, pp. 92, 93. (x) 4 Rep. 124.

(v) *Thompson v. Leach*, Comb. (y) 3 Mod. 307. See *ante*, p. 257. 468.

in blood, because the incapacity of the grantor extends to both.

It should be observed, that most of the authorities adopt the principle, that a man shall not be allowed to stultify himself; and although this rule seems in some instances to have been relaxed (*y*), yet it does not appear to be settled, that even now a person who has executed a deed or contract when of unsound mind can, on returning to his senses, avoid it at law, by pleading his past incapacity. It is clear, however, that, after a man has been found a lunatic by inquisition, his committee may institute a suit on his behalf, for the purpose of setting aside deeds which were made during his insanity (*z*).

Lunatics, after they have been so found by inquisition, cannot alien their estates (*a*), until the commission has been superseded, and they have been restored to their property (*b*). The power of the person intrusted by the King's sign manual with the commitment of the estates of lunatics, to alien their property, will be the subject of future consideration (*c*).

Idiots and lunatics, it is said, are capable of purchasing lands, and, on recovering their senses, cannot waive the purchase, and if they agree to it, their heirs cannot avoid it after their deaths; although, if they die in their madness, or without having confirmed the purchase after they were restored to mental capacity, the transaction may be avoided by their heirs after their deaths (*d*). It was formerly said, that a *non compos* could not take under a grant of a copyhold, because he is incapable of fulfilling the duties of a copyholder, or of appointing a deputy (*e*). But there can now be no doubt but that a *non compos* may be the grantee of a copyhold estate (*f*).

(*y*) See *post*, Chap. ix. where the other authorities on this subject are collected.

(*z*) See *post*, Chap. x. s. 1.

(*a*) 4 Rep. 127 a; Dyer, 26 a.

(*b*) See *ante*, p. 207.

(*c*) See *post*, Chap. viii.

(*d*) Co. Litt. 2. b.; 2 Vent. 203; 2 Bl. Comm. 291, 292; Bac. Abr. tit. "Idiots and Lun." (D.)

(*e*) Calth. 51.

(*f*) Shepp. Court Keep. p. 115; Co. Cop. s. 35; Bryd. p. 64, s. 27. See *ante*, pp. 14, 191, 192.

SECTION III.

Of Proceedings in Courts of Equity, for avoiding the Deeds and Contracts of Lunatics and Persons of Weak Minds.

AS justice is always, on the one hand, anxious to protect persons of weak minds from their own acts, and, where insanity is established at the time when deeds are executed, will set them aside, whether in their nature such as ought to be executed or not; so, on the other hand, if a man of weak intellect is a party to a deed which would not be improper if entered into by a man of the strongest mind, it is not for Judges to say, that because a person has at one moment, been afflicted with such a malady, he shall therefore never be restored so as to be competent effectually to do an act which a moral and good man would think it proper to do (*g*).

When a suit is instituted for the purpose of setting aside a deed or contract, on the ground of the insanity of the party at the time of its execution, an issue will generally be directed to try that fact, in order to inform the conscience of the Court (*h*). Thus, where a bill was filed against the co-heiresses of a mortgagor for payment of a sum alleged to have been advanced by him upon a deposit of title deeds and an agreement for a mortgage on the 2nd July, 1815, and for sale of the estate on which it was agreed to be charged, for payment of the mortgage debt; and it appeared that the mortgagor died intestate, and the defence set up was, that, at the time of such deposit, he was not in a state of mind capable of entering into any valid contract or of binding his estates, having been afflicted with insanity of mind, and having, on the 15th July, 1815, put an end to his existence, when in a state of lunacy—The Vice-Chancellor directed the parties

(*g*) *Per Lord Eldon*, 5 Dow, P. C. 235. den and Minor Canons of *St. Paul's v. Morris*, 9 Ves. 155; *Pemberton v.*

(*h*) See *post*, Chap. x. ss. 1, 2; *Richards v. Symes*, 2 Atk. 319; *The War-Pemberton v.* 11 Ves. 50; *Hampson v. Hampson*, 3 Ves. & Ben. 41.

to proceed to a trial of an issue in an action of trover, to be brought by the defendants against the plaintiff for recovering a deed in his possession: the defendants were ordered to admit that they were co-heiresses of the mortgagor, and that there was no outstanding estate, and that they had the title deeds of the estate in their possession (i).

On the trial of the issue it was contended, that, by the law of England, there was no such thing as *partial insanity* (k); that a man insane on one point was incompetent to manage his own affairs; and that such a man was a fit object of a commission of lunacy, because no one could tell how his morbid feelings on one subject might influence his conduct in others, Mr. Baron Garrow, in his charge to the jury, said, that whether there might or might not be partial insanity, there might undoubtedly be lucid intervals, in which the wildest madman might be capable of disposing of his property or binding himself by contract. If the jury thought that the deeds were deposited by way of equitable mortgage, and that, at the precise time they were so deposited, the party understood what he was doing, and was competent to that particular act, they ought to find for the defendant; which they did accordingly (l).

It was afterwards decreed by the Court of Chancery, that it should be referred to the Master to take an account of the principal and interest due in respect of the sum claimed by the plaintiff, and to tax the costs of the suit and of the trial at law, and that the administratrix of the mortgagor should pay to the plaintiff what should be found due for such principal, interest, and costs (m).

In another case, where a bill was filed in Chancery by the committees of a lunatic to set aside conveyances, and it appeared that the grantor was, in and previously to 1802, a person of unsound mind, and addicted to drinking to excess, in which he was encouraged by the defendant, who had, after

(i) *Grindley v. Davies*, Reg. Lib. ley, Shrewsbury Summer Assizes, 1 A. 1821, fol. 1738. Aug. 1822.

(k) See *ante*, p. 43, *post*, Chap. (m) *Grindley v. Davies*, Reg. Lib. vi. s. 6. A. 1822, fol. 2244.

(l) *Davies and Another v. Griad-*

that time, obtained leases and conveyances in his own favour of the property of the lunatic; who, in the year 1822, had been found of unsound mind under a commission of lunacy from 1792 up to the period of the inquisition. Issues were directed to try, whether, at the time of the execution of each deed, the plaintiff was a person of unsound mind, so as not to be sufficient for the government of himself, his lands, and chattels (*n*).

A person's being of weak understanding is not of itself any objection in law to his disposing of his estates, if he be legally *compos mentis*; whether wise or unwise, he is the disposer of his own property, and his will stands as a reason for his actions. Neither Courts of law nor equity examine into the wisdom or prudence of men in disposing of their estates: the rules of judging of insanity are the same in Courts of equity as in Courts of law (*o*). There are frequent instances in equity, where not only idiots and lunatics, but also persons of weak understandings, have been relieved, when they appeared to have been imposed upon in their dealings; and unreasonable purchases and securities, which had been obtained from them, have been set aside in their favour, where want of consideration, or the improvident nature of the transaction, has raised a presumption that fraud and misrepresentation were employed.

The Roman laws (*p*) drew a line between liberality and profusion; which considered immoderate extravagance—“*inconsulta largitio*”—as a distemper of the mind, and treated a “*prodigus*,” as a madman: they said, “*expedit*

(*n*) *Murley v. Templeman*, Reg. Lib. B. 1825, fol. 1310.

(*o*) See *Osmond v. Fitzroy*, 3 P. Wms. 129; 2 Atk. 327. *Ante*, p. 37.

(*p*) The Roman lawgivers thought it for the interest of the public to take care that particular persons should not foolishly and riotously squander away their estates; and, therefore, when any person grew prodigal to that excess, that it was necessary to

restrain him, the magistrates interdicted him the administration of his estate, and committed the care of it to a *curator*, till the owner should give greater proofs of his prudence and discretion. Domat, by Strahan, 1 Vol. p. 25, note; Dig. lib. 27, tit. 10; Ayliffe's Civil Law, book 2, tit. 40; Inst. of the Laws of Holland, by Henry, p. 110.

reipublicæ nequis suâ re male utatur." They thought it safer for the public, as well as kinder to individuals, to lay by their estates, whilst they were under the tyranny of their passions, and reserve them for their use, when under the direction of reason. But our laws strike no such boundary; "*stat pro ratione voluntas,*" is the law with us; every man may give a part or all of his fortune to the most worthless object in the creation; and the Court of Chancery never did rescind or annul donations, merely because they were improvident, and such as a wise man would not have made, or a man of very nice honour would not have accepted; nor will that Court measure the degrees of understanding, and say, that a weak man, provided he is out of the reach of a commission, may not give, as well as a wise man. But though that Court disclaims any such jurisdiction, yet, where a gift is immoderate, bears no proportion to the circumstances of the giver; where no reason at all appears, or the reason given is falsified, and proved to be a fiction, and the giver is a weak man, of a facile easy temper, liable to be imposed upon, the Court will look upon such a gift with a very jealous eye, and very strictly examine the conduct and behaviour of the persons in whose favour it is made; if it see that any arts or stratagems, or any undue means have been used by them to procure such a gift; if it see the least speck of imposition at the bottom, or that the donor is in such a situation with respect to the donee as may naturally give him an undue influence over him, if there be the least *scintilla* of fraud; in such a case the Court of Chancery will interpose (*q*); and, by the exercise of such a jurisdiction, it is so far from infringing the right of alienation, which is the inseparable incident to property, that the Court acts upon the principle of securing the full, ample, and uninfluenced enjoyment of it (*r*).

A voluntary conveyance, which a woman of weak under-

(*q*) *Gartside v. Isherwood*, 1 Br. Others, Wilmot's notes, 60, 61; C. C. 560.

S. C. 2 Ves. sen. 627.

(*r*) *Bridgeman v. Green* and

standing was prevailed upon to execute, was set aside as fraudulent (s).

Where a conveyance of an estate of 40*l.* *per annum* had been obtained from a man of seventy-two years of age, and of very weak intellect, in consideration of an annuity of 20*l.* secured by a covenant only, and he lived only two years afterwards; and where neither instructions for preparing the deed were given by him, nor was it read over to him, nor left in his possession:—on a bill by the heir-at-law, the defendants were directed to reconvey the estate, deliver up the writings, and restore the amount of the rents received beyond the annuity (t).

In another case, the heir-at-law of Sir John Lee filed a bill to set aside a conveyance, by indentures of lease and release, of an estate to the defendant, Vade, on the ground of fraud, imposition, and undue influence. Sir John Lee was so silly, that they married him without his being sensible of it; and Vade had such an influence over his mind, that, when he was outrageous, the bare name of Vade would quiet him, as a nurse would a child. He gave no instructions for the conveyance, nor was it read over to him, nor left in his possession; and although a power of revocation was inserted, which required the presence of three particular persons, (their executors or administrators,) living distant from each other, not one of whom Sir John knew: nor was it probable that he could have brought them together had he known them; it did not even appear that he was sensible of the existence of such a power. The attorney, moreover, who drew the deed, charged the property with an annuity of 40*l.* payable to himself and his wife, and the survivor of them. Lord Chancellor *Hardwicke* directed the conveyance to be delivered up, with immediate possession of the property; and Vade to pay the costs (u).

Courts of Equity hold a very strict hand over all deeds and conveyances obtained from persons soon after coming

(s) *White v. Small*, 2 Ch. Cas. 103. Br. P. C. 230.

(t) *Clarkson v. Hanway*, 2 P. (u) *Bennet v. Vade*, 2 Atk. 325, Wms. 203. See *Filmer v. Gott*, 4 529.

of age, by parties presuming too much on the confidence reposed in them, and obtaining deeds from the person under their charge (*v*). Therefore, where the parents of a young nobleman had intrusted a servant to take care of an infant heir on his travels, and to prevent his being imposed upon; and the servant continued with him until he was twenty-seven years of age, when he prevailed upon him to enter into a bond, to pay him a thousand pounds, which bond was prepared by the servant himself and kept a profound secret—The Court relieved on the ground of fraud, and decreed the bond to be delivered up, saying, that the servant, instead of acting agreeably to his trust, had been guilty of imposition; and that a breach of trust was of itself evidence of the greatest fraud; because a man, however careful otherwise, was apt to be off his guard when dealing with one in whom he reposed a confidence (*w*).

In one case, instruments obtained from a man who was represented to have been of weak understanding, shortly after he came of age, by the influence of persons who were or had been in a fiduciary character towards him, and who, instead of plundering him, ought to have protected his interests, were set aside thirty years after the execution (*x*).

Where a person, who had been a lunatic from his childhood, executed a conveyance of his whole property in favour of the keeper of a house for the reception of lunatics and his daughter, whilst residing under their care, it was set aside as fraudulent (*y*).

An agreement made in favour of a nephew by a person on his death bed, who, though not absolutely of nonsane mind, yet was in such a state of imbecility arising from indisposition, that he might easily at the time misconceive the effect of the agreement, was set aside by the Court of Chancery, on the ground that the uncle neither knew nor un-

(*v*) *Dawson v. Massey*, 1 Ball & 2 Ves. sen. 259. Beatty, 219.

(*w*) *Osmond v. Fitzroy and Another*, 3 P. Wms. 129. See *Nantes v. Corrock*, 9 Ves. 182; *Cray v. Mansfield*, 1 Ves. sen. 379; *Oldham v. Hand*,

(*x*) *Aylward v. Kearney*, 2 Ball & Beatty, 463. See *Hatch v. Hatch*, 9 Ves. 292; *Say v. Barwick*, 1 Ves. & Bea. 195.

(*y*) *Wright v. Proud*, 13 Ves. 136.

derstood the contents of the instrument, and that advantage had been taken of his circumstances to obtain his signature (x).

The fact of a deed having been prepared by the party who takes a benefit under it, is generally considered a suspicious circumstance, and raises a presumption of fraud (a); but it is not decisive, and may be rebutted by shewing that the party has not abused the confidence placed in him (b). For, where an instrument is prepared by the direction of the party who seeks advantage from it, and the other party has no person with whom he consults on the subject, or any thing is withheld from a person so consulted, a great degree of jealousy attends the instrument; because the party from whom it is obtained has not the ordinary guard about him; and consequently, it becomes the duty of the person seeking benefit from the instrument, to shew that the person employed by him did conduct himself fairly and honestly in the transaction; and he has generally the means of doing so, by the testimony of the person who prepared the deed, as far as that testimony is deserving of credit. But where a deed is prepared by the party himself who seeks the benefit of it, without the intervention of any other person, that circumstance alone is sufficient to raise a suspicion of fraud; and the instrument is to be viewed with the greatest jealousy, because the person with whom he deals is thus deprived of the opportunity of any disinterested testimony on the subject; and, for this reason, instruments obtained by attorneys from their own clients are always viewed with extraordinary jealousy (c). And a Court of equity, upon general principles of policy, will frequently set aside gifts and other deeds executed by a client in favour of his attorney, during

(x) *Willan v. Willan*, 16 Ves. 72; *Batch v. Symes*, Turn. Rep. 91, 92.

S. C. 2 Dow, P. C. 274.

(c) *Per Lord Redesdale*, in *Watt*

(a) *Watt v. Grove*, 2 Sch. & Lef. v. *Grove*, 2 Sch. & Lef. 502-3. See 503; *Harris v. Tremeneheere*, 15 Ves. *Huguenin v. Baseley*, 14 Ves. 273; 40; *Goddard v. Carlisle and Others*, *Saunderson v. Glass*, 2 Atk. 296. 9 Price, 169. See *post*, Chap. vii. s. 11. See 3 Hagg. Eccl. Rep. 587; *post*,

(b) *Paine v. Hull*, 18 Ves. 475; s. 11.

the continuance of such relation, even without any proof of actual fraud (d).

A suit was instituted in the Court of Chancery of the Isle of Man, for the purpose of setting aside two deeds, on the ground that the grantor in both of them was of unsound mind at the time that he executed them, and that they had been obtained from him by fraud and undue means. The decree ordered the two deeds to be vacated and set aside; from that decision there was an appeal to the King in Council. In this case an old man, feeble both in body and mind, separated from all his relations, without a friend to advise him, and surrounded by those only who were contriving to get his fortune, conveyed away nearly all that he was possessed of, even the house in which he lived, to persons not related to him, either in blood or connexion: and all his estate in lease was to become the property of the same strangers after his death. The consideration of 100*l.* was inserted for conveying away property worth 1,400*l.*; and such 100*l.* was not to be paid to the grantor, but to his executor after his death, without any interest being charged on it in the mean time—Lord *Wynford* said, the law will not assist a man who is capable of taking care of his own interest, except in cases where he has been imposed upon by deceit, against which ordinary prudence could not protect him. If a person of ordinary understanding, on whom no fraud has been practised, makes an imprudent bargain, no Court of justice can release him from it. Inadequacy of consideration is not a substantial ground for setting aside a conveyance of property (e). But those, who from imbecility of mind are incapable of taking care of themselves, are under the special protection of the law. The strongest mind cannot always contend with deceit and falsehood; a bargain, therefore, into which a weak one is drawn under the influence of either of these, ought not to be held valid, for the law requires that good faith should be observed in all transactions between

(d) *Welles v. Middleton*, 1 Cox, Gross inadequacy of consideration 112; *Wood v. Downes*, 18 Ves. 120. may afford evidence of fraud. *Gart-*

(e) *Sugd. Vend. & Pur. c. 5, s. 1. side v. Isherwood*, 1 Br. C. C. 563.

man and man. If this conveyance could be impeached on the ground of the imbecility of the grantor only, a sufficient case has not been made out to render it invalid; for the imbecility must be such as would justify the jury under a commission of lunacy, in putting his property and person under the protection of the Chancellor (*f*); but a degree of weakness of intellect, far below that which would justify such a proceeding, coupled with other circumstances, to shew that the weakness, such as it was, had been taken advantage of, will be sufficient to set aside any important deed. His Lordship, after noticing some suspicious circumstances, which would have been sufficient to invalidate the deeds, although the conveying party could not have been proved to be in such a state of mental imbecility as would have supported a commission of lunacy, concluded by observing, that all the facts united to form one consistent body of proof of imbecility in one party, and cunning and deceit in the others who were concerned in this transaction, and dismissed the appeal with costs (*g*).

By the law of Scotland, although facility of itself is not sufficient to set aside a deed, yet, if it be combined with any other circumstance, indicative of an undue advantage having been taken of the facile person, the deed is ineffectual; and where, upon the face of the transaction, it appears so grossly unequal and irrational, that it is plain it could only have been brought about by a fraudulent advantage having been taken of the facility of the grantor, it will be sufficient to avoid it (*h*). And it was held by the House of Lords, in a case on appeal from the Court of Session, that it was necessary to shew that a party who was proved to have been naturally weak in intellect and facile, but who was legally capable of making a deed, understood a deed executed by him; and that not having been done, it was set aside in favour of his heir (*i*).

(*f*) See 2 Ves. sen. 409; *ante*, p. 92.

(*h*) *M'Neal v. Moir and Others*, 2 Shaw, 206.

(*g*) *Blachford v. Christian*, Knapp's Rep. of Cases before the Privy Council, 1 Vol. pp. 73—82. See *Griffith v. Robins*, 3 Madd. 191.

(*i*) *White v. Ballantyne*, 1 Shaw, Rep. of Appeal Cases from Scotland, p. 472.

CHAPTER VII.

OF THE WILLS AND TESTAMENTS OF LUNATICS.

1. **IDIOTS**, lunatics, and persons of unsound mind, are incapable of making wills of lands or chattels by common law; and, by the statute of wills (*a*), it is declared, that wills or testaments made of any lands or hereditaments by any idiot, or by any person *de non-sane memory*, shall not be taken to be good or effectual in the law.

Every person is presumed to be of sound mind until the contrary is proved; therefore, it is incumbent on the party attempting to defeat a will on the ground of the testator's insanity, to prove the existence of such disability (*b*).

It was observed by Sir *John Nicholl* in a recent case (*c*), that it is a great, but not an uncommon error, to suppose, that, because a person can understand a question put to him, and can give a rational answer to such question, he is of perfect sound mind, and is capable of making a will for any purpose whatever, whereas the rule of law, and it is the rule of common sense, is far otherwise; the competency of mind must be judged of by the nature of the act to be done, and from a consideration of all the circumstances of the case. In *Combe's case* (*d*), it was agreed by the Judges, "that the sane memory for the making of a will is not at all times when the party can answer to any thing with sense, but he ought to have judgment to discern and to be of perfect memory, otherwise the will is void." And again, according

(*a*) 34 & 35 Hen. 8, c. 5, s. 14. Rep. 598.

(*b*) Swinb. on Wills, by Powell, 1 (c) 2 Hagg. Eccl. Rep. 122.

Vol. p. 119; *Evans v. Knight* and (d) Moore's Rep. 759; *S. C. Vin. Moore*, 1 Add. 382; 3 Hagg. Eccl. Abr. tit. Devise (A). pl. 22.

to Lord *Coke* (e), "it is not sufficient that the testator have a memory, when he makes his will, to answer familiar and usual questions, but he ought to have a disposing memory, so that he is able to make a disposition of his lands with understanding and reason; and that is such a memory as the law calls sane and perfect."

In one case it was laid down, that, although a man have a mind of sufficient soundness and discretion to regulate his affairs in general, yet, if such a dominion or influence be obtained over him as to prevent his exercising such a discretion in the making his will, he could not be considered as having such a disposing mind as would give effect to it, although the evidence to establish such a case was not determined; and that it was not necessary to go so far as to make a man absolutely insane, so as to be an object for a commission of lunacy, in order to determine the question whether the testator was of sound and disposing memory and understanding; a man perhaps might not be insane, and yet not equal to the important act of disposing of his property by will (f).

If the party, relying upon the testator's insanity, prove its existence before the making of the will in question, the law will presume the continuance of the disorder at the time of making such will, until the contrary be shewn, unless, indeed, the attack was only of a slight nature, of short duration, or owing to some accidental cause which had been removed, or a long period had elapsed since the commencement of such temporary disorder, and the making of the will (g).

Although an idiot is incapable of making a will, yet, he that is only of a mean capacity or understanding, or one who is, as it were, between a man of ordinary capacity and an idiot, is not prohibited from making a will or testament, if he has sufficient understanding to comprehend its nature and effect. If an idiot make a will, reasonable and wise in

(e) *Marquis of Winchester's case*, 6 Rep. 23; *Hetl.* 120; 2 *Bulst.* 211; 1 *Vol. p.* 120; *Groom and Evans v. Godolph.* *Orp. Leg.* 26, 27. (g) *Swinb. on Wills*, by Powell, *Thomas and Thomas*, 2 *Hagg. Eccl.*

(f) *Mountain v. Bennett*, 1 *Cox*, Rep. 433.

itself, it will not be valid; for the presumption of law is against the validity of all the legal acts of an idiot (*h*); but if it be shewn, that a rational will proceeded from, and was dictated by, a person commonly reputed to be an idiot, it would be strong evidence to prove that he was not so.

An old man, become childish, and so forgetful as not to remember his own name, cannot make a will; neither can a drunkard, who, by excessive intoxication is deprived of the use of his understanding and reason (*i*). Intoxication is in truth temporary insanity: the brain is incapable of performing its proper functions; there is temporary mania; but that species of derangement, when the exciting cause is removed, ceases, and sobriety brings with it a return of reason (*k*).

But where no fixed and settled delusion is shewn, and consequently no decided insanity, and an extravagant act of a party can be accounted for by the excitement of liquor, while at all other times his mind was sound; in order to avoid a will made by him, it must be proved that he was so excited by liquor, or so conducted himself during the particular act, as to be at that moment legally disqualified from giving effect to it (*l*).

A testator must have perfect ability and capacity in point of discretion and understanding, as a rational man, at the time of making his will; for, if a man be *non compos mentis* at the time of making it, though he afterwards become a man of sound judgment and memory, yet the will is void, because he wanted the disposing power at the time of its inception (*m*). If a man of sound mind makes his will, and afterwards becomes *non compos mentis*, he cannot revoke it during the continuance of such disability; and a subsequent loss of intellect is no revocation (*n*). For supporting the validity of the will, notwithstanding the subsequent incapacity of the testator, the rule of the common law is conformable to the civil, "*Nam neque testamentum recte factum, neque ullum aliud negotium recte gestum, postea furor interveniens perimit (o).*"

(*h*) Swinb. on Wills, by Powell, 1 Vol. p. 128; Shepp. Touchst. 403. (*l*) Id. 608. See *Cory v. Cory*, 1 Ves. sen. 19; 3 P.Wms, 130, n. (A).

(*i*) 8 Rep. 22, 23.

(*m*) 11 Mod. 157.

(*k*) Fonbl. Treat. on Eq. pp. 67, 68,

(*n*) 4 Rep. 61 a.

5th ed.; 3 Hagg. Eccl. Rep. 602.

(*o*) Inst. lib. 2, tit. 12, s. 1.

To all persons who are in any degree conversant with proceedings in Courts of justice, it is well known that, upon the point of capacity, evidence apparently the most contradictory frequently occurs, which may easily be accounted for, without imputing to either set of witnesses intentional falsehood. In the first place, it may be observed that a large portion of evidence as to capacity, is evidence of mere opinion; and upon matters of opinion mankind differ even to a proverb. In the next place, there is no *fixed* standard by which each witness forms his opinion of capacity; one person seeing a testator in extreme age or under extreme sickness, thinks, that if he knows those about him, and can answer an ordinary question with respect to the state of his illness, or of his wants, such and similar matters render him capable of giving effect to a disposition by will, however complicated it may be, by the mere formal execution of the instrument; while another person may be of opinion, that though a testator, in the ordinary management of his affairs, can hold reasonable conversation, can fully comprehend all the usual and simple transactions of life, yet, if he is unable to take the active management of all his concerns, however involved those concerns may be, or if he is liable to become confused by entering into intricate transactions, he is totally incapable, and cannot enter into a testamentary disposition, however plain and simple it may be. Now, where opinions are formed by such different standards, it is obvious that much contrariety will occur (o). Sir *John Nicholl* observed, that experience in the Ecclesiastical Court teaches us, that evidence upon questions of capacity is almost always contradictory, such evidence being commonly that of opinion merely; and this contrariety proceeds from the obvious grounds, that, of the witnesses, no two, possibly, have seen the party whose state is deposed to, at precisely the same time, and under precisely the same circumstances; and that each, again, of the several witnesses, however numerous, measures, possibly, testamentary capacity by his own particular standard. These sources of discrepancy,

(o) *Kinleside v. Harrison*, 2 Phill. 456, 457.

and many more might be enumerated, are common to all cases of this description. There is an additional source, when the transaction of which they have to speak is remote, a circumstance sufficient in itself to account for a no inconsiderable degree of contrariety of evidence, even where the witnesses have to speak of *facts* merely, and not to opinions formed, and inference built, upon facts, of which most of the evidence furnished on questions of capacity is commonly made up. If the Court, therefore, on questions of capacity, generally, is accustomed to rely but little on such evidence, so far as it is that of *mere* opinion, but to form its own judgment from the facts and the conduct of the parties at the time—it becomes it to do so, more peculiarly where much of the evidence not merely consists of opinions delivered long subsequently to the transactions which they profess to have suggested them—upon loose recollections too, and after repeated discussions of the subject matter with interested parties (*p*).

In a case where there was great conflict of opinion amongst the witnesses as to the capability of a testator, some being of opinion that he was decidedly incapable; some, that his capacity was in no degree affected; others, that, though capable, his mind was shaken—Sir *John Nicholl* said, the just result is, that the testator's faculties were in a degree damaged and deteriorated, but that he was not intestable; that his capacity was so far impaired and fluctuating, that the Court would require not only the mere fact of execution, but also satisfactory evidence of instructions, and proof of volition and intention (*q*).

Where a length of time has been suffered to elapse, witnesses even to facts will be inaccurate, and the Court must be prepared for variation in the relation of circumstances by the most credible and most respectable; but what is the Court to expect upon matters not of fact, but of opinion, when parties have enlisted themselves, as it were, on one side or the other? In all cases of opinion as to capacity, the

(*p*) *Evans v. Knight*, 1 Add. 239, 240.

(*q*) *Williams v. Goude and Bennet*, 1 Hagg. Eccl. Rep. 594, 595.

Court invariably finds conflicting evidence; the person is seen at different times and under different circumstances; and, therefore, where a great number of the witnesses describe a testator as being in a state of absolute fatuity and idiocy, others assert that his mind was not at all deteriorated; others, again, take a middle course; and there is no reason to suppose that such opinions are not sincerely given—the Court can only reconcile them by supposing that his capacity fluctuated; but, it may at the same time judge a little of the credit due to the different opinions, from observing how the facts are laid (*r*).

Witnesses speaking to transactions and conduct spread over many years, and not to specific facts fixed by time, place, and circumstances, are apt to describe occasional extravagances as constant and perpetual habits (*s*).

The criterion by which the capacity of a testator is to be examined, especially where there is much contradictory evidence, can only be drawn from his acts. The mere opinions of witnesses on this point, being drawn from very different standards, are of little weight, and must fluctuate, from their different abilities to form an opinion, from their different opportunities of seeing the person, and from the different condition of the testator's mind or humour at different times. Thus, the capacity of a testator of a very advanced age, and subject to occasional incapacity from violent nervous attacks, was established on the proof of acts inferring his general possession of reason, notwithstanding much conflicting evidence of witnesses (*t*). Lord *Redesdale* seems to have expressed an opinion, that a person might be capable of making a codicil to his will, though not of doing any thing which requires deliberation, as a bargain (*u*).

The manner in which a will has been written and executed, and the contents of the will itself, coupled with the situation of the testator, and the circumstances under which it was made, afford important evidence as to his capacity (*v*).

(*r*) 1 Hagg. Eccl. Rep. 589—591.

(*u*) 2 Dow, P. C. 283. See 2 P.

(*s*) 3 Hagg. Eccl. Rep. 603.

Wms. 270; 1 Eq. Cas. Abr. 406.

(*t*) *Kinleside v. Harrison*, 2 Phill.

(*v*) 9 Ves. 610.

And it seems, that, from such evidence alone, where the terms of the supposed will are such as tend to exclude the supposition of the maker's sanity, the jury may decide against the validity of the will. But it is clear, on the other hand, that it is not sufficient to shew that the dispositions of the will are imprudent and unaccountable (*w*). It was said by Lord *Eldon*, that subsequent papers written by a testator, though evidence of his competence, are regarded with considerable jealousy (*x*). There are cases of wills being established, which were made during the intervals of delirium, because they have contained internal evidence of their being reasonable, and such as a man in his senses may be supposed to have made. So, the question must depend materially on the will itself, the circumstances of its attestation, and its reasonableness, which may be such as to establish the will without any dispute (*y*).

In one case, where it was admitted that, according to the coroner's inquest, the testator must be taken to have been insane at the time he committed an act, in consequence of which he died—it was said, that it did not follow that he continued insane during the whole interval from the commission of that act to his death, or that he was so at the time of making his will (*z*).

And in one case, where there was no evidence of the deceased's insanity at the time of or prior to instructions for his will, the commission of suicide, three days afterwards, was held not to invalidate the paper by raising an inference of previous derangement (*a*).

And in another case, where the attesting witnesses to a will, disinterested medical men, gave evidence strongly in favour of the testator's sanity, the Ecclesiastical Court would not set aside the will on proof by interrogatories, without plea, that the deceased, many years before, had been under an insane delusion (*b*).

Where clear, decided, and undoubted insanity has been

- (*w*) *Burr v. Davall*, 8 Mod. 59. (*a*) *Burrows v. Burrows*, 1 Hagg.
 (*x*) 19 Ves. 506. Eccl. R. 109.
 (*y*) *Levy v. Lindo*, 3 Mer. 85. (*b*) *Kemble and Smales v. Church*,
 (*z*) *Ibid.* See *ante*, Chap. 3, s. 11. 3 Hagg. Eccl. Rep. 273.

established to have once existed before the contested transaction, acts otherwise of a doubtful character may become of more force in proof of its existence at the time in question than if no previous derangement had appeared. Even acts decidedly of an insane character, occurring after the transaction, may reflect back upon acts otherwise equivocal, about the time of the transaction itself, or on the general deportment of the party; but, where there are no decided acts proved ever to have taken place, when all the acts are equivocal, when they may be attributed to other causes, to violent passion, to intoxication, operating upon a mind naturally excitable—it does not appear that, in any case, such equivocal acts, however numerous, have been held to establish insanity (c).

2. *Non compos mentis* is a common law disability, with respect to every disposition of property, and, consequently, what shall be considered a sound and perfect memory at the time of devising lands, is a question determinable at common law (d).

A Court of equity will not interfere in setting aside devises of land, until they have been determined invalid by a Court of law. A devisee of real estate, having filed a bill against the heir of the devisor, to be put into possession of the property devised; and the heir, by his answer, having denied the validity of the will, alleging that it was obtained by circumvention and fraud, when the testator was *in extremis*, and not of sufficient capacity, or of disposing memory—the Court was of opinion, that the suit could not be proceeded in, since, when any doubt existed as to the evidence, it was an invariable rule not to establish a will against the heir without a trial at law, and the House of Lords would reverse a decree pronounced in breach of the established practice (e).

3. It seems to be a well established principle, that a will of real estate cannot be set aside in equity, on the ground of fraud or imposition, without having been first tried at law on an issue *devisavit vel non*; the subject being proper

(c) 3 Hagg. Eccl. Rep. 599, 600. 13 Ves. 297. See Earl of Fingal

(d) 6 Rep. 23 b.

v. Blake, Molloy's Rep. temp. Hart,

(e) Dawson v. Chater, 9 Mod. 90; p. 113.

for the inquiry of a jury (*f*). A bill was filed by an heir-at-law, charging fraud and circumvention in obtaining a will, and insanity on the part of the testatrix. Lord *Hardwicke* said, he could not make a determination without a trial at law, which was accordingly directed (*g*). But an heir-at-law cannot proceed *in equity* for setting aside a will, unless there is some *legal obstacle* in the way of his bringing an ejectment (*h*). To a bill filed in a Court of equity for the purpose of setting aside a will, on the ground of insanity, may be pleaded, that the will was duly executed, and ought to prevail until declared invalid by a Court of law (*i*). In one case a will of lands was set aside after forty years possession under it, on account of the insanity of the devisor, and to the prejudice of a purchaser (*j*). But an heir-at-law contesting his ancestor's will, in a suit to establish it in equity, is not *entitled* to an issue *devisavit vel non* to try the validity of it in a Court of law in all cases, and at any distance of time, but generally will be precluded by the acquiescence of twenty years, which would bar his possessory rights at law, or if his delay put the adverse parties in a much worse situation than they would have been in if he had disputed the will originally (*k*).

A Court of law will not set aside a will on the ground of *non compos mentis*, if the party knew perfectly what he was doing when it was made. The widow of Mr. Bennett claimed the whole of her husband's property under his will. Bennett had been greatly debilitated in mind and body by habits of debauchery, and the woman effected her marriage with him by getting into lodgings opposite to him at Bath; she obtained a great degree of influence over him; and, immediately after the marriage, turned away all his

(*f*) *Bransby v. Kerrich*, 2 Eq. Cas. Abr. 406; 7 Bro. P. C. 437, Toml. ed.; 2 Atk. 324. (*j*) *Squire v. Pershall*, Vin. Abr. title "Devise," Z. (2), pl. 18. The verdict against the will, in this case,

(*g*) *Webb v. Claverden*, 2 Atk. 423. was obtained by default, on an issue directed by the Court of Chancery. See Id. 324.

(*h*) *Jones v. Jones*, 7 Price, 663; 2 Bro. P. C. 396, Toml. ed.

Jones v. Frost, Jac. Rep. 466. See (*k*) *Tucker and Others v. Sanger and Others*, 1 M^cClel. 424; S. C. 297, 298. 13 Price, 119.

(*i*) *Anon.* 3 Atk. 17.

old servants. Lord *Thurlow* was much against the will, and two issues were directed as to its validity, in both of which it was established. Lord Chief Justice *Eyre*, before whom it was tried, stated to the Jury that the point was, whether the testator knew *perfectly what he was doing*, and that they were not to enter too minutely into considerations of influence (*l*).

In another case, the plaintiff, a devisee, sought by his bill to establish a will; the defendant, the heir-at-law, was an infant, and insisted that the testator was insane when he made the will. From the evidence adduced in the cause, it was clear the testator was not insane. The Vice-Chancellor said—"An heir is, in these cases, entitled to an issue, *devisavit vel non*; the Court cannot refuse it if asked for; but, if the counsel for the infant heir is clear, from the evidence, that there is no ground to impeach the will, he is well justified in declining to ask for an issue" (*m*).

To prevent the frauds consequent upon the secret manner in which wills were formerly executed, the statute of frauds (*n*) requires every will disposing of real estate to be in writing, and signed by the devisor, and attested and subscribed in his presence, by three credible witnesses. In the construction of this statute, therefore, it has been holden, that the Legislature, when it required the witnesses to attest the signing, must, by implication, have required them to attest the capacity of signing; for, it was not merely the abstract act or form of signing which the Legislature intended as one necessary solemnity to the constitution of a devise, for, an idiot or lunatic might put his name to an instrument, and yet be perfectly ignorant of its contents; but the Legislature, in the word "*signing*," comprehended another idea, namely, signing an instrument, intending it to be a will; consequently, the mental power or capacity of willing was necessary, as well as the corporal power of putting the mark or name to constitute a signing. The business, then, of the persons required by the statute to be present at executing a will, is not barely to attest the corporal act of signing, but to try, judge, and de-

(*l*) *Bennett's case*, cited 9 Ves. 185; S. C. 1 Cox, 353.

(*m*) *Levy v. Levy*, 3 Madd. 245. (*n*) 29 Car. 2, c. 3, s. 5.

termine, whether the testator is *compos* to sign (*n*); sanity is the great fact which the witness has to speak to, when he comes to prove the attestation, and that is the true reason why a will can never be proved as an exhibit *vidæ voce* in Chancery, though a deed may; for there must be liberty to cross-examine as to sanity (*o*). In conformity to this doctrine, it was said by Lord Chancellor *Hardwicke* (*p*), that it had been determined over and over again, in the Court of Chancery, that it must be shewn that the devisor was of sound and disposing mind when a will was to be established as to real estate; proving that it was well executed, according to the statute of frauds and perjuries, was not sufficient. It is not sufficient that the testator be corporally present when he signs his will, if, in truth, he be in a state of insensibility, and, consequently, absent as to mental purposes (*q*). The execution of a will, disposing of real estate, is to be proved by the subscribing witnesses, if they are alive, and can be produced. On a trial at common law, all the circumstances may be proved by a single witness, provided there were actually three witnesses, as the statute of frauds requires (*r*). But, though the devisee need not call more than one witness, the opposite party may call the other subscribing witnesses. Should one of the witnesses refuse to swear that he saw the testator publish his will, if that fact can be proved by other sufficient testimony, the fraud of the obstinate witness will not be sufficient to defeat the testator's will (*s*). In the Court of Chancery, it is the general rule never to establish a will, unless all the witnesses are examined: because the heir has a right to evidence of sanity, from every one of those whom the statute has placed round his ancestor, as guards against fraud. This is not a mere technical rule. The design of the statute was to prevent wills which ought not to be

(*n*) *Harris v. Ingledeu*, 3 P.Wms. 93.

(*r*) *Anstey v. Dowling*, 2 Str. 1254.

(*o*) *Hindson v. Kersey*, 4 Burn's Eccl. Law, 102.

(*s*) *Dayrell v. Glasscock*, Skinn. 413; *Pike v. Balderning*, cited 2

(*p*) *Wallis v. Hodgeson*, 2 Atk. 56. Str. 1098.

(*q*) *Right v. Price*, 1 Dougl. 241.

made; and operates silently, but forcibly, by intestacy (*t*). But, though the general rule of the Court of Chancery be, that all the subscribing witnesses must be examined (*u*); yet it would be laying down the rule too largely to say, that in no case can a will be proved in equity, without such complete examination (*v*). In a recent case, where an heir-at-law filed a bill to set aside a will, and the Court directed an issue to try the capacity of the testator, and all the subscribing witnesses to the will had not been examined on the trial, it was held, on a motion for a new trial, that the rule did not apply to the case of an heir attempting to impeach a will (*w*). It was long ago held, that when the best endeavours have been used to discover and bring forward a witness, if those efforts are fruitless, the witness may be considered as dead (*x*). The rule, that the proof of the death of an attesting witness must be positive (*y*), is to be understood with some qualification; for, where one of the witnesses to a will of real estate had since become insane, proof of the handwriting of such witness was allowed, as if he were dead (*z*).

A person who signs his name as witness to a will, by this act of attestation solemnly testifies the sanity of the testator. Should such witness afterwards attempt to impeach his own act, and to prove that the testator did not know what he was doing when he made (what purported to be) his will, though such testimony will be far indeed from conclusive (*a*), and Lord *Mansfield* even held, that a witness impeaching his own acts, instead of finding credit, deserved the pillory (*b*)—yet, Lord *Eldon* has not gone so far in exclusion of such evidence, admitting, however, that it is to be received with

(*t*) *Hindson v. Kersey*, 4 Burn's Rep. 614. And see *Burrowes v. Lock*, Eccl. Law, 97—102; *Bootle v. Blundell*, 19 Ves. 500; *S. C. Cooper*, 138.

(*u*) *Townsend v. Ives*, 1 Wils. 216; *Ogle v. Cook*, 1 Ves. sen. 177.

(*v*) *Powell v. Cleaver*, 2 Bro. C. C. 503.

(*w*) *Wright v. Tatham*, ante, pp. 55—57.

(*x*) *Anon. Godbolt*, 326; *M'Kenire v. Fraser*, 9 Ves. 6.

(*y*) *Bishop v. Burton*, Comyn, title *v. Clayton*, 4 Burr. 2225.

Rep. 614. And see *Burrowes v. Lock*, 10 Ves. 474; 2 Br. C. C. 504; Lord *Carrington v. Payne*, 5 Ves. 411.

(*z*) *Bernet v. Taylor*, 9 Ves. 382; *Currie v. Child*, 3 Camp. 283.

(*a*) *Hudson's case*, Skinn. 79; *Digg's case*, cited *ibid*.

(*b*) *Walton v. Shelley*, 1 T. R. 300; *Lowe v. Jolliffe*, 1 Sir W. Bl. 366;

Rex v. Nueys and Galey, Id. 416; *Lowe v. Jolliffe*, 1 Dick. 389; *Good-*

the most scrupulous jealousy (c). Sir *John Nicholl* has perhaps laid down the most distinct rule, namely, that such testimony is not to be positively rejected; but, at the same time, no fact stated by a witness open to such just suspicion can be relied on, where he is not corroborated by other evidence (d). In a case pregnant with appearances of fraud, and resting for support on the attesting witnesses alone, these witnesses must be beyond suspicion; if at all shaken in credit, no part of their evidence can be relied on (e). It is possible, that a testamentary instrument may be established against the evidence of all the subscribing witnesses; but such a case would require strong supplementary circumstances—would require to be supported by the whole *res gestæ*, by strong probability arising from the conduct of all parties, and by the improbability of the practice of any fraud or circumvention, or the exercise of undue influence (f). And it has been lately decided, that a will may be pronounced for, though both the attesting witnesses depose to the incapacity of the deceased (g). The issue *deviavit vel non* always implies in it, where the execution is not the point in issue, a question of the capacity of the testator; that is, either his absolute capacity, or his relative capacity, where it is supposed that the particular instrument was the effect of that undue influence, which necessarily implies a degree of weakness at the time, and *quoad* that instrument, making it not an instrument arising from the fair bias of his own mind, but from the exercise of that improper influence (h). Where the evidence proves the execution of a will, but the witnesses have not been examined as to the sanity of the testator, the cause will be adjourned at the hearing, and liberty will be given to exhibit an interro-

(c) *Bootle v. Blundell*, 19 Ves. R. 288.
504; *Howard v. Braithwaite*, 1 Ves. & Bea. 208.

(d) *Kinleside v. Harrison*, 2 Phill. 499. And see *Burrows v. Lock*, 10 Ves. 474.

(e) *Brydges v. King*, 1 Hagg Eccl.

(f) *Per Sir J. Nicholl*, 2 Hagg. Eccl. R. 219. See *ante*, pp. 54, 55.

(g) *Le Breton v. Fletcher*, 2 Hagg. Eccl. R. 568.

(h) *Bates v. Graves*, 2 Ves. jun.

288, 289.

gatory to prove his sanity (i). Where a Court of law has decided in favour of a will, objected to on the ground of the testator's insanity, a Court of equity will not direct a second trial without strong reasons. A bill was filed by the devisees, under the will of Lord Chedworth, to have the will established, and the trusts carried into execution. An issue *devisavit vel non* was desired by the heir-at-law, suggesting incompetency in the testator. Upon the trial of that issue, in the Court of King's Bench, a verdict was found, establishing the will upon very clear and strong evidence of capacity apparent from the conduct of the testator, particularly his acting as a magistrate, and as chairman at the quarter sessions, and performing his duties in the House of Lords, opposed only by some circumstances of eccentricity and irregularity in dress, which came out principally upon the cross-examination, his heir having examined only one witness. A motion was made by the heir-at-law for a new trial, upon a suggestion of the expectation of further evidence, and an affidavit by Dr. Parr, expressing his opinion that the testator had not been of a perfectly sound mind, from a propensity to insanity, perhaps subsisting from his birth, and promoted by certain circumstances of his life. On the other side, several letters from Dr. Parr to the testator were produced, consulting him upon subjects of literature, expressing in strong terms an opinion of his good sense and talents, and, in one instance, recommending a clergyman for a living in his Lordship's gift, the offer of which Dr. Parr declined for himself. Lord *Erskine* said, that he should be very sorry to find a rule in the Court of Chancery, that there must be a second trial of an issue if desired, without any ground laid for it. And in a case, therefore, of a man exercising all the great public duties, which it was proved the testator in that case did, it must be shewn that he, nevertheless, had a morbid image in his mind upon a particular subject, so wide from sound understanding, that he ought not to be considered in that state; but there being no evidence of the existence of such a morbid image connected with the will in question, a

(i) *Abrams v. Winshup*, 1 Russ. 526; *Wallis v. Hodgeson*, Id. 527, n.; *S. C.* 2 Atk. 56.

new trial was refused; and, as it did not appear that the heir-at-law had wickedly and fraudulently contested the will, he was not ordered to pay the costs of the issue (j).

If a devisee brings a bill merely *in perpetuum rei memoriam*, and the heir-at-law does nothing more than cross-examine the witnesses who are produced to confirm the will, he is entitled to his costs (k). If he examines witnesses to encounter the will, then he shall not have his costs where the bill does not pray relief, nor is brought to a hearing; if the heir-at-law has an issue directed to try the will, and the will is established, as he has a right to be satisfied how he is disinherited, he shall have his costs. If he sets up insanity or any other disability against the person who made the will, and fails, he shall not have his costs; but it must be a strong case to induce the Court to give costs against him, as spoliation or secreting the will (l).

Where a bill was filed by an heir-at-law, charging fraud and circumvention in the defendant in obtaining the will, and insanity in the testatrix—Lord *Hardwicke* decreed costs against the plaintiff, observing, that it was such vexation in an heir-at-law, to bring a bill to set aside a will for insanity in the testator, when he might have proceeded at law by ejectment, that, if he failed, he should pay the costs of controverting the will. . But where an heir is brought before the Court as defendant, even though he should insist upon the will being fraudulent, or the testator being insane, and an issue is directed to try the fraud or insanity, yet the Court of Chancery will not give costs against him, though he fail in the attempt of overturning the will, but very often allows the heir his costs (m).

If an heir-at-law, alleging insanity in a deviser, file his bill against the devisee, and he fail in the issue *devisavit vel non*, he shall pay the costs of the issue, but not the costs of the suit in equity, unless he might have asserted his claim by

(j) *White v. Wilson*, 13 Ves. 87. (l) *Biddulph v. Biddulph*, 2 P. Wms. 285; 3 P. Wms. 374; *Barney v. Eyre*, 3 Atk. 387.

(k) *Vaughan v. Fitzgerald*, 1 Sch. & Lef. 316; *Blinkehorne v. Feast*, 1 Dick. 153; *Turner v. Turner*, Id. 313. (m) *Webb v. Claverden*, 2 Atk. 424.

ejection; and then his suit will be deemed vexatious, and he will be ordered to pay the costs of it (n).

The practice is well established, that, where a bill is filed against an heir-at-law, praying relief, as to have the trusts of a will carried into execution, if he, who has a great interest in the inheritance, and is favored by the law, cross-examines, he is entitled to his costs; being brought into equity, in order that the will may be established against him; and having a right to see whether he is disinherited or not. If he chooses to examine witnesses himself, the question of course will depend upon the circumstances. But the heir is indulged in going a step farther. On account of the frail and imperfect mode of examination into facts in the Court of Chancery, he has a right, *ex debito justitiæ*, to demand an issue; and if he does, setting up insanity, he shall not have costs unless he establish it; and if it appear, that, knowing the devisor was perfectly sane, he set up that pretext, he would fall within the scope of Lord *Hardwicke's* exception (o).

In a recent case, where a bill was filed by the devisees under a will against the heiress-at-law, for establishing the will, and she insisted on the testator's insanity, and on an issue *devisavit vel non*, and a verdict was given in favour of the will, the heiress-at-law was allowed all her costs in equity, on the common principle that she was merely cross-examining witnesses, which she was entitled to do; but each party was left to pay their own costs of the issue (p).

5. All acts done during a *lucid interval* are to be considered as those of a person perfectly capable of contracting, managing, and disposing of his affairs at that period, and this rule applies to *wills* as well as contracts. This has more frequently occurred upon wills. A number of questions has been raised upon the execution of a will during a lucid interval, and that being proved, the will has been held valid and effectual to all intents and purposes, for the conveyance of real and personal estate, as if the testator had never been deranged (q).

(n) *Scaife v. Scaife*, 4 Russ. 309. 278. See *Devis v. Lord Brownlow*,

(o) *White v. Wilson*, 13 Ves. 91. 2 Dick. 796.

(p) *Smith and Another v. Dear-* (q) 9 Ves. 610.

mer and Others, 3 Younge & Jerv.

Where general lunacy has been established, the parties alleging a lucid interval are under the necessity of shewing that there was not merely a cessation of the violent symptoms of the disorder, but a restoration of the faculties of the mind sufficient to enable the alleged lunatic to judge of the act he has performed (*r*). Lord *Thurlow* is reported to have said, that, "by a perfect *interval*, he did not mean a cooler moment, an abatement of pain or violence, or of a higher state of torture, a mind relieved from excessive pressure—but an interval in which the mind, having thrown off the disease, had recovered its general habit" (*s*).

Every person is presumed to be sane, until it is shewn that he has become insane; the presumption then changes; it is presumed that he continues of unsound mind, and the party setting up any instrument after insanity has manifested itself, has the burthen of proof cast upon him; he must shew recovery, and he must shew, not merely that the party whose act is the subject of inquiry was restored to a state of calmness, and to the ability of holding rational conversation on some topics, but that his mind, having shaken off the disease, was again become perfect, was sound upon all subjects, and that no delusion remained (*t*).

If a will made by a lunatic is rationally drawn up, and the nature of the disorder was such as to afford any reasonable ground to suppose that a lucid interval may have prevailed; the act itself furnishes a very strong presumption of that sound and disposing mind which is necessary to its validity (*u*).

What fell from the late Sir *William Wynne* in his judgment in the case of *Cartwright v. Cartwright* and Others (*v*), before the Delegates, on an appeal from the Prerogative Court of the Archbishop of Canterbury, expounds the law upon this point with great clearness and precision. There, the testatrix wrote her will without any collateral circumstances to indicate the fact of a lucid interval, and with her own hands, loosened from their ligatures for the purpose; she

(*r*) 9 Ves. 611. See 3 Add. 46;
11 Ves. 11.

(*s*) 3 Br. C. C. 444.

(*t*) *Groom v. Thomas*, 2 Hagg. Eccl. R. 434.

(*u*) See Swinh. on Wills, by Pow.
1 Vol. p. 125; 9 Ves. 610.

(*v*) 1 Phill. 90—121; and see

White v. Driver, Id. 84.

was alone while she performed the act, though observed through an aperture by persons in an adjoining room, who deposed, that, while engaged in doing it, she frequently left off writing, threw the torn pieces of paper in the fire, and walked about the room in a wild and disordered manner. But the paper itself had no mark of irritation; whatever outward appearance of disorder there might have been, it had no effect upon the writing itself, which was a perfectly steady and correct performance, entirely consistent with her attachments, impressions, and habits, when in a sane condition, and written without a single mistake or blot. The will was planned and completed by the testatrix without any assistance, and afterwards recognised by her. Upon this state of the case, Sir *William Wynne* decided for the validity of the will, grounding his judgment on the following principles:—

The rule of the law of England on this subject is the same as that of the civil law (*w*). “If it can be established that the party afflicted habitually by a malady of the mind has intermissions, and if there was an intermission of the disorder at the time of the act, that being proved is sufficient, and the general habitual insanity will not affect it; but the effect of it is this, it inverts the order of proof and of presumption; for, until proof of habitual insanity is made, the presumption is, that the agent, like all human creatures, was rational: but where an habitual insanity in the mind of the person who does the act is established, there the party who would take advantage of the fact of an interval of reason must prove it—that is the law; so that in all these cases the question is, whether, admitting habitual insanity, there was a lucid interval or not to do the act. The strongest and best proof that can arise as to a lucid interval is that which arises from the act itself, which is the thing to be first examined, and if it can be proved and established that it is a rational act rationally done, that is sufficient.” The rule upon this subject is thus laid down by *Swinburne* (*x*),

(*w*) *Furiosi autem, si per id tempus videntur. Inst. lib. 2, tit. 12, s. 1.*
fecerint testamentum quo furor eorum intermissus est, jure testati esse (*x*). *Swinb. on Wills, part 2, s. 3.*

‘ If a lunatic person, or one that is beside himself at some times, but not continually, make his testament, and it is not known whether the same were made while he was of sound mind and memory or no, then, in case the testament be so conceived as thereby no argument of phrensy or folly can be gathered, it is to be presumed that the same was made during the time of his calm and clear intermissions, and so the testament shall be adjudged good; yea, although it cannot be proved that the testator used to have any clear and quiet intermissions at all; yet nevertheless, if the testament be wisely and orderly framed, the same ought to be accepted for a lawful testament.’ “Unquestionably (continued Sir *W. Wynne*), there must be complete and absolute proof that the party who had so framed it did it without any assistance. If the fact be that he has done as rational an act as can be, without any assistance from another person, nothing more is necessary to be proved. There does not appear to be any authority or law to prove what the length of the lucid interval is to be, whether an hour, a day, or a month; all that is required is, that it should be of sufficient length to do the rational act intended; if it is established that the act done is perfectly proper, and that the party who is alleged to have done it was free from the disorder at the time, that is completely sufficient.”

But, propriety of expression will not alone suffice to establish a will, if other circumstances in proof, added to the nature of the bequests, should raise a presumption that it originated in insanity. Thus, in the case of *Clarke v. Lear* and *Scarwell* (y), the testator, a middle aged man, being a lunatic, escaped from his keeper, and at a watering place fell in love with a young lady to whom he afterwards sent in very polite terms a present of a lottery ticket, and making a will, rational on the face of it, left her a legacy of 1000*l*. But, though it was argued that all this had the appearance of reason, the will was set aside as bottomed in insanity.

There are many circumstances which, though not of themselves enough to establish actual insanity, where it had not before become decided, are still strong *indicia* of its

(y) Cited 1 Phill. 119.

continuance—such as great irritability, violent passions, occasionally deep depression, eccentric habits, suspiciousness, inconsistency, changeableness, and the like. If actual insanity has never existed, many, or most of these circumstances may occur, and yet not establish positive derangement: but, where actual derangement has previously existed, lighter things become confirmations (x).

It has been stated, that if in a testament there is a mixture of wisdom and folly, it is to be presumed that the same was made during the testator's phrensy, insomuch, that, if there is but one word sounding to folly, it is presumed that the testator was not of sound mind and memory when he made the same (a). But this doctrine applies only to the case of a person who is sometimes sane and sometimes insane, and of whose state when he wrote the will there is no direct proof. And, therefore, the Ecclesiastical Court will not at once reject an allegation propounding a will which *sounds to folly*, when facts are pleaded, shewing that the testator, up to his death, conducted himself in the ordinary concerns of life as a sane man (b). It is necessary to observe great caution in examining the proof of a lucid interval, but the law must not be defeated by any overstrained demands of such proof (c).

It may be difficult, and perhaps would be dangerous, to attempt to define what is the essence of insanity. Delusion has been generally laid down (d) as essential; that is, the fancying things to exist which can have no existence, and are impossible according to the nature of things, as that trees will walk, or statues nod, and which fancy no proof or reasoning will remove. An opinion against-rational probability is not necessarily an insane opinion; it is not drawing right conclusions from manifestly wrong premises, but erroneous inferences from premises which may be true (e). Others may have said, that insanity may exist though no delusion prevail; whether this means that it may exist where no delusion ever has prevailed, or only where it cannot be

(x) *Groom v. Thomas*, 2 Hagg. R. 214.

Ecc. R. 443.

(c) *White v. Driver*, 1 Phil. 88.

(a) Swinb. on Wills, part 2, s. 3,

(d) See *ante*, Chap. 3, s. 5.

ad finem.

(e) 3 Hagg. Ecc. Rep. 545.

(b) *Arbery v. Ashe*, 1 Hagg. Ecc.

called forth upon the particular occasion, is not so clear. Sir *J. Nicholl* said, "that no case had ever come under his notice where insanity had been held to be established without any delusion ever having prevailed, nor was he able exactly to understand what is meant by 'a lucid interval,' if it did not take place when no symptom of delusion can be called forth at the time. How, but by the manifestation of the delusion, is the insanity proved to exist at any one time? The disorder may not be permanently and altogether eradicated—it may only intermit—it may be liable to return; but, if the mind is apparently rational upon all subjects, and no symptom of delusion can be called forth on any subject, the disorder is for that time absent; there is then an interval, if there be any such thing as a lucid interval. It may often be difficult to prove a lucid interval, because it is difficult to ascertain the total absence of all delusion" (*f*).

In a case where the deceased was admitted to have been insane before the execution of two asserted wills, and where there was evidence of delusion and other *indicia* of derangement existing shortly before, as well as subsequent to the acts, proof of calmness, and of his doing formal matters of business, under the sanction of his family, were held not sufficient to rebut the presumption against such wills (*g*).

In a case where delirium, as contradistinguished from fixed mental derangement or permanent proper insanity, was set up in opposition to a will, it was observed by Sir *John Nicholl*, "that the two cases, however similar in some respects, are still distinguished from each other in several particulars; and in no one particular more than in the greater comparative facility of proving a *lucid interval* in the one than in the other case. For, in cases of permanent proper insanity, the proof of a lucid interval is matter of extreme difficulty, because the patient so affected is, not unfrequently, rational to all outward appearance, without any real abatement of his malady; so that, in truth and substance, he is quite as insane in his apparently rational, as he is in his visible raving, fits.

(*f*) 3 Hagg. Eccl. Rep. 598, 599.

(*g*) *Groom v. Thomas*, 2 Hagg. Eccl. Rep. 433.

But the apparently rational intervals of persons merely delirious, for the most part are really such. Delirium is a fluctuating state of mind, created by temporary excitement; in the absence of which, to be ascertained by the appearance of the patient, the patient is most commonly really insane. Hence, as also indeed from their greater presumed frequency, in most instances in cases of delirium, the probabilities, *a priori*, in favour of a lucid interval, are infinitely stronger in a case of delirium than in one of permanent proper insanity; and the difficulty of proving a lucid interval is less, in the same exact proportion, in the former, than it is in the latter case, and has always been so held by the Ecclesiastical Court" (h). The antecedent declarations of a party with respect to his intention in making a disposition by will, have been allowed weight in favour of the presumption of a lucid interval. Thus, in a case (i) where a person, having a large family, made his will whilst resident in a receptacle for deranged persons, and provided for the respective branches of his family, for whom he had at several periods made different provisions. Among other respectable persons with whom he was acquainted was a Bank Director, to whom he had, previously to the commencement of his calamity, stated the provisions he had made, and what he intended to do further for the different branches of his family. The question was, whether a will made in that house was made during a lucid interval. He was at that time as competent to converse upon the subject of testamentary dispositions as he was before; he had the same objects and purposes: and, upon the state of his mind compared with his antecedent declarations, his will was established. And it seems that a will of personalty only, conformable to a long entertained intention, prepared two months before, and the execution whereof was merely delayed for want of witnesses, would be valid as an unexecut-

(h) *Brogden v. Brown*, 2 Add. Dow, P. C. 178. See also 1 Phill. 444, 445. See 1 Hagg. Eccl. Rep. 120; 3 Br. C. C. 444; 3 Hagg. Eccl. Rep. 159.

(i) *Coghlan's case*, 19 Ves. 508; 1

ed paper, even though the execution finally took place during supervening insanity (*k*).

It would be inconsistent with the nature and object of a commission of lunacy, to allow the party subject to it to alien his estate by deed, even during a lucid interval; but, as a will does not take effect until his death, it may be doubted whether the same objection would apply to a disposition by will, made during a lucid interval, by a person subject to such a commission (*l*). But, in a case where there is not actual recovery, and the unfortunate individual has not been restored to the management of himself and his concerns, the proof of a lucid interval is extremely difficult (*m*).

6. Proof of the existence of *partial insanity* will invalidate contracts generally, and will be sufficient to defeat a will, the direct offspring of that partial insanity, both in the Courts of Common Law, and in the Ecclesiastical Courts; although the testator at the time of making it was sane in other respects, upon ordinary subjects.

An allegation by an only child pleading partial insanity, for setting aside a will, was admitted; but the whole history of the insanity of the testator, as respected the particular person or fact, was required to be minutely detailed from an early period (*n*).

The following decisions have occurred upon cases of this description. The first is that of Mr. Greenwood, who was bred to the bar, and acted as chairman at the Quarter Sessions, but, becoming diseased, and receiving in a fever a draught from the hands of his brother, the delirium taking its ground then connected itself with that idea; and he considered his brother as having given him a potion with a view to destroy him. He recovered in all other respects; but that morbid image never departed, and that idea appeared connected with the will, by which he disinherited his brother. Nevertheless it was considered so necessary to have

(*k*) *Fulleck v. Allinson*, 3 Hagg. 3 Add. 37; *ante*, pp. 64, 67.

Eccl. Rep. 527.

(*m*) 2 Hagg. Eccl. Rep. 449.

(*l*) See 17 Edw. 2, c. 10; *ante*, pp. 11, 264; Dyer, 26 a; 4 Rep. 127 a. Add. 274.

See *Clement v. Rhodes* and Others,

some precise rule, that, though a verdict had been obtained in the Court of Common Pleas against the will, the Judge strongly advised the jury, on a second trial, to find the other way; and they did accordingly find in favour of the will. Further proceedings took place afterwards, and concluded in a compromise (o).

The principal object of inquiry in the recent case of *Dew v. Clark and Clark* (p) was the cause and grounds of the testator's impressions and feelings respecting his daughter, as to whom it was said he laboured under delusions; and the consideration whether those impressions were founded on realities, accounting for his acts of severity, or were the offspring of a disordered mind; and whether his conduct towards his daughter was accompanied by any other circumstances tending to shew insanity. The question arose in considering the validity of the will of Ely Stott, who died on the 18th November, 1821, at the age of seventy-two years, leaving a widow and an only daughter by a former wife. He had several nephews and nieces, but of course none of them were entitled in distribution. His property amounted to nearly 40,000*l.* In the month of February, 1821, the wife applied for a commission of lunacy against the deceased, which was granted and executed, and the deceased was found of unsound mind from the preceding 1st of January. The will in question was dated in the month of May, 1818, three years before the finding under the inquisition. The substance of the will is as follows: To his wife, the testator gave his furniture, books, &c.; to his nephew Thomas Clark 100*l.*; to his nephew Valentine Clark 150; to Daniel Goff (the amount was left in blank); 1333*l.* 6*s.* 8*d.* 3 *per cents.* were given to trustees, to pay the dividends to Lydia Sley, spinster, for her sole use; after her death, these 3 *per cents.* were to fall into the residue. A similar sum was given in trust for the children of Mrs. Jones, and this sum was ultimately to fall into the residue. He gave 2833*l.* 6*s.* 8*d.* 3 *per cents.* to trustees to pay the dividends to his daughter for her separate use; he like-

(o) 13 Ves. 89; 3 Bro. C. C. 444.

(p) See the report of this case by Haggard, and 3 Add. 79—209.

wise gave them all the money due to him, as representative of his first wife under the will of The Honourable Charlotte Clive, in trust to invest it and pay the dividends to *his daughter for her separate use*. After the daughter's death both sums were to fall into the residue. To any servant who had lived with him for five years at the time of his death, he gave an annuity of 40*l*. He bequeathed to Messrs. Reid, Fletcher, and Rawlings, his executors, a legacy of 50*l*. each; and the whole residue of his estates, real and personal, to his executors, in trust to pay his wife an annuity of 400*l*. during her life, or widowhood. If he left any children by his then wife, the residue was to be divided among them; if there were no such children, (as the event happened), then the residue was to go to his *nephews Thomas and Valentine Clark*. He appointed his wife, Reid, Fletcher, and Rawlings, executors. The dispositions of the will were undoubtedly very much to the prejudice of the daughter, who, out of the testator's large property, had merely an annuity for life of about 100*l*. But the will was fully and formally drawn up, was regularly executed, and attested by three respectable witnesses. Soon after the death of Mr. Stott, all the executors having renounced probate, administration with the will annexed was taken out by the residuary legatees, Thomas and Valentine Clark; and soon afterwards, in the month of April, 1823, the administration was called in by the daughter and only child. The will was propounded by the residuary legatees, and opposed by Mrs. Dew, the daughter; the *first allegation* given for the execution pleaded merely the *factum* of the will, and the death, character, and hand-writing of one of the attesting witnesses; in support of this allegation, the two surviving witnesses were examined, and the *factum* was proved. In particular, the solicitor, who prepared the will, proved instructions from the deceased himself, several interviews with him, the different stages of the preparation, and finally the regular execution of the will. Both the other witnesses spoke to their conviction and belief that the deceased was of perfectly sound mind when he made his will.

The ground on which the will was opposed, was not a denial of the instructions and execution, nor a suggestion of any

fraud or circumvention, nor of any extrinsic influence; and it was not alleged, that the will did not originate with himself, nor that it was not prepared and completed by his direction, nor that the attesting witnesses had misrepresented the facts, nor that they had not given an honest opinion of the state of the deceased; but the ground was, that, though the will was the mind of the deceased, yet, that it was not a sound, but an unsound mind—unsound in the legal acceptation of the epithet—“deranged and insane.” The general outline of the plea on behalf of the daughter was, that the deceased shewed strong marks of derangement towards his first wife, and at the birth of this daughter; that, towards the daughter, he shewed great antipathy and hatred; that, in respect to her, he laboured under great delusion of mind; declared that she was invested by nature with singular depravity; was an abandoned profligate, vile, and irreclaimable; that he treated her with the greatest cruelty and violence, notwithstanding she was dutiful and virtuous; that, in various other respects, he exhibited marks of insanity: the admission of this plea, which was very long and detailed, was opposed; and the Court was of opinion, that it disclosed a case difficult of proof; but that, if proved, it would be available. In answer, a long plea was also given in support of the will; pleading the general sanity of the deceased in the whole of his conduct; pleading his character, temper, and religious principles, as accounting for harshness towards his daughter; and alleging such misconduct in the daughter as afforded rational grounds for severity during her education, and for displeasure afterwards; such as shewed that he acted not under derangement, but on facts which he considered as justifying his resentment.

Sir *John Nicholl* observed (g)—“In this case, there is evidence to shew, that the deceased, in the ordinary transactions of life, conducted himself and his affairs rationally; was a sensible, clever man; amassed a considerable fortune by his profession; took great care of his property; and that several of his friends and acquaintance, some of them medical persons, never considered, or even suspected, that he

(g) See Report of *Dew v. Clark and Clark*, by Haggard, p. 18.


was deranged in his mind: all this is fully established, and strengthened the presumption of sanity, and requires that the proof of derangement should be very forcible and stringent; but, it is not conclusive, nor is it even conflicting evidence. All this may be true, and yet delusion on particular subjects, and shewing itself on particular occasions, might exist." And, after going through the principal evidence, he said, "In this case (r), the main delusions, certainly, are those respecting his daughter and respecting himself; so that, though his daughter, from her earliest infancy to the end of her history in this cause, is proved to be amiable in disposition, of superior natural talents, engaging in her manners, diligent, industrious, submissive, and obedient, patient under affliction, dutiful and affectionate, modest and virtuous, moral and religious, yet, in the deluded mind of the deceased, she is the most extraordinary instance of depravity, of vileness, of vice, of crime, of profligacy, of hypocrisy, of artifice, of disobedience, of revolt and rebellion against paternal authority, and is quite irreclaimable—while, in regard to himself, he is a pattern of fatherly tenderness and affection, though tying his daughter to a bed-post, and flogging her with the most unmerciful severity, and aggravating her sufferings by other acts of cruelty, and compelling her to perform the most menial drudgery, and of the severest sort, to which even a servant would not submit. All these things are represented by himself as proofs of his great tenderness and regard. These impressions accompany him through life, and are recorded in this will. To remove these delusions, no reasoning, no argument, no interposition of friends, no pastoral authority, is of any avail; even the sanctions of religion cannot convince him that his ideas are erroneous, nor induce him to alter his conduct; he held himself perfect and faultless—'pure as the Deity.' What might be the condition of the deceased as applied to other transactions, civil or criminal, it is not my duty to consider." The learned Judge in conclusion said, it was his duty conscientiously to decide this case upon his own moral

(r) *Id.* pp. 98, 99.

conviction, founded on the evidence respecting the will, carefully guarding himself from being misled by feelings of compassion: and it was his full conviction, that the deceased when he made this will was not a person of sound mind; or, in Lord *Coke's* language was—"non compos mentis." He therefore pronounced against the validity of the will (s). The last decision was confirmed by the Delegates, and a petition for a commission of review was afterwards presented by the residuary legatees; but the Lord Chancellor gave judgment, that, under the circumstances of this case, he did not think fit to recommend his Majesty to grant such commission (t).

It was held, in a recent case, that a testamentary paper cannot be set aside on the ground of *monomania*, unless there be the most decisive evidence, that, at the time of the *factum* of the paper, the belief in the testator's mind amounted to insane delusion. The testator had been a Fellow of Queen's College, Oxford, and for the last twenty years of his life rector of a living belonging to that college: he was always eccentric in his habits, resided in the rectory-house, and was latterly very retired. His sister had two daughters, one of whom married Harrison, a farmer, who lived in the testator's parish, collected his tithes, and was appointed his churchwarden. In consequence of the testator and his two servants having been all taken ill together; with a complaint in the bowels and vomiting, he believed that an attempt had been made to poison him. It appeared, that he had declared that the well belonging to his house had been poisoned by an infusion of poisonous matter, and that he subsequently thought that the eggs, butter, and milk sent by Harrison, were poisoned; which belief continued to his death. The testator, advised by his solicitors and a medical man, who thought at the time that he had rational grounds for his suspicions, caused several investigations to be made, for the purpose of ascertaining whether any attempt to poison him had been made; and the gentlemen who conducted them were satisfied that there had

(s) *Ibid.* And see Sir *John Nicholl's* judgment in *S. C.*, 3 *Add. pp.* Lib. 1827, A, 4, fol. 2673.



been none. The papers propounded as the will and codicil were prepared and executed subsequently to the time when the testator was impressed with the belief of the poison, and bequeathed nearly the whole of his large property to the Provost and Fellows of Queen's College, Oxford, for charitable purposes, for the benefit of the poor of the parish in which he resided; but it appeared that they carried into effect an intention which had been expressed long before he had the notion about poison, and which had been delayed merely for the purpose of getting witnesses. The will was all in the testator's hand-writing, was remarkably well written, without alteration or erasure, and bore no appearance of excitement or hurry, was attested by two clergymen, one his curate, the other the minister of an adjoining parish, who both in the most unhesitating manner deposed to their full belief that the testator was of perfect sound mind, notwithstanding, at the time of their examination, they were aware of his opinions respecting poisoning; and this testimony was corroborated by that of the solicitors and medical man of the testator. The testamentary papers were opposed by the next of kin, on the ground that they were prepared and executed when the testator was impressed with the belief of poisoning, and while he was of unsound mind and under mental delusion. Sir *John Nicholl* said, "that, at all events, it was a case of *monomania*: for, upon every other subject, from the time in question to his death, the deceased acted as a person of sound mind, as much as he had ever been; he managed his house, his property, and his farm, granted leases, received tithes, kept accounts, recognised his will, held rational conversation, and did church duty. A *monomania*, to affect such an instrument, under such circumstances, should be clear in point of existence, and decided in character, beyond all doubt. That the deceased thought and believed that an attempt had been made to poison him, seemed to be a fact established; but was it proved that his opinion in that respect was a mere morbid insane delusion, rendering him intestable? The question was not, whether the attempt to poison was really made, but whether he had grounds for suspecting it? or whether, as pleaded, 'the deceased had no rational

grounds whatever for his belief?" The Court pronounced in favour of the will and two other papers, but allowed all the costs out of the estate (u).

When the mind of a dying person is reduced by the stress of his malady, or by general exhaustion, to such a state of mental depression and debility as to be incapable of a determinate testamentary act, a paper signed by him under such circumstances, as a codicil to his will, will be rejected by the Ecclesiastical Court, especially if such instrument contains internal evidence of intellectual weakness, and disturbs the settlement of the testator's affairs by a former well-considered will made by him when in the entire possession of his mental powers (v).

Mental incapacity may invalidate only part of a will; as in a recent case where a testator wrote the first part of what was propounded as his will with his own hand, but the concluding part was written by the executor, who was principally benefited, and who was the active agent in bringing the witness to it to the house of the deceased. According to the evidence, the deceased was so worn out that he could not complete his will, but there was no proof of any actual incapacity which could be set against his writing his intentions sensibly and intelligibly to a certain extent. It appeared, however, that, after this effort, his capacity was not so alive as to prevent him from executing an instrument of the contents of which he was not aware; and it was not in evidence that he gave any instructions for the part of the paper which was written for him, or that it was read over to him after it was written. The Court pronounced against the part of the will as to the appointment of the executor and residuary legatee, but in favour of the part written by the testator himself (w).

Where a will is partially defaced by a testator whilst of unsound mind, it is to be pronounced for as it existed in its integral state, if that can be ascertained (x). If a testator

(u) *Fulleck v. Allinson*, 3 Hagg. Phill. 187—198. And see *Wood v. Ecll. Rep. 527—547.* *Wood*, Id. 357.

(v) *Brouncker and Cooke v. Brouncker*, 2 Phill. 57. (x) *Scruby and Finch v. Fordham and Others*, 1 Add. 74.

(w) *Bellinghurst v. Vickers*, 1

of impeached sanity do some act with relation to his will, of whose state of mind at the time of doing the act, there is no evidence *aliunde*, his rationality at such time, or the contrary, is to be inferred from that of the act itself (*y*). In a case where it appeared that the testator being moved with a sudden impulse of passion against one of the devisees under his will, conceived the intention of cancelling it, and of accomplishing that object by tearing, and, having torn it twice through, but, before he had completed his purpose, his arms were arrested by a bystander, and his anger mitigated by the submission of the party who had provoked him, and he proceeded no further: it was held a question for the jury to determine whether the act of cancellation was complete (*x*).

In another case, where it appeared from affidavits that the testator altered his will while in a state of unsound mind, and there was a proxy of consent from all the parties affected by such alterations, probate of the will in its original form was decreed (*a*).

Besides insanity, properly so called, a species of insanity, the mere effect of drunkenness and excitement from spirituous and other intoxicating liquors, has sometimes been set up for the purpose of defeating an alleged will. It has, however, been very justly observed (*b*), that, whatever resemblance there may be in the conduct and actions of a man under such excitement, and those of a person properly insane "their apparent similarity are subject to very different considerations." Where actual insanity has once shewn itself, either perfect recovery, or at least a lucid interval at the time of making, must be clearly proved, to entitle an alleged testamentary paper to be pronounced for as a valid will. Either of these, however, the last especially, is highly difficult of proof, for this reason—that insanity will often exist, though *latent*; so that a person may in effect be completely mad or insane on some subjects, and in some parts

(*g*) *Scruby and Finch v. Fordham* (a) *In bonis R. Bicknell*, 3 Add. Others, 1 Add. 74. 231.

(*z*) *Doe d. Perkes v. Perkes*, 3 B. (b) *Per Sir J. Nicholl*, 2 Add. & A. 489. 209. See *ante*, p. 276.

of his conduct apparently rational; but the effects of drunkenness *only subsist*, whilst the cause, the excitement, visibly lasts: there can scarcely be such a thing as latent ebriety; so that a case of incapacity from mere drunkenness, and yet the man being capable to all outward appearance, can hardly arise. Consequently, in cases of this description, all which is required to be shewn is, the absence of such excitement at the time of the act done, as would vitiate it: for, under a slight degree of excitement from liquor, the memory and understanding may be as correct as in the total absence of any exciting cause (c).

7. The Ecclesiastical Courts have exclusive jurisdiction respecting wills and testaments of personalty, by custom (d). Thus, in *Partridge's case* (e), (overruling the Marquis of *Winchester's case* (f)) prohibition to probate of a will of lands and goods, on suggestion of *non compos*, was denied; the Court saying, that the statute (g) never intended to lessen the jurisdiction of the Ecclesiastical Court as to probate of wills; and to grant a prohibition might be inconvenient; for, without probate, the executor cannot sue for debts, which by this means might be lost, and the will remain unperformed. As for granting it *quoad* the land it would be vain; because it is no evidence, either *pro* or *con*, in any Court of law, but a proceeding *coram non iudice*; yet it is good as to the personal estate. And in *Lady Chester's case* (h), *Hale* said, that the Ecclesiastical Courts may prove a will which contains goods and lands, though formerly a prohibition used to go *quoad* the lands (i). A will, as to so much as concerns lands, is to be tried in a Court of common law, and for so much as concerns personal estate in the Spiritual Court.

The granting probate is a judicial act, for the Ecclesiastical Court may hear and examine the parties on the different sides whether a will of chattels be or be not properly made; that being the only Court which can decide as to the

(c) *Ayrey v. Hill*, 2 Add. 209, 210.

(e) 2 Salk. 552.

(d) 6 Mod. 205; *Shutter v. Friend*,

(f) 6 Rep. 23.

1 Show. 158. The origin of this jurisdiction is stated in 1 Str. 667—

(g) 24 Hen. 8, c. 12.

672; Gilb. Eq. Rep. 203—209;

(h) 1 Ventr. 207.

Henloe's case, 9 Rep. 36—41. See

(i) See 1 Mod. 90; 2 Sid. 143;

4 Inst. c. 74.

Hardr. 131; 2 Roll. 315; 1 Sid. 141.

validity of such a will. The Courts of common law and of equity have no jurisdiction over the subject (*j*). The probate is also conclusive until repealed; and no Court of common law can admit evidence to impeach it (*k*). Where a party has obtained probate, it is conclusive that he is executor (*l*).

The seal of the Ecclesiastical Court authenticates the will; and therefore, if probate of a will of personalty under the seal of the ordinary be produced, evidence cannot be given in the temporal Courts that such will was forged, or that the testator was *non compos mentis*, or that another person was executor; but evidence may be offered that the seal of the Ecclesiastical Court was forged, or that there were *bona notabilia*, because that is not in contradiction to the real seal of the Court, but it admits the seal and avoids it (*m*). Since the Ecclesiastical Court has the probate of wills of personal estate, the temporal Courts cannot prohibit them in their inquiries, whether the testator was *non compos* or not, or whether the will be revoked or not (*n*). But if the validity of a will of personalty has been incidentally admitted by a party to a suit in equity, the Court of Chancery will restrain him from afterwards instituting proceedings in the Prerogative Court to impeach its validity (*o*). In a suit in the Ecclesiastical Court, by the administrator, for a legacy, if the defendant plead a release from the deceased legatee, and the administrator would avoid it by an allegation of lunacy or idiocy (*p*), that fact must be tried there; and no prohibition will lie, because that Court has jurisdiction of the original matter, according to the rule "*quod non est consonum rationi, quod cognitio accessorii in curia Christianitatis impediatur, ubi cognitio causæ principalis ad forum ecclesiasticum noscitur pertinere*" (*q*).

A will of personal estate was proved in the Spiritual

(*j*) *Jones v. Frost*, 1 Madd. Rep. Vaugh. 207; Str. 671; 1 Show. 273; 1; S. C. Jac. Rep. 466. See 2 Atk. Sir T. Raym. 406.

324; *Allen v. Hill*, Gilb. Eq. 257; (*n*) *Minshal v. Spicer*, Hardr. 131; 13 Ves. 297. *Hobart v. Barrow*, Id. 313. See

(*k*) *Allen v. Dundas*, 3 T. R. 125; Hob. 135.

Rez v. Vincent, 1 Str. 481; *Rez v. (o) Sheffield v. Duchess of Buckinghamshire*, 1 Atk. 628.

Rhodes, Id. 703. (*p*) Hob. 188; Godolp. Abr. Ecol. Law, p. 120.

(*l*) *Griffiths v. Hamilton*, 12 Ves. 298.

(*m*) *Noell v. Wells*, 1 Lev. 235; (*q*) See 12 Rep. 65.

Court, but the executor of a former will brought his bill in equity, to discover by what means the latter will was obtained, and to have an account of the personal estate, and to stop the wasting of it, and whether the testator was not incapable, or imposed on. To this bill, the defendant demurred, because it belongs to the Spiritual Court only to determine the validity of wills of personal estate, and the former will was not proved in the Spiritual Court, as the will in the defendant's favour was; but the demurrer was overruled (*r*). In this case, an order was made for the defendant to bring into Court all papers and writings relating to the testator's estate, to pay into Court what had been received on account thereof, for the appointment of a receiver, and for an injunction to restrain the defendant from receiving any more of the estate (*s*).

The heir-at-law is not estopped from impeaching a will, on the ground of the testator's insanity, although he has himself proved the will in the Ecclesiastical Court, and retained legacies (*t*). A person who proved a will in the Spiritual Court, by which he swore the testator was of sound memory, afterwards controverted the same will at law as to the real estate, upon which an issue was directed, *compos* or *non compos*, and the testator was found *non compos* (*u*)—Lord *Hardwicke* said, it was much to be lamented that there should be such different determinations in two concurrent jurisdictions; and though it was a great absurdity there was no way to make them uniform; but he knew only one case where this variation of judgment had happened, which was the case of *Maxwell* and Lord *Montagu*, where a testator was determined to be *compos mentis* in the Ecclesiastical Court, which sentence was affirmed in the Court of Delegates; and afterwards, on a trial at law, in relation to the real estate devised by the will, the testator was found *non compos*; and then an application was made to the House of Lords, by petition, to reverse the sentence in the Court of Delegates, in

(*r*) *Andrews v. Powis*, Vin. Abr. tit. "Executors," (B. 3.) pl. 14; *S. Mod.* 90.

C. 2 Bro. P. C. 504, Toml. ed.

(*t*) Lord *Montagu's* case, cited 9

(*s*) Reg. Lib. B. 1727, p. 151. See

2 Bro. P. C. 508, Toml. ed.

(*u*) *Id.* Vin. Abr. tit. "Execu-

tors," (B. 6.) pl. 9; 4 Br. P. C. 598, Toml. ed.

order to make the determinations uniform; but the House of Lords dismissed the petition, because the sentence of the Delegates was decisive, and no appeal lay from it (*v*).

A motion was made on behalf of the plaintiff, as heir-at-law and next of kin of a testator whose will had been set aside for insanity, that one of the trustees and executors of the will might pay into the Bank what money he had received from the testator's assets, and that he might be restrained from getting in any more for the future. Lord Chancellor *Hardwicke* said, "that he had often thought it a very great absurdity, that a will which consisted both of real and personal estate, notwithstanding it had been set aside at law for the insanity of the testator, should still be litigated upon paper depositions only in the Ecclesiastical Court, because they had a jurisdiction on account of the personal estate disposed of by it. But, as the law stood, it was not in the power of the Court of Chancery to interpose, so as to stop the proceedings in the Ecclesiastical Court" (*w*).

(*v*) 3 Atk. 546.

In arguing the case of *Hurst v. Dodgson*, which was an application made to the Lord Chancellor in December, 1829, for a commission of review, Dr. Lushington mentioned, that a similar diversity of result had occurred in *Ayrey v. Hill*, (reported in 2 Add. 206), where a will, impeached on the ground of the testator's insanity, was established as a valid testamentary disposition by the judgment of Sir *J. Nicholl*, and was, on the same ground, determined to be inoperative as a devise of real estate, by the verdict of a jury. Dr. *Lushington* added, that he recollected no case in which the converse had taken place, in which a will set aside by the Spiritual Court had been held effectual on a trial at law. 1 Russ. & Mylne, p. 106, note. See the Report of the Commissioners appointed to inquire into the practice of the

Ecclesiastical Courts in England and Wales; ordered by the House of Commons to be printed, 27 Feb. 1832, pp. 34, 35.

(*w*) *Montgomery v. Clark and Others*, 2 Atk. 378.

In the report of the Ecclesiastical Commissioners, some important alterations are suggested as to the jurisdiction respecting wills. It is recommended by them, "that the same solemnities should be required to render valid every testamentary disposition of every description of property, without any distinction; so that the same formalities of execution and attestation shall be necessary, whether the testamentary instrument disposes of real or personal estate; and, further, that, under certain limitations, the validity of wills disposing of real and personal estate, or either, should be determined by trial in one and the same Court, and the pro-

8. When a will is carried to the Ecclesiastical Court to be proved by the executor, and any disability attaches to the testator, it is customary for a proctor to enter a *caveat*, which prevents the probate passing in the common form. The opposing party is then required by the executor to shew what interest he claims in the estate; and, on so doing, and declaring his opposition to the will, the executor propounds the will, signifying, that it will be proved by witnesses. He files an allegation of the *factum* of the will, and of the testator's competence at the period of its execution; he then examines witnesses, which the opposing party may cross-examine, and assigns the cause for sentence, which passes; unless the opposing party file an allegation of facts, shewing incapacity, and examines witnesses, which may, in like manner, be cross-examined by the executor. Neither party can see the depositions before publication; but either of them may afterwards set down the cause for hearing; and the validity or invalidity of the testament will be declared by the Court, and probate granted or refused accordingly (*x*). If the will is only proved in the common form, it may, at any time within thirty years, be disputed (*y*) by any party interested requiring the executor to prove it *per*

bate made final and conclusive evidence of title to real and personal estate. That, by thus rendering the judgment of a competent Court unappealed from, or the judgment of a Court of appeal on the merits, after proper warning given to all who have an immediate interest, final and conclusive evidence in all Courts of the rights to real estate, additional security will be afforded to titles to real property, and some delay, doubt, litigation, and expense avoided. It is also proposed, under certain restrictions, to introduce into the Ecclesiastical Court proof by *vidé voce* evidence; and that, in all cases, the validity of a will shall be tried by *vidé voce* evidence and a jury, where any party interested may desire it, or the Judge, upon such application,

shall think fit to direct it; that such trial shall take place before the Judge of the Ecclesiastical Court; or, if such Judge shall think fit, or the parties shall require it, before a Judge of one of the Courts of Common Law, with such power of granting new trials by the Ecclesiastical Judge, as is now exercised by the latter Courts; and that the refusal to direct an issue with respect to any will, or the granting or refusal of a new trial, may be made a ground of appeal."—Report of the Commissioners appointed to inquire into the practice of the Ecclesiastical Courts in England and Wales; ordered by the House of Commons to be printed, 27 Feb. 1832, p. 31.

(*x*) 1 Coll. on Lun. 631-2.

(*y*) Godolph. Orp. Leg. 62. See

testes; but if the solemn form is pursued, and no adverse proceedings are instituted within the time limited for appeals, the will is liable to no future controversy (*).

The High Court of Delegates was established by statute 25 Hen. 8, c. 19, s. 4 (a), of which there are not any certain Judges of the Court regularly appointed; but, in every cause of appeal to this Court, there issues a special commission, under the Great Seal of Great Britain, directed to such persons as the Lord Chancellor, Lord Keeper, or Lords Commissioners of the Great Seal, for the time being, shall think fit to appoint to hear and determine the same. The persons usually appointed to determine causes in this Court are three puisne Judges, one from each Court of common law, and three or more civilians; but, in special cases, a fuller commission is sometimes issued, consisting of spiritual and temporal Peers, Judges of the common law, and civilians, usually three of each description; by the tenor of the commission, one of the Judges of the Courts of common law is required to concur in every final judgment. Many matters in the cause are decided, on motion, before the advocates named in the commission, usually called Condelegates, who sit on stated days in each term, for the purpose; but matters debated by counsel, even before the final hearing of the cause on its merits, are usually heard before the whole commission, on days specially appointed by the Judges Delegate. This Court is the appellate jurisdiction from the Courts of the Lords Archbishops of Canterbury and York, and from the Ecclesiastical Courts within the Royal Peculiars in each province. In case of the Court being equally divided, or no common law Judge forming part of the majority, a commission of Adjuncts issues, appointing additional Judges of the same description (b).

Williams on the Law of Executors, *Dyer*, 1 Hagg. Eccl. R. 219.

Part 1, B. 4, Chap. 3, s. 4; 4 Burn's (a) This act was repealed by 1 & 2 Eccl. Law, 251, 8th ed.; 3 Phill. 1, Phil. & Mary, c. 8, but revived by 1 Eliz. c. 1, s. 10.

(*) Godolph. Orp. Leg. 62; Bac. (b) Such a commission was granted in the cases of *Ingram v. Wyatt*, Abr. tit. "Executors," (E.) 8; 1 Hagg. Eccl. Rep. 384; and *Marsh Swinb.* part 6, s. 14, pl. 4; *In bonis*

By the statute Hen. 8th, last cited, and by the statute 8 Eliz. c. 5, the appeal to this Court is final, as of right. In very special cases, the Crown has granted a commission of review, but this rarely happens (c). No appeal lies to the House of Lords from a sentence in the Court of Delegates (d). It may be useful, by way of direction as to the practice upon a commission of review, to add, that the petition is addressed to the King's Most Excellent Majesty in Council. It states briefly a naked case of facts, and the sentence of the Court of Delegates; and that by such sentence the petitioner thinks himself aggrieved. It then proceeds to pray that his Majesty would most graciously be pleased to grant a commission of review to rehear, reconsider, and determine the said cause, directed to such Lords Spiritual and Temporal, and Judges of the common law, and the Doctors of the civil law of this realm, as to his Majesty in his great wisdom shall seem meet. An order then issues from the Council to the Lord Chancellor, to inquire into the merits of the petition, and report his opinion to his Majesty. In consequence of that order, the Lord Chancellor hears the parties by counsel, including civilians, and makes his report to his Majesty, whether it will be reasonable and proper to grant a commission of review according to the prayer of the petition. If the report is in favour of the petition, an order issues from the King in Council, directing the Lord Chan-

v. Tyrrell and Harding, 2 Hagg. Eccl. Rep. 84; 3 Hagg. Eccl. Rep. 471. See 4 Burr. 2251.

The Ecclesiastical Commissioners came to the following resolution:—"That it would be expedient to abolish the jurisdiction hitherto exercised by Judges Delegate, and to transfer the right of hearing appeals to the Privy Council: provided that, in order to render that tribunal efficient for such purpose, a sufficient number of days for the sitting of the Privy Council be fixed, and some arrangement made

for the attendance of Privy Counsellors conversant with legal principles: and further, that the present proceedings for a commission of review ought to be abolished."—Report of the Commissioners appointed to inquire into the practice of the Ecclesiastical Courts in England and Wales; ordered by the House of Commons to be printed, 27 Feb. 1832, p. 5.

(c) See 4 Inst. 341.

(d) *Sayl v. Wilson*, 2 Vern. 118; and see 2 Swanst. 326.

cellor to cause such commission to be prepared in the usual manner, under the great seal. The commission is directed to new Delegates, including Lords Spiritual and Temporal, Judges of the common law, and Doctors of the civil law; and, in order to make a final decree or sentence, one at least of each class is directed by the commission to attend (*e*). The granting a commission of review is not matter of right, but of grace and favour (*f*), and it is seldom issued, unless there are very cogent reasons for believing that the sentence of the Court of Delegates is founded on error in fact or in law, or unless the doctrines upon which it is supposed to be founded are so questionable or important, as to make it clearly fit that they should be considered in the most solemn manner (*g*). Even the application for the commission of review is expensive and burdensome to the party in the possession of the sentence, and is sometimes resorted to, as in the case of appeals, in order to extort a compromise. It has not even the check of costs, for it has been held, that costs cannot be given against the petitioner (*h*). A commis-

(*e*) See 4 Ves. 211, last ed. note.

(*f*) *Franklyn's case*, 2 P. Wms. 299; 2 Swanst. 328, note.

There is a list of the cases in which commissions of review have been granted, in 4 Ves. 195, note 92. The modern instances are *Matthews v. Warner*, 4 Ves. 186; *Goodwin v. Giesler*, Ridg. Lapp. & Sch. Rep. p. 371—384; and *Hurst v. Dodson*, before Lord Chancellor *Lyndhurst*, Dec. 1829.

Lord *Eldon* said, "that he apprehended the person to whom his Majesty referred such a memorial, is bound to consider this a prerogative that ought to be called into exercise where a due and fair attention to public convenience and to the interests of the parties, in just and sound discretion, requires it; and, like all other prerogatives for the benefit of the subject, it is not to be discountenanced, merely because it

is such. If the exercise of it is due and wholesome, it is a trust for the King's subjects. At the same time, if it is to be regulated by principles of public convenience, as the general administration of justice is in many cases, where, perhaps, pressing hard upon individual cases, there are strong calls upon the Crown to take care that this prerogative is cautiously exercised, and only where a due application of the principle requires that it should be exercised. It is not surprising, therefore, that there have been few instances of advising the Crown to permit it." 8 Ves. 465.

(*g*) *Eagleton and Coventry v. Kingston*, 8 Ves. 438; *Ex parte Fearon*, 5 Ves. 633; *Wyatt v. Ingram*, 3 Hagg. Eccl. Rep. 466.

(*h*) *Wyatt v. Ingram*, 3 Hagg. Eccl. Rep. 471.

sion of review is not considered to have the effect of suspending the execution of the sentence, though in practice it is attended generally with that consequence; a circumstance which renders the application grievous to the other party (*i*).

9. The Court of Chancery has, in several instances, appointed a receiver of personal estate pending a suit in the Ecclesiastical Court either for obtaining or recalling probate or administration (*k*). A bill was filed against the executors of a testator, by his sister and sole next of kin, and prayed the usual accounts of his personal estate, and for a receiver, and an injunction, pending a suit instituted by the plaintiff in the Ecclesiastical Court, to recall probate: the testator, when on his death bed, and at the time when he was insensible and utterly incapable of disposing of his property, was made to affix his mark to the alleged will by one of the defendants, who caused a pen to be put between the testator's fingers, and guided his hand. The defendants obtained probate of this will, on the same day on which the testator was buried (*l*). The bill, besides these facts, stated strong circumstances, as evidence of incapacity in the testator, and of the charge that the probate had been obtained by fraud. A motion was made for a receiver, and an injunction against the defendant, before answer, on affidavits of the truth of the allegations contained in the bill. The Vice Chancellor said, the ordinary application is for a receiver, where the legal administration has not been granted by the Ecclesiastical Court, and pending the contest for such administration. Here the legal administration has been granted by the Ecclesiastical Court, but there is a pending contest to recall the probate. Taking into consideration the evidence

(*i*) See Report of the Ecclesiastical Commissioners, Feb. 1832, pp. 20, 21. Others, Reg. Lib. A. 1825, fol. 1844; Contra, *Richards v. Chave*, 12 Ves. 462, before Lord Chancellor Erskine.

(*k*) *King v. King*, 6 Ves. 172; *Edmunds v. Bird*, 1 Ves. & Bea. 542; *Atkinson v. Henshaw*, 2 Ves. & Bea. 85; *Ball v. Oliver*, Id. 96; *Gallivan v. Evans*, 1 Ball & Beatty, 191. See 3 Mer. 174; *Dew v. Clark* and (*l*) See 1 Hagg. Eccl. Rep. 469, where it was observed by Sir J. Nicholl, that snapping a probate (as it is called) is always considered to create a suspicion of fraud.

respecting the incapacity of this testator; the manner in which the will was obtained; the sort of surprise by which the probate was acquired; and the danger to the property: and upon the ground of the jurisdiction exercised in the Court of Chancery, to protect property pending a litigation in another Court, his Honour thought it a fit case for a receiver and an injunction (*m*). This jurisdiction is not exercised for the preservation of real estate, pending a suit between the devisee and heir (*n*). Sir *William Grant*, however, is reported to have said, that he could not see a good reason why the Court should not interfere to preserve real property, pending a suit concerning the validity of a devise. But, as a condition of such interference, the Court would certainly expect it to be shewn that the party applying was proceeding with all due expedition to bring the question to a decision (*o*). But a receiver will not be appointed at the instance of the party claiming as devisee under a will, the validity of which is to be determined by an issue, unless the claimant satisfies the Court that there is a reasonable probability of his succeeding on the issue, and that the property will be endangered by being left in the possession of the heir-at-law (*p*).

10. A Court of equity cannot relieve against the bequests of a will of personal property, objected to on account of fraud or insanity, whilst the probate continues unrepealed. A maid servant prevailed upon her master, a week before he died, when on his death bed, to marry her at 6 o'clock in the evening, and make his will, bequeathing her all his property, and appointing her sole executrix. She had married another man a year before, who was then living, and the testator knew of that marriage when it took place, but he had subsequently lost his understanding. The will having been proved in the Prerogative Court, and all the property being personal, the Lord Chancellor *Jefferies* was of opinion, that, so long as the probate remained in force, the

(*m*) *Rutherford v. Douglas*, 1 Sim. (o) 3 Mer. 173.

& Stu. 111, n. (*d*).

(*p*) *Clark v. Dew*, 1 Russ. &

(*n*) *Smith v. Collyer*, 8 Ves. 89; *Mylne*, 103.

19 Ves. 155.

matter could not be examined by the Court of Chancery; and his Lordship dismissed the bill, without permitting the parties to read evidence (*g*).

Although the Ecclesiastical Court has the exclusive power to decide what is or is not a will of personalty, yet it is clear, that it belongs to the Court of Chancery to give construction and effect to the will; and that there may be circumstances attaching personally on those who take by force of it, which will authorize the latter Court to ingraft an equity on the gift, and convert them into trustees for others (*r*).

A distinction was taken in one case between fraud upon the testator, and fraud after his death. Thus, where a bill sought relief against a paper-writing, purporting to be the will of the plaintiff's father, under which the defendant claimed, and an issue had been directed, and the jury found a verdict against the will, on the ground that it was a forgery—Lord Chancellor *Hardwicke* said, there is a material difference between the Court of Chancery setting aside a will of personal estate on account of fraud or forgery in obtaining or making that will, and taking from the party the benefit of a will established in the Ecclesiastical Court by his fraud, not upon the testator, but upon the person disinherited thereby, and claiming after the testator's death against it. Fraud in obtaining a will infects the whole; but the case of a will, of which the probate was obtained by fraud on the next of kin, is of another consideration: upon which foundation this probate stands, being obtained from the plaintiff by fraud upon him, a weak man, (since found to be a lunatic), by the defendant's own acts subsequent to the death of the testator." And, in analogy to the principle, that, though a Court of equity cannot set aside a judgment of a Court of common law, obtained by fraud and against conscience, but will decree the party to acknowledge satisfaction upon it, though he has received nothing, the Court decreed the defendants to consent in the Ecclesiastical Court, in the following term, to a revocation of the

(*g*) *Archer v. Moas*, 2 Vern. 8; 666—673; *Barnesly v. Powell*, 1 Ves. S. C. 1 Eq. Cas. Abr. 405. sen. 119; Id. 284; *Segrave v. Kir-*

(*r*) *Marriott v. Marriott*, 1 Str. wan, 1 Beatty, 263.

probate; that one defendant should have a fortnight after such revocation, to propound and exhibit another writing, purporting to be the testator's will of his personal estate, and to prosecute it with effect; and, if he did not, then both defendants were decreed to consent to the granting administration to the plaintiff. An account of the personal estate, which was to be paid into the Bank for the benefit of the parties entitled, was also decreed (*s*).

A Court of equity may restrain a party from deriving any benefit from his appointment as executor, surreptitiously obtained from a person of incompetent understanding. As where an attorney, by sinister means, prevailed on a testator of very weak mind to appoint him executor and trustee—the Court ordered that he should derive no benefit from the conveyances so obtained of the property, nor meddle in the execution of the will, without his co-executors (*t*). Where the plaintiff, by force and restraint on the testatrix, had induced her to make a will in favour of, and to appoint the plaintiff executrix, and such will concerning personal estate only, had been proved in the Spiritual Court—on a bill being brought by the executrix for the execution of a trust, the Court of Chancery would not allow the matter to be controverted there, but said, the plaintiff might make the best she could of her probate in the Spiritual Court, but should have no aid in equity; and, therefore, dismissed the bill with costs (*u*).

To a bill to perpetuate the testimony of witnesses to prove a will concerning personalty, a plea, that a cause was depending in the Prerogative Court concerning the validity of such will was allowed, but without costs (*v*). After a verdict has been found either for or against a will, on a trial directed by the Court of Chancery, a perpetual injunction is sometimes granted to prevent further proceedings at law or in the Ecclesiastical Court (*w*).

(*s*) *Barnesly v. Powel*, 1 Ves. sen. 22.
119, 284; Belt's Suppl. p. 152. See
also *Meadows v. Duchess of King-*
ston, Ambl. 762.

(*u*) *Nelson v. Oldfield*, 2 Vern. 76.

(*v*) *Rogers v. Bromfield*, Finch,
67; *Cawston v. Helwyes*, Id. 218.

(*t*) *Herbert v. Lounds*, 1 Chan. R.

(*w*) *Lowe v. Jolliffe*, 1 Dick. 388;

11. By the civil law, if a person wrote a will in his own favour, the instrument was rendered void (*x*) as to so much as was in favour of the writer. That rule has not been adopted in its full extent by the law of England, which only holds that such conduct creates a presumption against the act, and renders necessary very clear proof of *volition and capacity*; nor does the law of the Ecclesiastical Court determine that the act is absolutely void, even though the person making the will is the attorney and agent of the testator. The suspicion is thereby increased; and, for obvious reasons, the testator reposes confidence in his attorney, and is less on his guard against imposition; while the attorney, from skill and knowledge, is more likely to be successful in such a contrivance, and has more influence, so as to obtain a blind acquiescence. Courts of equity have, in many instances, set deeds aside, on account of the relation of influence in the person obtaining, and of confidence in the person granting the benefit, as in the cases of *guardian and ward, attorney and client, agent and principal*, and the like; more particularly in respect to *attorney and client* (*y*). There is a particular jealousy and anxiety on the part of all Courts in guarding suitors against that sort of influence and knowledge which attorneys possess and may exercise injuriously towards their clients, and in protecting the unwary against undue influence and control. Where that relation of confidence exists, and where the party frames the instrument for his own advantage and benefit, every presumption arises against the transaction. As in the case of an interested witness, it is not necessary to prove falsehood; a Court of law will not hear him at all. So, in the case of such an executor, it is not necessary to prove fraud and circumvention; he must remove the suspicion by clear and satisfactory proof (*x*).

Jones v. Jones, 7 Price, 665; *Bever- 25—27; Saunderson v. Glass*, 2 Atk.
sham v. Springold, 1 Cas. in Ch. 80. 297; *Cray v. Mansfield*, 1 Ves. sen.

(*x*) Dig. Lib. 48, tit. 10, s. 15; 379; *Pierce v. Waring*, cited Id.
 and Lib. 34, tit. 8. See Godolph. 380; *Oldham v. Hand*, 2 Ves. sen.
 Orp. Leg. 86. 259. See *ante*, pp. 271, 272.

(*y*) *Walmsley v. Booth*, 2 Atk. (*z*) See *Middleton v. Forbes*, stat-

In a recent case in Ireland, where a testator devised his real estate, and without giving any legacies, or making any disposition of his personal estate, appointed his executor, a gentleman who had acted as his *confidential counsel* for several years, who drew his will from verbal instructions, without informing the testator of the rule of law which vests the personal estate undisposed of in the executor, for his own benefit (a); and the next of kin of the testator filed a bill, insisting that the executor ought to be compelled by the Court of Chancery to distribute the personal estate according to the statute of distributions; and the executor stated that he did not know the above rule of law at the time of making the will, and claimed a right to retain the personal estate for his own benefit—Lord Chancellor *Hart* acquitted the defendant of having practised any fraud or imposition on the testator as charged in the bill; but, upon principles of public policy, declared, “that, under the circumstances of the case, a Court of equity would not permit the executor to retain the clear residue of the testator’s estate for his own benefit; and that he must be made a trustee of it, for the testator’s next of kin; and laid down this general principle of equity, that “wherever a professional man is called on to give his services to a client, whether to prepare a deed or a will, the law imputes to him a knowledge of all the legal consequences to result, and requires that he should distinctly and clearly point out to his client all those consequences from whence a benefit may arise to himself from the instrument so prepared; and, if he fail to do so, a Court of equity will deprive him of it” (b). His Lordship, after adverting to the case of *Gibson v. Jeyes* (c) observed—“if those guards are thought necessary in matters of contract, the safety of families requires a much stricter hand to be held in a testamentary act. Men too frequently defer the duty of making a will to an extreme period of life, and to the bed of sick-

ed in 1 Hagg. Eccl. R. 394; *Barton* stat. 11 Geo. 4 & 1 Will. 4, c. 40.
v. Robins, 3 Phill. 455, n.; *Ousley v.* (b) *Segrave v. Kirwan*, 1 Beatty,
Wells, Prerog. Trin. T. 1777. 157—166.

(a) This rule has been altered by (c) 6 Ves. 266.

ness. They are generally closeted with the lawyer, from a reluctance that their families should know what they are to expect; and, in such circumstances, whatever may be the respectability of the witnesses who attest the formal execution of the will, no family would be safe, if the law did not impose on the lawyer difficulties amounting almost to a disqualification to become a devisee for his own benefit. Where he is the hand to prepare the testament, he must be prepared to prove that the will is the spontaneous intention of the testator, by other evidence than that which may be read out of the testamentary paper" (d).

Though the testator and the maker of his will may stand in a relation favourable to the exercise of undue influence by the latter, and though there may be suspicious conduct, and some deficiency of capacity, yet satisfactory evidence of the *factum* may establish the instrument; it is not in law invalid. If the writer of a will takes any benefit under it, as the Courts look on such a transaction with jealousy, the authenticity of the will must be proved by stronger evidence than ordinary. In such a case, the capacity, free agency, freedom from surprise, and perfect knowledge on the part of the testator of what he was doing, will be subjects of minute inquiry. On such occasions, the *onus probandi* will be thrown with peculiar strictness on those who seek to establish the will; and this will be further increased, if the testator was, at the time, in a state of debility, if he was in the habit of placing great confidence in the devisee, if there was any thing private or clandestine in the transaction, or any other circumstances of a similar character (e). So, also, where the will is not written by the party benefited, but by his agency or procurement, the presumption will be strong against the act, which is not actually defeated, as it was by the civil law (f), provided the intention can be fairly deduced from other circumstances. Though the Court will not presume fraud, it will require strong evidence of intention (g). Though the

(d) *Segrave v. Kirwan*, 1 Beatty, See 3 Hagg. Eccl. Rep. 467, 468.
166—170. See *Maccabe v. Hussey*, (f) Dig. Lib. 34, tit. 8.

2 Dow & Clark, P. C. 440.

(g) *Billinghurst v. Vickers*, 1 Phill.

(e) *Paske v. Ollatt*, 2 Phill. 323. 193, 194.

proof of instructions is not necessary where the capacity is not doubtful, yet where imposition and custody are suspected, the defect of instructions is extremely material, more especially when the writer makes himself executor (*h*). Under such circumstances, the Court demands the most decisive proof of the complete absence of influence and excitement at the preparation and making of the asserted will, and must require unimpeachable evidence of unbiassed volition and of clear capacity, and must expect it to be shewn by instructions coming from the deceased himself, and by an execution in the presence of witnesses above all exception (*i*). In cases where there is any doubt of capacity, or any suspicion of fraud, evidence of affection and testamentary declarations are generally adduced, to prepare the mind of the Court, and conduct it, as it were, to the testamentary act. In such a case, the first requisite would be instructions coming from the testator himself; if they cannot be proved, the defect may, by possibility, be remedied by something passing at the execution tantamount to instructions, or by subsequent recognitions so clear and direct as to supply the place of instructions.

A very remarkable case has been reported, combining almost all the unfavourable circumstances that occur in the framing of a will, (the testator being almost an idiot, and the party principally benefited almost a stranger,) written by the procurement of his father, who was the attorney of the testator, and the will itself drawn out from instructions given not by the testator himself, but by his attorney, the father of the legatee; and, besides these, a variety of other circumstances, clearly indicating a purpose of circumvention. In this case the testator died on the 20th November, 1824, aged about 74 years, leaving his sister his sole next of kin. His personal property amounted in value to 25,000*l.*; his real estate to 250*l. per annum*. The will was dated on the 14th of August, 1821, and bequeathed to his sister 2000*l.*; to his cousin 4000*l.*; to another person 1000*l.*; to the poor

(*h*) *Middleton v. Forbes*, stated in
1 Hagg. Eccl. Rep. 398.

(*i*) *Dodge v. Meech*, 1 Hagg.
Eccl. Rep. 620.

of Stratford-on-Avon, 50*l.*; to Henry Wyatt, the residue both of his real and personal property; and appointed Henry Wyatt sole executor. The codicil, dated on the 5th Aug. 1822, after reciting the clause of the will giving 2000*l.* to his sister, revoked that legacy, and in all other respects confirmed that will. The will and codicil were propounded by Henry Wyatt the executor; and were opposed by the sister of the deceased. Both instruments were prepared from instructions, not given directly by the deceased, but through the intervention of the party interested, and were executed in the presence of the executor and residuary legatee, who was the attorney and agent of the deceased. It was not denied in argument—that the deceased, to a certain extent, was possessed of capacity, which, with clear proof, might give effect to a testamentary instrument; that, if the attesting witnesses could have spoken to instructions given by the deceased himself, to circumstances and conduct clearly and distinctly manifesting intention and volition, and that he fully comprehended the nature of the act, and evinced a voluntary wish and desire so to dispose of his property—there was nothing in the evidence of incapacity sufficient to falsify such a case. The deceased was not insane, nor was he an idiot; he had a certain degree of eccentricity, but not delusion; he had a certain degree of weakness of understanding, that exposed him to imposition, but not that degree of imbecility which rendered him intestable. The result of the evidence as to capacity was, that the testator was a very weak man; that, judging both from what he did, and from what he omitted to do, his understanding was much below par, and the legal standard of perfect capacity; that inertness, inactivity, indolence, torpidity of mind, inattention to his large property, were the leading characteristics and symptoms of his weakness; that he was therefore a person so far liable to be imposed upon, as to require the Court to look with vigilance and jealousy into the proofs of the *factum*; that he might possess a testable capacity; and that very strong and clear evidence of the *factum*, and of free and active testamentary intention might establish the executor's case. For the sister it was argued—that the

disposition was in favour of a stranger in blood; that the parties interested were active in obtaining the instruments; that the will was prepared from instructions conveyed by the father of the executor—the codicil by the executor himself; that these persons were the attorneys and agents of the deceased; that the presumption of law was against the act; that the law, though not positively invalidating, yet required the clearest proof of unbiassed intention, and full understanding of the nature and effect of such instruments; that the capacity of the deceased, though not intestable, yet was weak, and liable to circumvention and imposition; that the evidence of the *factum* did not clear up these difficulties, and was insufficient to support the testamentary papers; lastly, that there were such marks of fraudulent conduct in the executor, as called for his condemnation in costs. For the executor—that, though by the principle of law, where parties interested were active in the framing of the testamentary instrument, and stood in a particular relation to the testator, a greater degree of vigilance was required in investigating the transaction, yet, that this case would fully satisfy the most jealous examination; that the deceased was not a person of doubtful, but of perfect capacity; that no circumstance of fraud attached upon the executor; that the evidence on the *condidit*, and of subsequent recognitions and conduct, fully established the testamentary intention, and the validity of the will and of the codicil. The learned Judge held that, under the several circumstances of suspicion attending this case, the proof of the *factum* was insufficient. The capacity of the deceased, though not intestable, was so far weak and inactive, as to require a cautious examination of any testamentary act, and proof beyond a mere formal execution; direct proof that he clearly understood and freely intended to make that disposition of his property which the will purported to direct. Added to the difficulty arising from weakness, it was a will in favour of *an agent and attorney*, in which case the law is jealous of influence on one side, and of blind confidence on the other; the instructions, instead of being given by the deceased, came from the parties benefited, and the will was

prepared under the directions of the executor's father, the codicil by the executor himself; the execution of both instruments was merely formal, in the presence of the executor, without any thing to probe the capacity, or to supply the want of instructions; the suggested recognitions were insufficient in themselves, and being made, if at all, at a time when the deceased was in the possession of the executor, under his influence, and exposed to any impressions that might be made upon his mind—the Court, therefore, was of opinion, that the executor's case was not sufficiently established against all the presumptions and suspicions that attached to it, and pronounced, that the executor had failed in the proof of the will and codicil: but as actual fraud had not been established, no costs were given (*i*).

There was an appeal in the last case to the Court of Delegates, but that Court having been equally divided in opinion, no judgment was given (*j*). A commission of Adjuncts was afterwards issued, and the sentence of the Prerogative Court was reversed (*k*), and probate of the will and codicil was decreed to the executor; and the costs of the appeal on both sides were directed to be paid out of the personal estate of the deceased. An application was then made for a commission of review, on the ground that the evidence was voluminous and contradictory, that the property in question was very large, and that divers important questions of law were involved in the sentence of the Court of Delegates, by which the petitioner conceived himself aggrieved (*l*). Lord Chancellor *Brougham*, on refusing the commission of review, observed, “that the great admitted fact of suspicion in this case arose from the circumstance that the testator and the person to be benefited by his will stood in the relation of client and attorney towards each other. This point the Court of Delegates had considered, and they were, in the result, satisfied that the other circumstances of

(*i*) *Ingram v. Wyatt*, 1 Hagg. 16th and 17th June, 1831.
Eccl. R. 384.

(*j*) Deleg. 7th, 8th, 9th and 20th Jan. 1830. (*l*) The case was very fully and ably argued before Lord Chancellor *Brougham*, on the 26th, 27th, 28th,

(*k*) *Id.* 12th, 14th, and 15th Feb.; 30th, and 31st Jan. 1832.

the case were strong enough to rebut the presumption which necessarily arose from that relation; and which presumption, if they had not believed it to be rebutted, would have given a contrary turn to their decision. They had considered the proofs which had been given of the state of the testator's mind, his capacity to make a will, the singularity of his conduct, the eccentricity of his habits, and all those other circumstances relating to the testator personally, which were in the main admitted on both sides, although they were exaggerated by the evidence of some of the witnesses, and attempted to be softened by others. They had not overlooked the evidence which went to shew the feelings the testator expressed towards some of his relatives, the little care and interest he evinced respecting his property, and the little knowledge he had as to some part of it; and having well investigated and weighed all these, and all the other facts of the case, the Court of Delegates came to the conclusion, that the will in question *was the will of the testator, and that it was not, as was alleged on the other side, the will of the Messrs. Wyatt.* Unless, then, his Lordship could be satisfied that the principles of law on which the Court decided were wrong, or that the facts were misstated, or misunderstood, it was impossible that he could recommend the Crown to grant a commission of review; a doubt was not sufficient; he must be convinced that the Judges were wrong" (*m*).

If no suspicion of fraud exists, a will consistent with previous affection and declarations, and supported by recognition and circumstances shewing volition and capacity, is valid, though made *in extremis*, and though the instructions were conveyed through the party benefited (*n*).

In a case, where a bill was filed by an heir-at-law against residuary devisees, suggesting a trust for charitable purposes—one of the defendants was the attorney, who drew the will; but there was no evidence of any fraud, or of the alleged trust—Lord *Eldon* said, that he had always

(*m*) *Wyatt v. Ingram*, 3 Hagg. Eccl. Rep. 466—469.

(*n*) *Ross*, otherwise *Russ*, v. *Chester*, 1 Hagg. Eccl. Rep. 227.

considered the fact, that the person who prepared the will is himself residuary devisee, an unfortunate circumstance, calling for a considerable degree of jealousy in the Court; but he did not by any means go the length that some judges went, particularly Mr. Justice *Buller*, in a case from *Hampshire*, who considered that circumstance as almost decisive evidence of fraud. He knew cases, in which it is perfectly impossible fairly to impute fraud, as arising out of such a circumstance. The bill must be dismissed unless the heir will take an issue *devisavit vel non*; to which he is entitled" (o).

In another case, the asserted will of a person of fluctuating capacity (totally abandoning the principles of a former disposition, made before the testator's faculties were impaired, and long adhered to) was pronounced against; and the executor, the person principally benefited, was condemned in costs, as, among other things indicative of fraud, he had himself given the instructions for the will, and his son alone, a minor, spoke to its execution (p).

Where a testator is proved to be of perfectly sound mind, and free from any suspicion of imposition having been practised upon him, the evidence of bare execution of a will is sufficient; the law will infer the other necessary ingredients, that the contents were known and approved, and that the party intended to give them effect. Neither fraud, nor the absence of sound mind is to be presumed; but the circumstances of there being no evidence of instruction, and that the party who prepared the will takes a considerable benefit under it, excite the jealousy and awaken the vigilance of the Court; and in such cases something more than proof of a bare execution is required—As in a recent case, where a will was in the hand-writing

(o) *Paine v. Hall*, 18 Ves. 475, referring to the case of *Hicks v. Parr*, before *Buller, J.*, at Winchester Assizes, 1789, cited by Lord *Ellenborough* in *Trimbletown v. Lloyd*, 1 Bligh, New Ser. 449, 458, 476; *S. C.* 1 Dow, 85; and in *Walker v. Stephen-*

son, 3 Esp. 284; and by Counsel, 4 Esp. 51, and noticed by *Buller, J.*, in *Revett v. Braham*, 4 Term Rep. 497.

(p) *Dodge v. Meech*, 1 Hagg. Eccl. Rep. 612.

of, and prepared by, the *solicitor* of the testatrix, when she was alone in his office, and he was named joint *residuary legatee and executor*, and *large legacies* were given to himself and his family, and the will was attested by two neighbours of the solicitor casually called in, but who were not privy to the instructions for, preparation, or reading over of the will, but merely saw the deceased subscribe it, and had no reason to doubt her capacity.—The will, in that case, was opposed, on the ground of the weak capacity of the testatrix, and of fraud and imposition having been practised upon her; and also of legal incapacity arising from insanity; and it was alleged that the testatrix, from her youth, was a person of weak capacity and of deranged mind; that the wildness of her countenance and the expression thereof, and her general appearance, manners, conduct, and deportment, were such as to denote that she was a person of deranged intellect, and, as an insane person, was incapable of any act requiring thought and judgment; and that she was at all times considered and spoken of, and treated, by medical men, and by her family, relations, friends, and acquaintance, *as mad*; and her general habits, from the earliest period of her life to the day of her death, were described as irrational and extravagant—And it was alleged, that certain documents in her hand-writing, which had been produced to support the will, were mere contrivances to give colour and effect to the fraud, as they were written by her either from dictation, or from the drafts which she was made to copy. In support of the will, it was urged that the deceased throughout her life was sane, was treated as such by her family and friends, was in the uncontrolled management of her property, in which she displayed judgment and prudence; that, at various periods of her life, she was engaged in acts of business, which she conducted without the suspicion of derangement; and facts were alleged to shew the probability of the disposition in favour of the legatees; and explained some of the specific acts charged as insane, and exhibited a number of her letters written at different periods—The will was established on the ground that the documents written by the testatrix afforded full evidence

of mind and intention, and that she understood the nature of the testamentary act in question, and that they not only repelled any appearance of fraud and circumvention practised on an understanding too weak to resist (*g*); but that they supplied such proof of sound mind as nothing short of decisive disqualifying insanity could defeat the testamentary effect of a disposition proceeding from such a mind and intention. —The Court decided that the evidence, so far as it was credible at all, did not, in its judgment, make out actual insanity; for no act was proved by credible witnesses which could not be accounted for by the excitement of liquor. Even the acts which might have been produced by that excitement were not constant and habitual, the exhibits in her own hand-writing shewing, that, at the times when they were written, she was in a sound state of mind; and above all no fixed and settled state of delusion was proved by which the Court was enabled to say that at any one time, or on any one subject, the deceased was actually or essentially insane, so as to be legally incapacitated from disposing of her property, either by an act to take effect in her life-time or after her death (*r*).

So also, in a case, where a testatrix, eighty-eight years of age, had made a will appointing one person sole residuary legatee, and by a codicil thereto, executed only six days before the death of the testatrix, named her *attorney*, who drew the codicil, joint residuary legatee with the first, who opposed the validity of the codicil, it was established by the Court of Delegates (*s*).

In another case, where a testator, when of sound mind, had written a testamentary paper, consistent with his long settled and fixed intentions and affections, which were adhered to as long as he retained his capacity, it was held, that *supervening* insanity was sufficient to account for the non-execution of such paper, and that such incapacity would

(*g*) See *Filmer v. Gott*, 7 Br. P.C. 70; *Fane v. Duke of Devonshire*, 6 Br. P. C. 137.

(*s*) *Bonner v. Matthews*, Serjeants Inn Hall, 10th Feb. 1832.

(*r*) *Wheeler and Batsford v. Al-*

erson, 3 Hagg. Eccl. Rep. 574—

616.

not reflect back on previous eccentricity, so as to invalidate the paper as a testamentary act (t).

In another case, where the drawer and attesting witnesses of a will (revoking a former one) executed ten days only before the death of the testator, who was eighty-five years of age, were confirmed in their testimony as to his capacity, volition, and free agency, by adverse witnesses, and by his affections, declarations, and recognitions; the general bad character of the drawer (an attorney of low practice, who had been employed by the testator for many years) and slight discrepancies in the evidence of the *factum*, were held not material, as it appeared that the testator possessed faculties equal to the act, and was not likely to have been imposed upon, the Court pronounced in favour of the will; and condemned the opposer of it, who had pleaded a fraudulent conspiracy, incapacity, and circumvention, (in the proof of which he failed) in the costs incurred by his allegation (u).

But in a case where a husband, by undue influence and marital authority, obtained from his wife (nine days before her death, when her mind was affected by delirium, and when she was labouring under a painful disorder, to allay which she took laudanum) a will by which he was appointed *sole executor and universal legatee*, wholly departing from a former will deliberately made a few months before; it was held that the presumption was strong against the will so obtained by the husband; and the evidence not being satisfactory in support of it, the Court pronounced against it, and condemned him in costs (v).

So also, where the execution of a codicil to a will was clandestinely, and without any previous instructions, obtained from a testator eighty years of age, only one month before his death, by his son (the person solely benefited) and his associates, and the disposition was contrary to the repeated former acts of the deceased, (the clearest proof of capacity

(t) *Hoby v. Hoby*, 1 Hagg. Eccl. Rep. 146—162.

(v) *Mynn v. Robinson*, 2 Hagg. Eccl. Rep. 179. See *Moss v. Bran-*

(u) *Bird v. Bird*, 2 Hagg. Eccl. Rep. 142.

der, 1 Phill. 254.

and free agency under such circumstances being necessary), the Court pronounced against such codicil, and condemned the son in costs (*w*).

It has been laid down, that, if a man makes a will in his sickness by the *over importuning* of his wife, to the end that he may be quiet, this shall be said to be a will made by *constraint*, and shall not be good (*x*). The influence, to vitiate a testamentary act, must amount to *force and coercion destroying free agency*, it must not be the influence of affection and attachment, nor the mere desire of gratifying the wishes of another, for that would be a very strong ground in support of a will; further, there must be proof that the act was obtained by that coercion, by importunity which could not be resisted; that it was done merely for the sake of peace, so that the motive was tantamount to force and fear.

Thus, in a case where a codicil, written before the capacity of the deceased was attempted to be impeached, shewed the testator's great affection for, and confidence in, his wife, his anxiety for her comfort and gratification, and that she should not be disturbed in the enjoyment of his property; and whatever might have been her influence over the testator, it was not suggested that it was of a nature to vitiate the act: and it further appeared, that there was the general influence of an active, bustling, high spirited wife, over a good natured, easy husband; and that, in consequence of a paralytic attack, it was necessary she should take a decided lead in the management of the concerns of an inn kept by the husband; and that she exercised some control over his actions and conduct, as a kind nurse and an affectionate wife naturally would; but no trace appeared of any unfair importunity, on the part of the wife, to induce him to alter his will or to do any testamentary act—Although the Court admitted that the wife possessed influence arising from the affection and deference of the husband, and from his wish, in the dispo-

(*w*) *Mackenzie v. Handasyde* 2 Rep. 427; Vin. Abr. tit. Devise, (Z. Hagg. Eccl. Rep. 211. 2.) pl. 3, 7. 3; and see Swinh. on

(*x*) *Haaker v. Newborn*, Styles' Wills, part 7, s. 2.

sition of his property, to please her who was the principal means of acquiring it; yet that was held insufficient to vitiate the testamentary act; for, in order to do that, there must be proof of something amounting to force and coercion in the obtaining the act itself (*y*).

Such influence is much more readily inferred to be exercised by the husband over the wife, than by the wife over the husband. Thus, in a case where a *feme covert* having, under certain powers, made a will and codicil in February, 1818, (eight months after her marriage, by which, after making provision for her husband, and leaving sundry legacies, she bequeathed the bulk of her fortune to, and appointed executors, strangers in blood; such disposition (except the provision for the husband) being similar to a will made by her in 1816. The wife afterwards made a will on the 9th of March, 1827, and a codicil thereto on the 21st April, (she dying on the 8th May,) 1827; which papers, (except legacies to three servants, and rings to three friends), left all her property to her husband, and appointed him and a total stranger executors; the Court holding that the latter papers were obtained by the husband's undue influence, when her faculties were much impaired, pronounced for the will and codicil of 1818, and condemned the husband (who, though he denied the validity of the powers, and nominally prayed an intestacy, was the real party setting up the latter papers) in the costs of the executors of the will of 1818. Sir *John Nicholl* observed, in inquiring into the *factum* of the latter will, it becomes material to examine the probability of this great change of intention; and it becomes the more necessary to examine that probability, if, at the time of making the disposition, the capacity of the testatrix was in any degree weakened or doubtful; still more, if the husband, in whose favour this great change is made, and who, from the relation in which he stood to the deceased, must almost necessarily have great influence and authority, should be the person originating the whole business of the new will. To examine, then, the probability of this change, it may be proper to consider the

(*y*) *Williams v. Goude and Bennett*, 1 Hagg. Eccl. Rep. 577—611.

grounds and circumstances of making the first will. If that were made upon hasty, capricious, and temporary considerations, the departure from it becomes less improbable; but if made under motives long existing, and quite naturally inducing it, the adherence to it will be the more strongly presumed, and the circumstances to account for the complete revolution in her intentions will be required to be more forcible. Where, in addition to these circumstances—*First*, that the disposition in the new will is highly improbable—*Next*, that the husband had been endeavouring to get at her deeds and testamentary instruments; and further, that she was in a state of doubtful capacity—it is found that the husband, as far as the evidence went, originated and conducted the whole business, representing or rather misrepresenting the previous facts, and being present at all the material parts of the transaction, the case proceeded to the evidence of the *factum* under presumptions of fraud and imposition, which hardly any evidence would be sufficient to repel. It would at least be extremely difficult to shew, that she was a free as well as capable testatrix; to shew that she had a real disposing testamentary mind, and an intention to abandon all the dispositions of her former will made so carefully, and adhered to so firmly. The strong presumption would be, that, in whatever she said and did, however it might impose upon the witnesses, she was a mere instrument and puppet in the hands of her husband. To revoke the former will, her spontaneous act, it was necessary that the deceased should be proved to have recollected, at least, its general contents; that she had distributed memorials among her friends; that she had given her husband a certain portion; that she had bequeathed the bulk of her fortune to those whom she had long adopted for that purpose; it was necessary that she should be proved, upon some rational grounds (negating the importunity of her husband) to have become desirous of abandoning all her former intentions; but to no part of her former will is there the least reference. That this new will was without the importunate influence of the husband, there is not the slightest appearance in any part of the evidence. There

was nothing to convince the learned Judge that the mind of the deceased was sufficiently probed, to ascertain whether she was or was not either a free, or, as applied to such a will, a capable testatrix; nothing satisfactory to discover what her real wishes were, without the restraint and influence of her husband. To support such a complete revolution in the testamentary dispositions of the deceased, it was necessary to shew that she had recollection of what the former disposition was, even supposing there were no grounds to suspect a mere tutored acquiescence under the influence of her husband. The circumstances were all quite sufficient to require that the husband should afford the most satisfactory proof that the deceased was not a mere unresisting instrument in his hands, so taught, tutored, and impressed, as to say and do all that was stated to have taken place. The learned Judge in conclusion observed, (considering the extreme improbability of this change of disposition; the means used by the husband to urge her to place her concerns in his hands; her long resistance till reduced to a weakened state of capacity; the presence of the husband conducting all these transactions), that it was not proved to his mind that the latter will was the real mind and wish of a capable and free testatrix; on the contrary, he was of opinion, that it was the will of the husband obtained by him by undue influence and marital authority, contrary to the real wishes and intention of the deceased, as far as she was capable at that time of forming any testamentary intention (x).

In a case where a testator having, ten years before his death, when in perfect health, executed a will, and subsequently a codicil, conformable to his ascertained affections; and two years and a half before his death, (after a paralytic

(x) *Marsh v. Tyrrell and Harding*, 2 Hagg. Eccl. Rep. 84—141. In this case, there was an appeal to the Court of Delegates, and (neither of the Common Law Judges consenting to the decree proposed by the majority) no judgment was given. A commission of Adjuncts was afterwards issued, and the parties having entered into a compromise, the sentence was reversed by consent. *Tyrrell and Harding v. Marsh*, 3 Hagg. Eccl. Rep. 471.

stroke producing at least great bodily infirmity), had executed a second codicil materially departing from those instruments, and, six months before his death, a third codicil, revoking the second and reverting to the former disposition, probate of the will and first and third codicils was granted, there being no satisfactory proof of a change in his affections, and the evidence of volition and capacity being, at least, as strong in support of the third as of the second codicil (*a*).

It was held in another case, that the clearest and most consistent evidence of capacity and volition is required to support a codicil conveying bequests of such extent as to be irreconcilable with the character of the deceased, and with her intentions, as proved by her affections and former testamentary dispositions; and where the deceased, at the time of the execution of such codicil (within ten days of her death), was in a state of extreme weakness and debility, all her confidential friends excluded or absent, and those only about her who were benefited under, or engaged in, the preparation or execution of the instrument (*b*).

It seems, that if undue influence be exercised over the mind of a testator in making his will, the provisions in the will, in favour of the person exercising that influence, are void; and that the will may be good as far as respects other parties: so that a will may be valid as to some parties, and invalid as to others (*c*).

Costs, in suits in the Ecclesiastical Courts, are, for the most part, in the discretion of the Judge, according to the nature and justice of the case; and the reasons for granting or refusing costs are generally publicly expressed at the time of giving judgment.

If a fraudulent conspiracy in procuring a will is established, the party who has framed and engaged in it will be compelled, in the Ecclesiastical Court, to pay all the costs

(*a*) *King and Thwaites v. Farley*, 1 p. 85; *S. C.* 1 Bligh, P. C. New Ser. Hagg. Eccl. R. 502. 427. But it seems that a deed cannot be partially set aside for fraud.

(*b*) *Brydges v. King*, 1 Hagg. Eccl. R. 256. *Myddleton v. Lord Kenyon*, 2 Ves. jun. 391.

(*c*) *Lord Trimlestown v. D'Alton and Others*, 1 Dow & Clark, P. C.

incurred in debating it; while, on the other hand, if the grounds of opposition fail, if the imputation of fraud is not sustained, the party who has set up an unfounded charge, which he is unable to prove, must pay the costs which he has occasioned (*d*).

12. When it appears that a lunatic, who has been so found by inquisition, has executed a will or any testamentary papers, an order may be obtained, on petition to the Lord Chancellor, for depositing them in the Master's office, or in some other secure place, for safe custody, during the life or lunacy of the party. Thus, an order was granted on the petition of the committee of the person and estate of a lunatic, to deposit his will, which had come into the hands of his committee many years ago, in the custody of the Master to whom the matter was referred, or with such other person as the Court should think proper, on an affidavit that the will was in the same state in which the petitioner received it. The next of kin were served with the petition, and consented (*e*). So, again, on the petition of three of the younger children and next of kin of a lunatic, the Lord Chancellor ordered the heir-at-law and committee of the estate of the lunatic, within a week after the service of the order, to deposit on oath in the Master's office, all wills and other testamentary papers in the custody of such committee, there to remain for safe custody until further order; and the Master was ordered to inquire and certify what wills or other testamentary papers of the lunatic did exist, or had existed, and where the same then were, or what had become of them, with liberty for the Master to examine any persons he might think necessary upon interrogatories or otherwise, for the better discovery of such matters: and the costs of the inquiry were directed to be taxed and paid out of the lunatic's estate (*f*)

(*d*) *Bird v. Bird*, 2 Hagg. Eccl. Rep. 145; *Green v. Proctor and Mylne*, 355. *Newey*, 1 Hagg. Eccl. Rep. 337; (*e*) *In re Thomson*, 1 Russ. & Myle, 17 August, 1827. See *ante*, pp. 323, 328, 330.

Where the will of a lunatic had been deposited in the Master's office, with other deeds and writings, pursuant to an order; on the petition of two of the executors named in such will, and proof of the death of the lunatic, the Master was ordered to cause such will to be taken to the proper officer of the Prerogative Court of the Archbishop of Canterbury, in order that the same might be duly proved and established (g). So, also, when, on the death of the lunatic, a petition was presented by the committee of his person, praying that the proper officer of the Bank of England might be directed to deliver up, with the privity of the Accountant-General of the Court of Chancery, unto the solicitor for the petitioner and the next of kin, and the rest of the lunatic's family, a paper packet having words indorsed thereon, indicative of its containing the will of the lunatic, which had been deposited, pursuant to an order in the Bank of England—The Lord Chancellor ordered one of the cashiers of the Bank to deliver such paper packet to the said solicitor, on his giving an undertaking in writing to the Secretary of lunatics immediately to deliver over the same to the executors (if any) named in the will, if such executors were willing to act; and notice was to be immediately given by such solicitor to such executors; and if they refused to act, the same packet was to be delivered to the next of kin of the lunatic, or the persons entitled to take out administration with the will annexed of the lunatic's estate (h).

In another case, an order was made on the petition of the committee of the estate of a lunatic, that his solicitor should deposit in the Master's office, upon oath, all wills and codicils, and all instructions for, and drafts of, wills and codicils, of the lunatic, there to remain until further order (i). And, after the death of the lunatic, on the petition of his children, the Master was directed to open the box (deposited in his office under the last-mentioned order), containing the wills and codicils of the lunatic, and deliver the last will with all

(g) *In re Southby*, 28 November, 1827. (i) *In re Humpleby*, 18 June, 1829.

(h) *In re Orme*, 21 August, 1827.

codicils thereto to a proctor named in the order, for the purpose of being exhibited and proved in the proper Ecclesiastical Court (*k*). And sometimes, after the death of a lunatic, the Master will be directed to look into the wills and testamentary papers of the lunatic deposited in the Master's office, and to certify such as he shall find to be the last will (*l*).

If a person makes a will and afterwards becomes a lunatic, equity will not entertain a suit, in his lifetime, to perpetuate the testimony of the witnesses to such will (*m*). Nor to perpetuate testimony of any other facts in which the next of kin as such may be interested.

An idiot can have no executor; for, being *non compos a nativitate*, he could at no time make a will: but a lunatic may have an executor; for lunacy is not a revocation of a will made in the absence of the disorder (*n*).

Idiots and lunatics are, both by the civil law and likewise by the common law, incapable of being executors or administrators; for such disabilities render them not only incapable of executing the trust reposed in them, but also, by their insanity and want of understanding, they are incompetent to determine whether they will take upon them the execution of the trust or not (*o*). Therefore it is settled, that, if an executor become *non compos*, the Spiritual Court may, on account of such disability, commit administration to another (*p*).

If a person appointed an executor become *non compos*, the Spiritual Court will grant administration to another, usually to the party whom the Chancellor appoints committee; but such grant of administration will not prejudice any right of retainer which the *non compos* would have had, provided he had been capable of taking the administration (*q*). And administration may be revoked if the next of

(*k*) *In re Humpleby*, 16 June, 276.

1831.

(*l*) *In re Cresswell*, 4 August, 1823.

(*m*) *Sackville v. Aylworth*, 1 Vern. 105. See *post*, Chap. x. s. 1.

(*n*) 4 Rep. 61 b. See *ante*, p.

(*o*) Godolp. Orph. Leg. 86; Bacon's Abr. tit. "Idiots and Lunatics" (D).

(*p*) Bacon's Abr. Ibid. *Hills v. Mills*, 1 Salk. 36.

(*q*) *Franks v. Cooper*, 4 Ves. 763.

kin, to whom it has been granted, becomes *non compos* or otherwise incapable (r).

Where a sole executor or administrator becomes a lunatic, it is the ordinary practice of the Ecclesiastical Court to make a limited grant to his committee, for his use and benefit during his lunacy (s). And in a case where the executor had no beneficial interest and no committee had been appointed, administration with the will annexed was granted to the residuary legatee during the life and incapacity of the executor (t). So, where letters of administration *de bonis non* had been granted to three administrators, one of whom was afterwards found a lunatic by inquisition, the Court directed, upon the letters of administration so granted being brought in by the two sane administrators, and the committees of the third, letters of administration *de bonis non &c.*, should with the consent of such committees issue *de novo* to the two former only, (omitting the third administrator, who had so become a lunatic), in order to supply the defect in the legal representation, occasioned by such lunacy (u). In a case where the surviving executor and residuary legatee in trust had been found a lunatic by inquisition, administration of the unadministered effects of the deceased was granted during the lunacy of the surviving executor and residuary legatee in trust, to the two joint residuary legatees for life, with the consent of the committee of the lunatic (v); and administration was decreed under circumstances precisely similar, except that there was no actual consent of the committee of the lunatic, but a personal service of the citation upon the committee, calling upon him to shew cause, &c., and no dissent had been expressed (w). But, where a testator appointed two persons executors of his will, one of whom renounced, and the other was a lunatic under confinement, and no committee of her person or estate had been appointed, although it did not appear that any obstacle exist-

(r) *Offley v. Best*, 1 Sid. 373; Bac. (t) 3 Phill. 497. See 3 Hagg. Eccl. Abr. tit. Executors, (E. 3.) 12; 4 R. 217.

Burn's Eccl. Law, 292, 8th ed.; Com. (u) *In bonis Phillips*, 2 Add. R. 335. Dig. Administration, (B. 8.) (v) *In bonis Milnes*, 3 Add. 55.

(s) 2 Add. p. 336, n.

(w) *Rodnall v. Webb*, Id. 56, n.

ed to the formal appointment of a committee, yet the Court refused to grant letters of administration with the will annexed to the daughter and residuary legatee (during the lunacy of the executor), without the sureties in the bond justifying according to the ordinary rule of the Court (*x*). Where a person died intestate, leaving a widow, a lunatic, and two grandchildren, his next of kin, the Court decreed administration to the two grandchildren jointly, upon their exhibiting an inventory, and the sureties justifying (*y*).

The Ecclesiastical Court will not, when a competent party is opposing a will, stay the admission of the executor's allegation propounding such will until the appointment of a committee of one of the next of kin, who was a lunatic, be confirmed, especially where such committee was already a party to the suit as *curator* of the other next of kin (*z*). Where administration has been granted on account of the mental incapacity of a party, it may be revoked on his subsequent recovery (*a*). Administration of the effects of a wife who was proved to have been insane at the time of her marriage, was refused to the husband on the ground that the marriage had been illegally contracted (*b*).

By the law of Scotland, the power of disposition by will is confined to *moveable subjects*, and does not extend to immoveable and heritable rights (*c*); but such power cannot be exercised by idiots, nor by furious persons during their furiosity (*d*).

(*x*) *In bonis Hardstone*, 1 Hagg. Eccl. Rep. 487.

(*y*) *In bonis Williams*, 3 Hagg. Eccl. Rep. 217.

(*z*) *Tyrrell v. Jenner*, 2 Hagg. Eccl. Rep. 72.

(*a*) Com. Dig. Administration, (B. 8).

(*b*) *Browning v. Reane*, 2 Phill. 69. See *post*, Chap. xi.

(*c*) *Stair's Inst. B. 3. tit. 8, s. 29*, Ersk. Inst. by Ivory, 874.

(*d*) *Stair's Inst. B. 3, tit. 8, s. 37*. As to what constitutes a sound disposing mind, whether considered

apart from, or combined with, circumstances of undue influence, or fraud and circumvention, may be collected from the cases of *Towart v. Sellars*, 5 Dow, P. C. 231—247; *White v. Ballantyne*, 1 Shaw, 272; *Watson v. Noble's Trustees*, 4 Shaw & Dunlop, 200; *M'Diarmid v. M' Diarmid*, Id. 583; S. C. 3 Bligh, N. Ser. 374. See Ersk. Inst. B. 4, tit. 1, s. 27; and *Tulloch v. Viscount Arbuthnot*, 26 Jan. 1759; 1 Lord Kaimes' Princ. of Eq. 106—108, 3rd ed.

CHAPTER VIII.

OF THE ALIENATION OF THE ESTATES OF LUNATICS BY THE DIRECTION OF THE LORD CHANCELLOR, OR OTHER PERSONS INTRUSTED BY THE KING'S SIGN MANUAL WITH THE CARE AND COMMITMENT OF THE CUSTODY OF THE PERSONS AND ESTATES OF LUNATICS.



SECTION I.

Of Leases of the Estates of Lunatics.

AS the committee of the estate of a lunatic has no interest in his estate, but is considered as a mere bailiff (*a*), such committee cannot, of his own authority, grant leases of the lunatic's estate (*b*). And it seems to have been formerly considered, that such a lease, made even by the order of the Court of Chancery, was not valid at law; because the King could not grant it (*c*). Lord Chancellor *Eldon* held that he could make a lease of the lunatic's estate only during the lunacy; and that a tenant, trusting to the order of the Court, and taking a lease, might be ejected by the lunatic if he recover-

(*a*) *Ante*, p. 180.

(*b*) *Foster v. Marchant*, 1 Vern. 262; *Knipe v. Palmer*, 2 Wils. 130.

(*c*) *Knipe v. Palmer*, 2 Wils. 130; and see preamble of the act of 11 Geo. 3, c. 20. And it seems that, by the law of Scotland, the tutors of

idiots &c., cannot make a lease to endure beyond the term of their administration. *Craig*, Lib. 2, dieg. 10, sect. 1; *Reay v. Anderson* and Others, 5 February, 1800; *Mor. Dict. of Decisions*, pp. 16, 385; *Colt v. Colt*, Id. 16387.

ed (*d*). Before the statutes for enabling committees, by the direction of the Lord Chancellor, to grant leases of the estates of lunatics, orders were made for granting such leases if the lunatic should so long live, and continue a lunatic (*e*).

It has been before stated, that the Lord Chancellor had, formerly, no power to authorize the committee of a lunatic tenant for life, with power of leasing, to execute such power (*f*). But, by statute 43 Geo. 3, c. 75, s. 3, after reciting that many persons found lunatic or of unsound mind might be seised and possessed of freehold and copyhold lands, tenements, and hereditaments, either for the term of their natural lives, or for some other estate, with power of granting leases and taking fines, reserving small rents on such leases for one, two, or three lives, in possession or reversion, or for some number of years determinable upon lives, or for terms of years absolutely—it was enacted, that, in every such case, every power of leasing such lands, tenements, and hereditaments, which should be vested in such person so found lunatic, or of unsound mind, having a limited estate only, should and might be executed by the committee or committees of the estate of such person, under the direction and order of the Lord Chancellor, &c., duly intrusted, by virtue of the King's sign manual, with the care and commitment of the custody and estates of such persons; and such leases so to be executed by the said committees, under and by virtue of such order, should be as good and effectual in law, as if the same had been executed by the person so found lunatic or of unsound mind, in his or her sound mind.

By the fourth section of the last-mentioned statute, after reciting that persons found lunatic or of unsound mind might be seised or possessed of freehold or copyhold estates in fee or in tail and an absolute interest in leasehold estates, and that it might be for the benefit of such persons that leases or under-leases should be made of such estates

(*d*) *Ex parte Dikes*, 8 Ves. 79. *In re Stephenson*, 4 Aug. 1779.

(*e*) *In re Davies*, 30 March, 1779; (*f*) *Ante*, p. 189.

for terms of years, and especially to encourage the erection of buildings thereon, or otherwise improving the same; enacted, that it should be lawful for the Lord Chancellor &c., of the United Kingdom and of Ireland, respectively, intrusted as aforesaid, to order and direct a committee or committees of the estate of such lunatic to make such leases of the freehold, copyhold, or leasehold estates of such persons respectively, according to his or her interest therein respectively, and to the nature of the tenures of such estates respectively, for such term or terms of years, and subject to such rents and covenants as the Lord Chancellor, &c., of the United Kingdom and of Ireland, respectively, intrusted as aforesaid, should direct; and that all and every such lease or leases, made by such committee or committees under and by virtue of the said orders, as such Lord Chancellor, &c., should make thereupon, should be as good and valid in the law as if the same had been executed by the persons so found lunatic or of unsound mind respectively in his or her sound mind.

The statute 11 Geo. 4 & 1 Wm. 4, c. 65, has repealed the 43 Geo. 3, c. 75; and by the 23rd section of the former act, it is enacted, "that, where any person, being lunatic, is or shall be seised or possessed of any land, either for life or for some other estate, with power of granting leases and taking fines, reserving small rents on such leases, for one, two, or three lives in possession or reversion, or for some number of years determinable upon lives, or for any term of years absolutely, such power of leasing which is or shall be vested in such person being lunatic, and having a limited estate only, shall and may be executed by the committee of the estate of such person, under the direction and order of the Lord Chancellor, intrusted as aforesaid." And it is further enacted (*g*), "that, where any person, being lunatic, is or shall be seised or possessed of or entitled to any land in fee or in tail, or to any leasehold land for an absolute interest, and it shall appear to the Lord Chancellor, intrusted as aforesaid, to be for

the benefit of such person that a lease or under-lease should be made of such estates for terms of years, for encouraging the erection of buildings thereon, or for repairing buildings actually being thereon, or otherwise improving the same, or for farming or other purposes, it shall be lawful for the Lord Chancellor, intrusted as aforesaid, to order and direct the committee of the estate of such lunatic to make such lease of the land of such persons respectively, or any part thereof, according to his or her interest therein respectively, and to the nature of the tenure of such estates respectively, for such term or terms of years, and subject to such rents and covenants as the Lord Chancellor, intrusted as aforesaid, shall direct."

When the committees of the estate of a lunatic have received proposals for leases of his estates, and are desirous of granting them, they must present a petition (notice of which must be given to the heir-at-law and next of kin of the lunatic,) to the Lord Chancellor, who, if he thinks proper, will direct a reference to the Master to inquire and certify whether it will be for the benefit of the lunatic's estate, that the leases in question should be granted of the property mentioned in the petition, and upon what terms and conditions, having regard to the lunatic's interest in the estates. The Master to whom the matter is referred, after having been furnished with affidavits of the nature and value of the property, made by persons having a knowledge of the subject, and with such other evidence as he may require, makes his report, and, if he finds that it will be for the benefit of the lunatic and his estate, that the leases should be granted, a petition must be presented by the committee of the estate, praying that the Master's report may be confirmed, and that he may settle and approve of the leases to be granted, and that the committee may be at liberty to grant the lease mentioned in the report; the Court, unless any sufficient objection should be made, will then make an order that the Master's report be confirmed, and that the committee of the estate of the lunatic be at liberty, in the name, and on behalf of the lunatic, to grant the par-

ticular lease mentioned in the report, upon the terms therein expressed; and that it be referred to the Master to settle and approve of a proper lease accordingly, and that the committees do execute such lease when so settled and approved, upon the lessee's executing a counterpart thereof. And it is usually further referred to the Master to tax the petitioners and next of kin of the lunatic, their reasonable and proper costs incurred in the application, which, after being taxed, will be ordered to be paid by the committee of the lunatic's estate out of the rents and profits of it (*h*).

In some instances, where the Lord Chancellor has been satisfied by the evidence offered in support of a petition, of the propriety of granting the lease proposed, the usual reference to the Master on the subject has been dispensed with, and the committee ordered to execute a lease. In one case, where the property of the lunatic was very small, and he was not possessed of funds for bearing the expense of a reference, and a surveyor had certified that a proposed lease of a house in London would be highly beneficial to the lunatic's estate, the committee of the estate was ordered to carry the agreement for granting a lease into effect, and to execute a lease without any reference to the Master (*i*). In another case, where it appeared that the lunatic's income did not exceed 120*l.*, and that an eminent and experienced surveyor had reported in favour of the proposed lease of a messuage belonging to the lunatic, a reference to the Master on the subject was dispensed with, upon the counsel for the committee of the lunatic undertaking to settle and approve of a proper lease being made upon the terms mentioned in the petition; which the committee was ordered to execute, and it was only referred to the Master to tax the costs of the application and consequent thereon (*k*).

The Court has made an order for granting a lease of coal mines belonging to a lunatic. Thus, where the Master had found by his report that it would be for the benefit of the

(*h*) *In re Cadogan*, 3 April, 1827; of a lunatic's estate in the Appendix. *In re Young*, 16 May, 1827; *In re Betts*, 9 Aug. 1828; *In re Buckle*, 11 Aug. 1828. See the form of a lease

(*i*) *In re Fidler*, 12 May, 1825.

(*k*) *In re Spring*, 4 Aug. 1831.

lunatic and his estate to grant a lease of the coal mines belonging to him and contiguous to other coal works, such report was confirmed, and it was ordered that the committee of the estate should be at liberty, in the name and on the behalf of the lunatic, to grant a lease of such coal mines to the owners of the adjoining coal works for the term of thirty years, upon the terms mentioned in the report, the lease to be settled by the Master, and the costs of the committee of the estate and next of kin of the lunatic to be taxed, and paid out of the rents and profits of the lunatic's estate (*l*).

On a petition presented by one of the receivers appointed in a lunacy praying the confirmation of the Master's report, that it would be for the benefit of the estate of the lunatic that a lease should be granted on the terms specified, and a reference to approve a lease, and taxation of the costs of the petitioner and the next of kin, and the committees of the estate of the lunatic, relating to the proposal for and granting the lease, to be paid by the petitioner and allowed in passing his accounts — Lord Chancellor *Eldon* said, the practice in lunacy is, for the committee to pay the expenses of the inquiry, and the lessee of the lease. The order made in that case directed the Master to tax the petitioner and the committees of the lunatic's estate and his next of kin their costs and expenses incurred about the proposal for granting the lease, and of the application and relating thereto; and such costs, when taxed, were directed to be paid by the petitioner out of the rents and profits of the lunatic's estate, and allowed in passing his accounts, but the costs and expenses of the lease and counterpart were to be borne by the petitioner (*m*).

The question as to the payment of the costs incurred by granting a lease of the lunatic's property depends in many cases upon the agreement of the parties; but, in the absence of any stipulation upon the subject, it should seem that the costs of the reference, and of the necessary orders of the

(*l*) *In re Percival*, 20th July, 1822.

(*m*) *Ex parte Prickett, In re Duchess of Norfolk*, 3 Swanst. 130.

Court, must be paid out of the lunatic's estate, and one half of the expenses of the lease and counterpart by the lessee, according to the general rule.

Sometimes an order is made for letting the estates of lunatics by auction. Thus, where part of the property of the lunatic consisted of houses for which no offer had been made for taking leases, and by reason of the peculiar character of such property it had been found difficult to fix fines at which it would be for the interest of the lunatic to renew; it was ordered that the committee of the estate of a lunatic should be at liberty, in the name and on behalf of the lunatic, to offer for sale by public auction the property mentioned in the petition, either in one lot or several lots, as the petitioner might be advised was most for the benefit of the lunatic, for one, two, or three life or lives, or for a number of years determinable on lives, as might be deemed most proper, on payment of the best fines which could be obtained, subject to such conditions as should be produced, and the subsequent approval of the Master (n).

Lord Chancellor *Hart* disapproved of the practice of letting the estates of lunatics by auction to the highest bidder, without giving any preference to an old tenant; and held, that the Court possesses the discretion of a landlord in the management of the real estates of lunatics, and should exercise it in letting them, and ought not to be governed solely by the highest bidding. On the hearing of a petition relating to the management of the lunatic's estate, Lord Chancellor *Hart* observed, with disapprobation, upon the practice which prevails in letting the lands of lunatics and infants, by which the good conduct of the old tenant is not considered, but the lease is made to the highest bidder, without regard to the old tenant's claim to be preferred; and said, that the usage of the land occasioned by such a mode of dealing must be wasteful to it, and prejudicial to the heir. That the Court possesses the discretion of a landlord over the estates of lunatics and infants, which it would be wholesome to exercise more actively. It

(n) *In re The Earl of Portsmouth*, 14th July, 1828.

ought not to sanction the mischievous practice of putting up the land by auction, without any preference to the tenant who has preserved or increased its value by proper cultivation (o).

A reference in general terms is sometimes made to the Master, to inquire as to the expediency of granting leases of the estates of lunatics from time to time, with liberty for him to make a separate report. Thus, in one case it was referred to the Master to inquire and certify whether it would be fit and proper and for the benefit of the lunatic and his estate to grant any and what lease or leases of several farms specified, and of the other parts of the lunatic's estate from time to time as the same should become untenanted, and if so to whom, and upon what terms and conditions, and whether it would be fit and proper that the committee of the lunatic's estate should enter into any agreement or agreements for granting leases, and if so upon what terms and conditions, with liberty for the Master to make a separate report or reports from time to time as he should think proper, and the nature of the case might require (p). And in another case, it was referred to the Master to inquire, whether it would be proper to grant any, and what, leases for years, or otherwise, of any and what parts of the lunatic's estates, on the expiration of the leases and tenancies on which parts of his estate were then respectively held, and if so upon what terms, covenants, and conditions (q).

In one case, the Lord Chancellor would not allow the committee of the estate of a lunatic to take a lease of part of his property, although the Master approved of it. Thus, where the Master had reported that it would be for the benefit of the lunatic that a dwelling-house and land belonging to him, when repaired in the way proposed, should be let on lease to one of the committees of the lunatic's estate for the joint lives of himself and the lunatic at the yearly rent and subject to the terms mentioned in the report, such committee being entitled to the property in question

(o) *In re Ball*, 1 Molloy's Rep. tempore Hart, 141.

(p) *In re Bray*, 3 April, 1828.

(q) *In re Cooper*, 3 April, 1828.

next in remainder expectant upon the death of the lunatic. On praying a confirmation of the Master's report, and that the other committee of the estate might execute a lease to the petitioner on his executing a counterpart—Lord Chancellor *Lyndhurst* refused to confirm the Master's report, and ordered that such committee might be at liberty to occupy the said dwelling-house and land at the rent and upon the terms and conditions mentioned in the Master's report, until further order (r). Lord Chancellor *Eldon* refused to confirm the Master's report, that it was expedient to grant building leases of part of the lunatic's estate for the term of 999 years, and directed the Master to review his report (s).

By the statute 11 Geo. 3, c. 20, it was enacted, that, after the 25th March, 1771, in all cases where any lunatic was entitled to renew any leases for lives or for any term absolute, or determinable on lives, it should be lawful for such lunatic or his committee, by the direction of the Lord Chancellor, signified by order made upon petition in a summary way, to accept a surrender of such leases, and to execute new leases, which it was declared should be deemed as good and effectual as if such lunatic had been of sane mind. The statute 11 Geo. 4 & 1 Will. 4, c. 65, has repealed the 11 Geo. 3, c. 20; and by the 19th section of the former act it is enacted—"That, where any person, being lunatic, is or shall be entitled or has a right, or in pursuance of any covenant or agreement, might, if not under disability, be compelled to renew any lease made or to be made for the life or lives of one or more person or persons, or for any term or number of years absolute, or determinable on the death of one or more person or persons, or otherwise, it shall be lawful to and for the committee of the estate of such lunatic, in the name of such lunatic, by the direction of the Lord Chancellor, intrusted as aforesaid, to be signified by an order to be made in a summary way, upon the petition of such committee, or of any person entitled to such renewal, from time to time to accept of a surrender of such

(r) *In re Sir Thomas Smyth*, 29th July, 1829.

(s) *In re Starkie*, 2 Russ. 197.

lease, and to make and execute to any person a new lease of the premises comprised in such lease to be surrendered by virtue of this act, for and during such number of lives, or for such term or terms of years absolute, as were mentioned or contained in such lease so surrendered at the making thereof, or otherwise, as the Lord Chancellor, intrusted as aforesaid, by such order shall direct; and this provision shall extend as well to cases, where the lunatic shall not be compellable to renew but it shall be for his benefit to do so, as to cases where a renewal might be effectually enforced against the lunatic if of sound mind." By the 20th & 21st sections of 11 Geo. 4 & 1 Wm. 4, c. 65, the fines for such renewals must be paid before the execution of the leases, and counterparts thereof executed by the lessees, and the Lord Chancellor may direct the application of such fines.

On the petition of the committee of the person and estate of a lunatic, it was referred to the Master to receive proposals for granting leases of the remaining part of the lunatic's estate, which were or might become out of lease, for terms or number of years determinable on the dropping of a life or lives, or for adding a life or lives to subsisting leases, (which were actually on lease for lives or years determinable on the dropping of a life or lives at the date of a settlement), and so from time to time as the subsisting or new leases to be granted should determine, or as a life or lives named therein should drop; with liberty to report thereon as might be necessary (*t*).

The Lord Chancellor, in some cases, exercises a jurisdiction in lunacy, upon petition, although no bill has been filed, over the tenants of the property of a lunatic. Thus, on the petition of the committee of the estate of a lunatic, the tenant of his lands was restrained by the order of the Court from cutting timber, and from committing waste on lands in his occupation (*u*). And in another case the persons who claimed as heirs-at-law, and next of kin of the lunatic, were restrained after his death by the order of the

(*t*) *In re The Earl of Portsmouth*,
11th December, 1828.

(*u*) *In re Frank*, 30th June, 1827;
In re Creagh, 1 Ball & B. 108.

next in remainder expectant upon the death of the lunatic. On praying a confirmation of the Master's report, and that the other committee of the estate might execute a lease to the petitioner on his executing a counterpart—Lord Chancellor *Lyndhurst* refused to confirm the Master's report, and ordered that such committee might be at liberty to occupy the said dwelling-house and land at the rent and upon the terms and conditions mentioned in the Master's report, until further order (r). Lord Chancellor *Eldon* refused to confirm the Master's report, that it was expedient to grant building leases of part of the lunatic's estate for the term of 999 years, and directed the Master to review his report (s).

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(r) *In re Sir Thomas Smyth*, 29th July, 1829.

(s) *In re Starkie*, 2 Russ. 197.

lease, and to make and execute to any person a new lease of the premises comprised in such lease to be surrendered by virtue of this act, for and during such number of lives, or for such term or terms of years absolute, as were mentioned or contained in such lease so surrendered at the making thereof, or otherwise, as the Lord Chancellor, intrusted as aforesaid, by such order shall direct; and this provision shall extend as well to cases, where the lunatic shall not be compellable to renew but it shall be for his benefit to do so, as to cases where a renewal might be effectually enforced against the lunatic if of sound mind." By the 20th & 21st sections of 11 Geo. 4 & 1 Wm. 4, c. 65, the fines for such renewals must be paid before the execution of the leases, and counterparts thereof executed by the lessees, and the Lord Chancellor may direct the application of such fines.

On the petition of the committee of the person and estate of a lunatic, it was referred to the Master to receive proposals for granting leases of the remaining part of the lunatic's estate, which were or might become out of lease, for terms or number of years determinable on the dropping of a life or lives, or for adding a life or lives to subsisting leases, (which were actually on lease for lives or years determinable on the dropping of a life or lives at the date of a settlement), and so from time to time as the subsisting or new leases to be granted should determine, or as a life or lives named therein should drop; with liberty to report thereon as might be necessary (f).

The Lord Chancellor, in some cases, exercises a jurisdiction in lunacy, upon petition, although no bill has been filed, over the tenants of the property of a lunatic. Thus, on the petition of the committee of the estate of a lunatic, the tenant of his lands was restrained by the order of the Court from cutting timber, and from committing waste on lands in his occupation (u). And in another case the persons who claimed as heirs-at-law, and next of kin of the lunatic, were restrained after his death by the order of the

(f) *In re The Earl of Portsmouth*,
11th December, 1828.

(u) *In re Frank*, 30th June, 1827;
In re Creagh, 1 Ball & B. 108.

Court, made on the petition of the committee of the estate, from proceeding in a distress for arrears of rent, and from taking any proceedings under replevin bonds, and from distraining on the tenants of the lunatic's freehold estates, until further order (v).

By statute 29 Geo. 2, c. 31, it was enacted, that, in all cases where any lunatic should be interested in, or entitled to, any lease for life or lives, or for any term of years, either absolute or determinable upon the death of one or more person or persons, it should be lawful for such lunatic, or the committee of his estate, or other person on his behalf, to apply to the Court of Chancery of Great Britain, the Court of Exchequer, and the Courts of Equity of the Counties Palatine, or the Courts of Great Session of Wales, by petition or motion in a summary way; and, by order of such Courts, such lunatic was enabled to surrender such lease, and to take, in the name of such lunatic, one or more new lease or leases of the premises comprised in the leases surrendered as such Courts should direct; and by the second section of the last-mentioned act, the fine and expenses of such renewal were directed to be paid out of the estate or effects of the lunatic for whose benefit the renewal was made, or to be a charge upon the said leasehold premises, as such Courts should direct, and such new leases were to enure to the same uses, and be held upon the same trusts, as those surrendered (w).

The statute 11 Geo. 4 & 1 Will. 4, c. 65 has repealed the statute 29 Geo. 2, c. 31; and by the 13th section of the former act it is enacted, "That, in all cases where any person, being lunatic, shall become entitled to any lease or leases made or granted or to be made or granted for the life or lives of one or more person or persons, or for any term of years, either absolute or determinable upon the death of one or more person or persons, or otherwise, it shall be lawful for the committee of the estate of such person to apply to the Lord Chancellor of Great Britain, intrusted with the

(v) *In re Grove*, 11 Aug. 1827. lunatics, see *ante*, pp. 180, 181.

As to the abatement of the rents of tenants of the property belonging to (w) See *Ex parte Swann*, 2 Dick. 749.

care and commitment of lunatics, by petition or motion in a summary way; and by the order and direction of the Lord Chancellor, intrusted as aforesaid, such committee shall and may be enabled from time to time, by deed or deeds, in the place of such lunatic, to surrender such lease or leases, and accept and take, in the name and for the benefit of such lunatic, one or more new lease or leases of the premises comprised in such lease or leases surrendered by virtue of this act, for and during such number of lives, or for such term or terms of years, absolute or determinable as aforesaid, as was or were mentioned or contained in the lease or leases so surrendered at the making thereof respectively, or otherwise, as the said Lord Chancellor, intrusted as aforesaid, shall direct." And it is provided (*w*), that the fine for the renewal of any such lease, and all reasonable charges incident thereto, shall be paid out of the estate or effects of the lunatic for whose benefit the lease shall be renewed, or be a charge upon the leasehold premises, together with interest for the same, as the Lord Chancellor, intrusted as aforesaid, shall direct and determine. And (*x*) that every lease to be renewed as aforesaid shall operate and be to the same uses, and be liable to the same trusts, charges, and incumbrances, dispositions, devises, and conditions, as the lease to be surrendered would have been subject to, in case such surrender had not been made.

The application to the Court under this statute must be by petition, on notice to all parties interested, that it may be referred to the Master to inquire whether the lunatic is interested in or entitled to the property leased, or any part thereof, within the intent and meaning of that act. The petition for a reference should state a regular deduction of the title deeds, and other facts under which the lease has devolved upon the lunatic. By virtue of the order made on such petition, the parties must attend before the Master and produce a statement of the title, and of the facts, to shew the nature of the interest vested in the lunatic; all

(*w*) 11 Geo. 4 & 1 Will. 4, c. 65, s. 14.

(*x*) Id. s. 15.

which is to be verified by the production of the original deeds, and such other evidence as the Master may require, upon which he will make his report to the Court. A motion upon petition must afterwards be made to confirm the report, when the Court will exercise its judgment thereon, and either direct the committee of the lunatic to surrender as directed by the Master, or, if a difficulty arises upon it, the Court will order the report to be reviewed by the Master as to the points objected to, and, after it has been reviewed, such order as the Lord Chancellor shall think proper will be made.

If the lease at the time of the lunacy was made to a trustee for the lunatic, on a renewal it will be so continued, as the Court will not change the estate; but, if the old lease was made to the lunatic himself, and only taken out of him by the act of the Court, the new lease will be ordered to be taken in his name, and not in that of his committee; and an inquiry as to that fact is occasionally directed (y). Thus, in a case where the trustees of a marriage settlement of a lunatic were desirous of obtaining a renewal of a lease held of a corporation, it was referred to the Master to inquire and certify whether it would be for the benefit of the lunatic and his trust estates to renew the lease of the parsonage, and of the copyhold estates mentioned in the order; and if so, upon what terms, and by whom the fine and fees of such renewals ought to be paid; in making which inquiry the Master was to have due regard to the lunatic's interest in the estate. After the Master had made his report in favour of a renewal, the committees of the estate of the lunatic, and the trustee under his settlement, were ordered to renew the lease, and the grants of the copyhold premises, upon the terms mentioned in such report; and such renewed lease and grants were directed to be taken in the name of the surviving trustee of the settlement upon the trusts thereby declared, and the fines, fees, and expenses of such renewals were ordered to be paid by the trustees out of the income of the lunatic's estate; and for the purpose of obtaining such new leases and grants, it was ordered that the

(y) *Ex parte Jermyn*, 3 Swanst. 131, note.

trustee should surrender the old lease, and the committee of the lunatic's estate the copyhold premises, to the corporation, and that all necessary parties should concur in such renewals; and that the costs, to be taxed by the Master, should be paid by the trustees out of the money in their hands as trustees of the lunatic's estate (x).

And, in another case, on the confirmation of the Master's report, it was ordered that the committee of the estate of the lunatic should be at liberty, in his name, to renew the lease upon the terms specified in the report, and that he should apply money in his hands, and to arise from the sale of stock belonging to the lunatic, for the payment of the fines and fees of the renewal; and that the costs of obtaining the renewal, and of the petition, and order of reference, should be taxed, and paid out of the lunatic's estate (a).

By the Irish statute 11 Anne, c. 3, after reciting that several persons make leases for one or more life or lives of lands and hereditaments in Ireland, with agreements for renewing the same on payment of some fine certain, on the death of any life or lives in such leases mentioned, by adding such one or more new life or lives as the lessee or lessees shall nominate; it is enacted, that, in all cases where the person or persons who by covenant are obliged to make such renewals shall be disabled to renew by reason of being *non compos mentis*, it shall be lawful for the Lord Chancellor of Ireland, on petition, upon payment of the fine for the use of the persons entitled to the same, and upon the lessee's performing all the covenants on his part previous to such renewal, to order such renewal to be made by one of the Masters of the Court of Chancery to be nominated by the Lord Chancellor, and such Master shall execute such deeds of renewal, which, when so executed by him, (counterparts thereof being duly perfected by the lessees for the benefit of the persons having the reversion of the hereditaments comprised in such deeds), shall be as effectual as if

(x) *In re The Earl of Portsmouth*, 23rd July, 1827.

(a) *In re Birch*, 19th Dec. 1827.

the person under such disability had not been disabled and had executed the same.

By the statute 11 Geo. 4 & 1 Will. 4, c. 65, s. 22, it is enacted, that the clauses and provisions contained in the act of the 11 Anne, c. 3, shall continue in force in the same manner as if they had been repealed and re-enacted; and none of the other provisions contained in the former act, for authorizing any surrenders to be accepted, or any new lease to be made or executed, for or on behalf of any person who, in pursuance of any covenant or agreement for renewal in any lease contained or to be contained, ought to make such new lease or leases, shall extend to land in *Ireland*.

By the Irish statute 10 Geo. 1, c. 5, it is enacted, that it shall be lawful for all ecclesiastical dignitaries, parsons, rectors, vicars, and all bodies politic and corporate, and *all other persons* who are tenants for life, with an immediate remainder to his or her first and every other son in tail male, and for every tenant in dower or by the curtesy, with the consent of the persons seised in remainder of an estate of inheritance; or in case of *idiocy* or *lunacy* of such person seised in reversion or remainder, then with the consent of the committee of such idiot or lunatic, with the approbation of the Lord Chancellor, Lord Keeper, or Commissioners of the Great Seal of Ireland, in such cases of idiocy and lunacy, by indentures under their hands and seals, to grant leases not exceeding the term of thirty-one years, of all mines and minerals whatsoever, which shall be found within their respective manors, lands, and tenements, upon certain conditions therein expressed.

By the third section of the same act, after reciting that it might happen that such tenants for life, tenants in dower or by the curtesy, might be idiots or lunatics, it is enacted, that in all such cases it shall be lawful for all committees of idiots and lunatics, with the consent of the Lord Chancellor of Ireland, or Lord Keeper, or Commissioners of the Great Seal for the time being, to grant leases not exceeding the term of thirty-one years of all mines and minerals to be

found on the manors, lands and tenements of such idiots and lunatics, upon the conditions thereinbefore expressed.

By the Irish statute 15 Geo. 2, c. 10, the provisions of the last-mentioned act are extended to coal mines in Ireland, of which, by statute 23 Geo. 2, c. 9, the term of forty-one years may be granted.

By statute 3 Geo. 4, c. 125, s. 1, all ecclesiastical persons and bodies corporate in Ireland, and every lay improprator, or person entitled to any impropriate tithes or portions of tithes, may lease for any term of years to any persons seised or possessed of the lands out of which such tithes shall be issuing, having any freehold title or interest, or any interest for a certain term of years in such lands, all and every or any tithes or portions of tithes payable or belonging to such ecclesiastical persons and bodies corporate, in right of their ecclesiastical preferments, or payable to any such lay improprator.

By the second section of the last-mentioned act, it is provided, that every such lease shall be by indenture; and where such lease shall be made by the incumbent of any benefice, the patron of such benefice, or the committee or guardian of the estate of such patron, if such patron shall be a minor or *lunatic*, shall be a party consenting thereto, signified before the execution of such indenture or the counterpart thereof, by indorsement on such indenture and counterpart, subscribed by such patron, or by such committee.

By statute 11 Geo. 4 & 1 Will. 4, c. 65, s. 40, it is declared, that the powers and authorities given by that act to the Lord Chancellor of Great Britain, intrusted as aforesaid, shall and may be exercised in like manner by, and are thereby given to, the Lord Chancellor of Ireland, intrusted, as aforesaid, with respect to all land in Ireland, but not further or otherwise (a).

(a) See *ante*, pp. 341, 349, 353.

SECTION II.

Of the Sale and Mortgage of the Estates of Lunatics, for the Payment of their Debts and other Purposes.

1. BEFORE the passing of the statute 43 Geo. 3, c. 75, the Lord Chancellor had no power, in lunacy, to order the real estates of a *non compos* to be sold or charged for payment of his debts, or for any other purpose.

Thus, where a petition was presented by the creditors of a lunatic, praying, that the Master's report of the debts due to the petitioners might be confirmed; and that they might be paid out of the lunatic's personal and leasehold estates; and the committee ordered to sell so much of the personal and leasehold estates as would be sufficient for that purpose; and if the produce should be insufficient, that the committee might be directed to apply the rents and profits of the real estate from time to time. The committee consented to the proposal for sale. Lord Chancellor *Eldon* said, "such cases were very lamentable, and ought to be provided for by an act of Parliament. But the question was, whether he had any power of selling the leasehold estate. He had no objection, if any purchaser would take it; *but his order would not make him a title.* As to the rest of the application, his Lordship said, he never remembered an instance, upon the report of debts, of stripping the lunatic, and putting him in the situation of absolute want; and that he had known the Court of Chancery throw difficulties in the way of creditors to prevent that." The personal estate was ordered to be applied as far as it would go, and the rents of the leasehold estates, in payment of the debts; and if any purchaser would take the leasehold estate, they were to apply again *(b)*.

And in another case, where a lunatic was entitled under a will to real estates in fee simple, subject to debts by mortgage, bond, and simple contract. The bond-creditors having exhausted the personal estate in part payment of their demands, a petition was preferred, (to which the heir-at-law

(b) Ex parte Dikes, 8 Ves. 79.

and next of kin consented), praying that a specific estate might be sold for payment of the debts. Lord Chancellor *Rosslyn* held, that, although very desirable, he could not make a decree in lunacy, but it must be by bill (c).

In one case, where a testator, by his will, devised to his wife all his real and personal estate charged with the payment of his debts, and appointed her executrix of his will, and a bill was filed by his creditors against his widow, who had proved his will, taken possession of his personal estate, entered on the real, and sold part of it, and then *became insane*, and the testator's heir-at-law was in the West Indies—The Lord Chancellor declared that the will ought to be established, and directed the usual accounts, and a sale of the real estate, in case the personal should be insufficient to pay the debts (d).

The leading principle of considering, in the administration of the jurisdiction in lunacy, the comforts of the lunatic has been carried so far, that, although it never can be the wish of the Court that creditors should be defrauded of their just demands, an order will not be made for payment of the debts of a lunatic out of his funds in Court, unless it clearly appear that a sufficient maintenance will remain, or is securely provided for the lunatic.

Thus, where a petition was presented by the wife and committee of the person of a lunatic, praying that his specialty and simple contract debts might be paid out of a fund of 5000*l.* in the Bank, upon the suggestion that the creditors would arrest him. Lord Chancellor *Eldon* said, that he had no authority to pay the debts of the lunatic, unless it was for the accommodation of his estate; he could not pay his debts, and leave him destitute of any provision. If any one would undertake to maintain him, the undertaking must be very precise to pay a specific sum for the maintenance of the lunatic while he remained in that condition. There was no instance of paying the debts of a lunatic, without reserving a sufficient maintenance for him; as the creditors cannot touch these funds. They may put him in gaol, where the Chancellor

(c) *Ex parte Smith*, 5 Ves. 556.

(d) *Williams v. Whinyles*, 2 Br. C. C. 399; cited in 1 Sch. & Lef. 241.

could maintain him, and they might sequester his living. These orders are made for the accommodation, not of the creditors, but of the lunatic; and on its being shewn that it is for his accommodation, the Court will order his debts to be paid (e). It should be observed, however, that the person of a lunatic can only be protected by providing for the payment of his debts, for any creditor of such a party may arrest him (f).

Where a creditor had obtained judgment for his debt against a lunatic, it was held that he might file a bill to set aside a voluntary settlement executed by him (g).

Where a lunatic was possessed of leasehold property, the annual income of which was 245*l.*, the Lord Chancellor, after directing the annual sum of 150*l.* to be set apart for the maintenance of the lunatic, ordered that the residue of the rents and profits of the estates should be applied by the committee of the estate in payment of the debts reported due to the several creditors of the lunatic, whose names were mentioned in the schedule, rateably and in equal proportions, according to the respective amounts thereof, until the same should be satisfied (h).

References are frequently directed to the Master to take an account of the debts of a *non compos*, and to certify in what manner it will be proper to discharge them, and sometimes the Master is directed to advertise for the creditors of a lunatic. Thus, it was referred to the Master to inquire and certify whether there were any and what debts due and owing by the lunatic, and to whom, and out of what funds the same (if any) ought to be paid; and, for the better taking such account, the Master was to cause advertisements to be published in the London Gazette, and such other public newspapers as he shall think fit, for the creditors of the said lunatic to come in before him and prove their debts, within a time to be limited in the latter of such advertisements; and in default thereof, they were to be ex-

(e) *Ex parte Hastings*, 14 Ves. 182.

(g) *Colman v. Croker*, 1 Ves. jun. 160.

(f) *Ex parte Hall, In re Legard*, Jac. R. 161. See *post*, Chap. ix. s. 2.

(h) *In re Deller*, 22 Dec. 1821.

cluded the benefit of the order (i). In another case, the Master was directed to inquire whether there were any disposable funds of the lunatic, out of which a particular debt could be paid, regard being had to the maintenance of the lunatic (k).

The creditors are not bound to come in under such an order of reference, as they would be under a decree, the object of inquiry being merely the benefit of the *non compos* and his estate (l); but provision will be made for the payment of the debts of such only of the creditors as bring in their claims under the order, it is of course the duty of the committee and of the Master to ascertain that such demands are just. In case the Master disallow the claims of any creditors, they may except to his report, if made in a cause, but if made in a lunacy only, a petition may be presented for allowing such claim, or to have the Master's report reviewed. Where a person had, previously to his having been found a lunatic, granted an annuity charged on real estate and money in the funds, and the Master was directed to take an account of the debts owing by the lunatic, and the annuitant claimed several sums for insurance of the life of the lunatic, and interest on those sums, which were disallowed by the Master; on exceptions being taken to the report, it was decided, that no allowance would be made for the premiums for insuring the life, either in an action, or by the Court of Chancery, the insurance being part of the speculation (m). In another case, the claims of two creditors of a lunatic having been disallowed by the Master, on their taking objections, he was ordered to review his report (n). In case the Master admit only part of a claim, the creditor will probably not be allowed his costs, except upon undertaking not to bring an action in respect of what the Master has disallowed. The Accountant-General may be directed to pay the creditors of a *non compos* out of the cash in his hands in the matter of the lunacy (o).

(i) *In re Davidson*, 11 Jan. 1827; (m) *Ex parte Shaw*, 5 Ves. 620.
In re Kendall, 3 Aug. 1820. (n) *In re Cranmer*, Aug. 1807; 1
(k) *In re Buckle*, 23 April, 1827. Coll. on Lun. 379.
(l) 12 Ves. 385. (o) 1 Coll. on Lun. 381.

The extra costs occasioned by a mistake of the Master were, in a recent case, allowed to a creditor proving his debt against a lunatic's estate (*g*). After the death of a *non compos*, an order may be made in the lunacy for payment of his debts, upon a petition preferred in his lifetime (*r*). But such an order cannot be made in lunacy upon a petition preferred after the death of a *non compos* (*s*). The creditors in such a case may file a bill against his personal representatives for taking an account of their debts, and for the payment of them out of the assets of the lunatic (*t*).

2. By the statute 43 Geo. 3, c. 75, it was enacted, that it should be lawful for the Lord Chancellor of England and Ireland, respectively, intrusted by the King's sign manual with the care and commitment of the persons and estates of the persons found lunatic or of unsound mind, and incapable of managing their affairs, by inquisition, when in England or Ireland, respectively, to order the freehold and leasehold estates of such persons respectively, to be sold or charged and incumbered by way of mortgage or otherwise, as should be deemed most expedient, for the purpose of raising such sums of money as should be necessary for payment of the debts, and for performing the contracts or engagements of any such persons respectively, and the costs attending such sale, mortgage, or incumbrance respectively, and to direct the committee or committees of the estate of such persons respectively to execute in the name, and on the behalf, of such persons respectively, conveyances of the estates so to be sold, mortgaged, or incumbered, and to do all such acts as should be necessary to effectuate the same, as such Lord Chancellor should direct; which conveyances so to be made in pursuance of any such order as aforesaid, should be as effectual as if the same had been executed by such person found lunatic or of unsound mind respectively, when in his sound mind. It was also enacted, that in case there should be any surplus of money to be raised by any such sale as aforesaid, after answering the purposes aforesaid, the

(*g*) *In re Buckle*, 1 Russ. & Mylne, 384. See *ante*, pp. 22, 23, 360.

(*s*) *Pochin's case*, 12 Ves. 385.

(*r*) *Ex parte M'Dougal*, 12 Ves.

(*t*) *Wigg v. Tiler*, 2 Dick. 552.

same should be applied and disposed of in the same manner as the estate sold would have been applied if the act had not been made (u). And it was provided that nothing in the act contained should subject any part of the estates of a lunatic to the debts or demands of his creditors, otherwise than as the same were then liable, but only to authorize the Lord Chancellor, &c., intrusted as aforesaid, to make order in such cases as were thereinbefore mentioned, when the same should be deemed for the benefit and advantage of such person so found lunatic or of unsound mind, and incapable of managing his affairs (w).

Although the statute of 43 Geo. 3, c. 75, enabled the committee of the estate of a lunatic to mortgage or sell any part of his estate for payment of his debts, as the person holding the Great Seal should direct, yet it seems that Lord Eldon would give such direction in such cases only as would be for the benefit of the lunatic (x). And his Lordship intimated, that in the exercise of the power given him by that statute, on being satisfied that the maintenance of the lunatic would be better provided for, and his advantage promoted, by disposing of a real estate, inconvenient and ill-conditioned, and that it would be for his benefit so to pay the debts, and keep together the personal estate, he should have had no difficulty in granting an application for selling part of the real estate; although the effect of such an order would have been to change the right of succession (y).

It was held, that the above act did not authorize the sale of the copyhold lands of a lunatic, as such lands were not mentioned as subjects of sale (z). By statute 59 Geo. 3, c. 80, it was enacted, that such of the powers and provisions of the 43 Geo. 3, c. 75, as authorized the sale or mortgage of estates belonging to lunatics, should be deemed to extend to such estates as were held by *ancient demesne* or by *copy of court roll*.

(u) 43 Geo. 3, c. 73, s. 2.

(y) Ibid.

(w) Id. s. 6.

(z) *Ex parte Birch, In re Addy*,

(x) *Ex parte Phillips*, 19 Ves. 3 Swanst. 98.

By statute 9 Geo. 4, c. 78, such of the powers and provisions contained in the 43 Geo. 3, c. 75, and the 59 Geo. 3, c. 80, as authorized the sale or mortgage of estates belonging to lunatics, were extended to the sale, mortgage, charge, incumbrance, or other disposition of such estates, for the purposes of raising money for payment of the debts and engagements of such lunatics, the discharge of any incumbrances on their estates, the costs of applying for and obtaining the commission of lunacy, and in opposition thereto, and all proceedings under the same commission, or incurred by any persons under the order of the Lord Chancellor, and the costs of such sales, mortgages, charges, and incumbrances, and other dispositions as such Lord Chancellor should direct; and that the monies so raised should be applied for such purposes, and in such manner as the Lord Chancellor should direct. It was also provided (a) that the person whose estate was sold or mortgaged under the above act, his heirs, next of kin, executors, and administrators, should have the same interest in the surplus monies raised under it as he would have had in the estate sold or mortgaged, if such sale or mortgage had not been made, and that such money should be of the same nature and character as the estate so sold or mortgaged.

In a case, where a lunatic was tenant for life of large estates, an order was made for raising a sum of money for payment of his debts by the sale of an annuity to be charged on such estates. Thus, it was ordered, that the committee of the estate of the lunatic should be at liberty, in his name and on his behalf, to proceed to raise the amount of the debts, reported by the Master to have been proved against the lunatic's estate, by a sale of an annuity for the life of the lunatic, after the rate of 6*l.* for every 100*l.* of the sum to be raised, besides the annual expense of insuring his life; and that such annuity should be charged upon the life estate of the lunatic in certain manors and estates, with a right on his part to repurchase such annuity, or of any proportionate part thereof, in sums not under a given amount,

(a) 9 Geo. 4, c. 78, s. 2.

whenever there should be funds of the lunatic ready to be so applied; and it was ordered, that the trustees named in the settlement made of the lunatic's estates, and all other necessary parties, should join in and execute such deeds as might be required on the part of the annuitants, and as the Master should approve; and that the annuitants should be at liberty to pay the consideration money into the Bank, in the name and with the privity of the Accountant-General, which was not to be paid out without notice to the annuitants; and that the annuity to be granted should be paid by the trustees of the lunatic's settlement, out of the rents of his estate (b). And it was afterwards ordered, as the lunatic was tenant for life only of the estates to be charged, that the Master, in settling the grant of such annuity, should not subject the lunatic, or his representatives, to the payment of any proportional part of the annuity to be granted, subsequent to the last quarter day appointed for payment of it immediately preceding his death, but, in lieu thereof, should add such further sum to the annuity proposed to be granted, as he might find to be a fair equivalent for such proportional part (c).

The statute 11 Geo. 4 & 1 Will. 4 c. 65, has repealed the 43 Geo. 3, c. 75, the 59 Geo. 3, c. 80, and the 9 Geo. 4, c. 78; and by the 28th section of the former act, it is enacted, "That it shall be lawful for the Lord Chancellor, intrusted with the care and commitment of the custody of the persons and estates of lunatics, to order any land, or to which any person *being lunatic* (d) shall be seised or possessed or entitled, to be sold, or charged and incumbered by way of mortgage, or otherwise disposed of, as shall be deemed most expedient for the purpose of raising money for payment of the debts or engagements of such lunatic, the discharge of any incumbrances on his estates, the costs of applying for and obtaining the commission of lunacy and in opposition thereto, and all proceedings under the said commission, and the costs of such sales, mortgages, charges,

(b) *In re* The Earl of Portsmouth,
31 March, 1828.

(c) *Id.* 14 August, 1828.

(d) This clause is different from
that contained in 43 Geo. 3, c. 75.
See *ante*, p. 359.

and incumbrances, and other dispositions, or for any of such purposes as aforesaid, as such Lord Chancellor, intrusted as aforesaid, shall respectively direct; and that the monies arising from any such sale, mortgage, charge, incumbrance, or other disposition, may be paid, laid out, and applied in payment of the debts and engagements of such lunatic, the discharge of any incumbrances on his estates, the costs of applying for and obtaining the commission of lunacy and in opposition thereto, and all the proceedings under the same commission, or incurred under the order of such Lord Chancellor, intrusted as aforesaid, and the costs of such sales, mortgages, charges and incumbrances, and other dispositions, in such manner as the said Lord Chancellor, intrusted as aforesaid, shall direct; and to direct the committee of the estate of such person to execute in the place of such person respectively, conveyances of the estates so to be sold, mortgaged, incumbered or disposed of, and to do all such acts as shall be necessary to effectuate the same, in such manner as such Lord Chancellor, intrusted as aforesaid, shall direct."

It is also provided by 11 Geo. 4 & 1 Will. 4, c. 65, s. 29, that, on any disposition to be made under that act, the person whose estate shall be sold, mortgaged, charged, incumbered, or otherwise disposed of, his heirs, next of kin, devisees, legatees, executors, administrators, and assigns, shall have such and the like interest in the surplus which shall remain, after answering the purposes aforesaid, of the money so raised, as he or they would have had in the estate by the sale or mortgage or other disposition, of which such monies shall be raised, if no such sale or mortgage or other disposition had been made; and such monies shall be of the same *nature and character* as the estate so sold or mortgaged or disposed of; and the Lord Chancellor, intrusted as aforesaid, may direct such acts and deeds to be done and executed, as shall *be necessary for carrying the aforesaid objects into effect*, and for the due application of such surplus monies (*e*).

(*e*) Provisions of a similar nature for the sale of lunatics' estates. See are usually inserted in private acts, *post*, Sect. 4, and *ante*, pp. 238-241.

It is also provided, that nothing in that act contained shall extend to subject any part of the estates of any person being lunatic, to the debts or demands of his creditors, otherwise than as the same were then subject by due course of law, but only to authorize the Lord Chancellor, intrusted as aforesaid, to make order in such cases as were therein-before mentioned, when the same *shall be deemed just and reasonable, or for the benefit or advantage of such lunatic* (*f*). The powers and authorities given by this act to the Lord Chancellor of Great Britain, intrusted as aforesaid, extend to all land within any of the dominions, plantations, and colonies belonging to his Majesty (except Scotland and Ireland) (*g*). And it is declared, that the powers and authorities given by that act to the Lord Chancellor of Great Britain, intrusted as aforesaid, may be exercised in like manner by, and are thereby given to, the Lord Chancellor of Ireland, intrusted as aforesaid, with respect to all land in Ireland (*h*).

The powers conferred on the Lord Chancellor, by the preceding statutes, are certainly very extensive; but it should seem, that in exerting them he ought to be guided by a sound discretion, and that in making orders for the sale or mortgage of the estates of lunatics, particularly the former, a case of necessity or expediency ought to be required to be established by the committee making the application; for example, that the property is so circumstanced, as to locality or otherwise, that it cannot be beneficially enjoyed by the lunatic, but may be disposed of to advantage, (as in cases where a trade or business has been carried on); that there are incumbrances upon the estates of, or debts due from, the lunatic for the payment of which it is necessary to provide a fund, (there being no other available for those purposes); or that the income of the lunatic's estate will be so increased by converting it into personalty as to afford an ample fund, where before there was a deficient one, for his maintenance, by investing the produce of the sale in some

(*f*) 11 Geo. 4 & 1 Will. 4, c. 65, s. 30.

(*g*) *Id.* s. 39.

(*h*) *Id.* s. 40.

other mode, as in the purchase of an annuity, or in the funds. In all applications by the committee for altering the estate of the lunatic, it ought to be considered how far the interest of the latter will be promoted, and no such application ought to be granted, unless the committee can shew satisfactory reasons for exerting the extraordinary powers upon this subject now given by the Legislature to the Lord Chancellor.

3. When the committee of the estate of a lunatic is desirous of raising money on a mortgage of the lunatic's estate, the application must be made on petition to the Lord Chancellor (previous notice of it having been given to the heir-at-law and next of kin of the lunatic), setting out the particular debts or incumbrances for the payment of which it is necessary or expedient to provide; if the application be granted, the Master will be directed to make the necessary inquiries, and, in some cases, the reference to him is to inquire whether the particular debt mentioned in the petition is due from the lunatic within the meaning of the act authorizing the committee to mortgage (*i*). After the Master has reported that the sum proposed to be raised constitutes such a debt, and that he has perused and approved of the security for it, such report will be confirmed, and an order will be made that the committee of the estate may be at liberty, in the name and in the place of the lunatic, to execute the mortgage for securing the principal sum and interest mentioned in the report; and such directions as to the application of the mortgage-money will be given as the nature of the case may require, and the costs attending such mortgage will be ordered to be taxed, and paid out of the lunatic's estate (*k*).

References on this subject are sometimes made in more general terms: thus, in one case, it was referred to the Master, to inquire whether it would be proper that any and what parts of the real estates of the lunatic should be sold or mortgaged for the purpose of raising sums of money mentioned in the pe-

(*i*) 11 Geo. 4 & 1 Will. 4, c. 65.

(*k*) *In re Buckle*, 19 December, 1827.

tion, and found by the Master's former report to be due from the lunatic (*l*)—It was held, that the last reference could not be proceeded in after the death of the lunatic (*m*).

In order to obtain a sale of the lunatic's real estate, a petition must be presented by the committees of his estate (of which notice must be given to the heir-at-law and next of kin of the lunatic), and if the Lord Chancellor grant the application, it will be referred to the Master to inquire whether it will be proper to sell any parts of the lunatic's estate;—upon inquiry before the Master, evidence shewing the necessity for such sale, a state of facts, and a valuation of the property, should be laid before him, who will report as to the propriety of the proposed sale, and, if he find that it will be proper to sell any part of the estate, an order for confirming his report must be obtained on the petition of the committees, in which it will be further ordered, that they shall be at liberty to proceed to a sale of the estates mentioned in the report; and to apply the money to arise therefrom as shall be thereby directed, being for purposes authorized by the act of Parliament (*n*).

On the confirmation of the Master's report, approving a sale, an order will be made, that the particular estate in question may be sold by public auction, with the approbation of the Master, to the best purchasers who can be obtained, subject to his allowance (*o*): and he will be directed to settle a reserved bidding for the estates directed to be sold, in order to prevent the same being sold for an inadequate consideration, and to appoint persons to bid for the same accordingly (*p*). When the Master has reported that a particular person has become the purchaser of the estate directed to be sold, or any part thereof, the purchase may be confirmed on the petition either of the committee, or of the purchaser, of the estate, whereupon it will be or-

(*l*) *In re Holmes*, 14th Jan. 1831.

(*m*) *Id.* 19th Aug. 1831, *ante*, p. 23.

(*n*) 11 Geo. 4 & 1 Will. 4, c. 65, s. 28.

(*o*) *In re Walter*, 6th Aug. 1826.

The sales of estates in lunacy are for the most part conducted in the same way as those under a decree of the Court of Chancery. As to which, see *Sugd. V. & P.* c. 2.

(*p*) *In re Walter*, 6th Aug. 1826.

dered that the latter pay the amount of his purchase-money into the Bank of England, with the privity of the Accountant-General of the Court of Chancery (to be placed to such account as the case may require), and upon payment thereof be let into possession of the estate purchased, and that a proper conveyance of such estate be executed by the committees of the estate to the purchaser at his own expense. The conveyances of the estates of lunatics are generally directed to be settled by the Master, *in case the parties differ about the same*; and the costs incurred by the committees and next of kin of the lunatic about the sale, are usually directed to be taxed and paid out of his estate.

In a case, where the Master had reported that considerable sums of money were due from the estate of the lunatic for costs incurred in the lunacy, and in other legal proceedings arising thereout, and that there were no available funds for payment of them, and that it would be proper to provide for their payment by sale of part of the lunatic's real estate, and that the remainder of the lunatic's property, after the proposed sale, would produce an annual sum nearly equal in amount to the sum allowed for his maintenance—Such report was ordered to be confirmed, and the costs of the committee and next of kin of the lunatic to be taxed, and such costs, when taxed, and other costs which had been taxed under a former order, were directed to be raised and paid out of the monies to arise from the sale of the estates of the lunatic thereafter directed to be sold, and out of the balance remaining in the hands of the committee.—And it was ordered, “that the several freehold and leasehold estates and other property belonging to the lunatic, comprised in the several valuations made thereof respectively, as stated in the said report, should be sold either by public auction or private contract, with the approbation of the Master (subject to any mortgage or mortgages thereon, or any part thereof, in case the mortgagee or mortgagees should not concur in such sale), to the best purchaser or purchasers that could be gotten for the same, to be allowed by the Master, wherein all proper parties were to join as the Master should direct, with liberty for the Master out of

the purchase-money of a particular estate to discharge part of the principal sum due to a mortgagee upon his joining in the conveyance to the purchaser. And in order to effect the sale, all deeds and writings relating to the estates in the custody or power of the committee or of any other persons, were to be produced before the Master, as he should direct; who was also ordered to settle a sum as a reserved bidding for the estates, in order to prevent the same from being sold under the real value, and to appoint one or more persons to bid for the same accordingly; and notice of attending before the Master was directed to be given to the heir-at-law and next of kin of the lunatic (*q*).

Where the Master certified by his report, that, in pursuance of an order made for sale of a lunatic's estate, he had caused advertisements to be inserted in the London Gazette, and in several London newspapers, for sale at the public room of the Court of Chancery, and that a person who attended and was the highest bidder, was allowed by the Master to be the purchaser, and such report had been confirmed; on the petition of such purchaser it was ordered, that he should forthwith pay the amount of his purchase-money and the interest thereon (to be verified by affidavit) into the Bank of England, in the name and with the privity of the Accountant-General of the Court of Chancery, on the credit of the matter, to an account to be intitled "the produce of the sale of the real estate of the lunatic," which was to be invested in the purchase of *3l. per cent.* Consol. Bank Annuities; and it was ordered, that upon payment of such purchase-money and interest, the committee of the estate of the lunatic, in his name and on his behalf, should execute a proper conveyance or other assurance of all the estate and interest of the lunatic in the estate sold to the purchaser, his heirs, and assigns, or as he or they should direct (*r*).

In a recent case, where large estates were settled on the lunatic for life, with remainder to his first and other sons in tail, and the eldest son, being of age, was desirous of purchasing the life-interest of his father, (a sum of money being

(*q*) *In re Humpleby*, 9th May, 1831.

(*r*) *In re Wharton*, 22nd March, 1832.

required for payment of incumbrances on the estates and the debts of the lunatic), and the Master had reported in favour of the son's proposal, which was objected to by the committee and younger children of the lunatic—Lord Chancellor *Brougham* expressed a very strong opinion against sanctioning the proposed purchase by the eldest son, and said, that the Court would not be justified in ordering the sale of the lunatic's life-interest in a large estate, except in a case of urgent necessity; for the Court always contemplated the possibility of the lunatic's recovery; and if on that event, instead of being restored to his property, he found that his interest in his family estate had been disposed of, it would have a most injurious effect upon his mind (s). In the same case it was afterwards proposed by the committee to raise a sum of money on mortgage of the lunatic's estates for payment of his debts, and by his son to become the purchaser of the life-interest of his father; when it was referred to the Master to inquire and certify whether it would be proper, and for the benefit of the lunatic, (regard being had to his circumstances and estate), that a particular sum or any other sum should be raised, or that provision should be made for raising any and what sums of money by mortgage, annuity, or otherwise, on the estates of the lunatic, for the purpose of being applied in satisfaction of all or some, and which of the incumbrances affecting such estates, the debts of the lunatic, and the costs incurred in the lunacy; and if the Master should be of opinion in the affirmative, then he was to inquire whether the same should be raised upon the terms proposed by the committee, or upon the terms proposed by the lunatic's eldest son, or in any other and what manner, either by way of mortgage or otherwise, on the son's consenting to join in a new settlement of part of the estates, (if the Master thought the same ought to be made), and upon being paid a sum of money in addition to that before allowed to him for his maintenance; and if the Master should think that an act of Parliament was necessary for effecting any settlement, then he was to inquire whether it would be proper, and for the benefit of the lunatic, his family, and estate, to apply to Parliament for such act (t).

(s) *In re Frank*, 31st Aug. 1831.

(t) *Id.* 20th March, 1832.

The Master reported that it would be advantageous to raise a sum of money on mortgage of the estates of the lunatic, to be applied in satisfaction of the incumbrances on his estates, and his debts; and recommended that the eldest son should be at liberty to purchase an annuity on the life of his father, to be secured to the son, his executors, administrators, and assigns, during the life of the former, and charged on part of his estates; and (subject to such annuity, and the mortgage directed to be made,) that such estates should be again settled on the lunatic for life, remainder to his eldest son for life, with limitations in strict settlement to his sons, with remainder to the other sons of the lunatic and their issue, in strict settlement, with provisions and powers for raising portions and creating jointure-rent-charges, and other usual powers; and that it would be proper to apply for an act of Parliament, for carrying such arrangement into effect. The last report was confirmed, and the committee was directed to grant an annuity to the eldest son, charged on the lunatic's estate, and (subject to such annuity and to a mortgage for securing the sum directed to be raised, which was to be executed by the eldest son to the persons advancing the money,) the committee was ordered to join with all necessary parties in executing the requisite deeds for effecting the proposed settlement of the estates, and to apply to Parliament for an act for that purpose; and the costs of the committee and the younger children of the lunatic, incurred in carrying such arrangement into effect, were directed to be taxed and paid out of his estate (u).

Orders have, in some instances, been made for carrying into effect, or rescinding, contracts made by lunatics before the inquisition, for sale of part of their property. Thus, in one case, the Master was directed to receive proposals for the sale, by private contract, of a freehold house belonging to the lunatic, which he had agreed to sell before the inquisition, with liberty for the Master to sell the same at such price as he should think reasonable; he reported that the sum which had been offered was a fair price; and, on the petition of the purchaser, such report was confirmed, and the

(u) *In re Frank*, 12th May, 1832.

usual directions were given for carrying the sale into effect (v). And in another case, an order was made for rescinding a contract, made by the lunatic before the commission of lunacy, for sale of part of his property (w).

In a recent case, where a testator devised his real estates to trustees, in trust to divide the same in equal moieties between his two daughters, one of whom was afterwards found a lunatic by inquisition; and on a bill being filed by the creditors of the testator against the lunatic and her committee and others, for payment of their debts, a decree was made by the Court of Chancery for sale of so much of the testator's real estates as would be sufficient to pay such of his debts as should not be satisfied out of his personal estate; and the real estate was sold under such decree, and the purchase money had been paid into Court; when a petition was presented by the surviving trustee of the will and the purchaser, for the purpose of obtaining an order for a conveyance from the committee of the lunatic. It was doubted whether the application was made by the proper person within the meaning of the statute 11 Geo. 4 & 1 Will. 4, c. 60, s. 11; but, on a petition being afterwards presented by the lunatic herself, it was referred to the Master to inquire whether the moiety of the estate lately belonging to her had been properly sold; and, if so, then the committee of her estate was ordered to join, with all proper parties, in executing such conveyances to the purchaser as the Master should deem necessary (x).

Generally speaking, where the estates of a lunatic are directed to be sold, his committee will not be allowed to become the purchaser, on the same principle as trustees (y), assignees of the estates of bankrupts (z), and other persons in a confidential relation towards the parties interested, are

(v) *In re Iredale*, 26 April, 1827. *Graxebrook*, 3 Mer. 208.

(w) *In re Lucas*, 9 August, 1827. (z) *Ex parte Reynolds*, 5 Ves.

(x) *In re Bird*, 25 April, 1832. 707; *Ex parte James*, 8 Ves. 337;

(y) *Ex parte Lacey*, 6 Ves. 627; *Ex parte Bennett*, 10 Ves. 381. See *Lister v. Lister*, Id. 631; *Downes v. Sugd.* V. & P. chap. 14, s. 2.

prohibited from purchasing estates of which they have the management in those capacities.

In a case, where it appeared that sums of money, advanced by the committee of the person and estate of a lunatic were due to the former, and that the lunatic was entitled to a share of trust funds on the death of another person, which had been estimated by the Actuary of the Equitable Assurance Office to be worth 1694*l.*, and that there were debts due from the lunatic to such committee and other persons, and the Master had reported that it would be expedient, and for the advantage of the lunatic, to sell such interests according to the valuation, and that an annuity should be purchased out of the produce of such sale, for the benefit of the lunatic—It was ordered that such committee and other persons should be considered creditors on the lunatic's estates, for the sums mentioned in the report; and that, upon the committee entering into a joint bond with two other parties, to be approved by the Master, for securing an annuity to the lunatic, and upon such bond being deposited in the Master's office, the committee should be at liberty to become the purchaser of all the estate and interest of the lunatic under a particular will at the price of 1600*l.*; and that, after the execution of such bond, the committee should be at liberty to sell such interests of the lunatic, either by public auction or private contract, for any sum not less than 1600*l.*, with liberty for the committee to execute all necessary deeds for carrying such sale into effect; and it was further ordered, that in case the committee should elect to become the purchaser of the lunatic's interest at the sum of 1600*l.*, or in case he should make such sale as aforesaid, that then, out of such money, he should purchase a government annuity for the life of the lunatic; whereupon the bond which he should execute was to be vacated (a).

4. Before the passing of the statutes mentioned in the preceding part of this section, the sale or mortgage, or other disposition of the estates of lunatics, could be carried into

(a) *In re Butcher*, 21 December, 1831.

effect only by private acts of Parliament, which were sometimes obtained for those purposes (*b*). The powers conferred by the public acts will not, in many cases, owing to the involved state of the lunatic's affairs or property, or the nature of the intended arrangement, enable the Lord Chancellor to carry the proposed settlement into effect; and therefore resort is now sometimes had to the Legislature for private acts (*c*). Previously to the Lord Chancellor's making an order, directing the committee to apply for a private act of Parliament, it is usually referred to the Master, to inquire whether it will be beneficial to the lunatic's estate. Thus, in one case it was referred to the Master to inquire and certify, whether the lunatic was seised or entitled to the real estates and shares thereof mentioned in the petition, and as to the annual income and condition thereof; and whether it would be proper, and for the benefit of the lunatic and her estate, that the whole of her real estates, and shares thereof, should be sold; and whether it would be proper, and for the benefit of the lunatic, that the petitioner, as her committee, should apply to Parliament for an act to authorize him, and any other and what persons as trustees, to sell the same, or to concur with any other party who might be entitled to any share or interest in such estates, in the sale thereof; and under what conditions such act of Parliament should be applied for and obtained, and whether it should contain a power for the committee, or any other person, to make partition of the estates, in which the lunatic was entitled to an undivided share (*d*).

In another case, where the Master had reported that partnership property, in which the lunatic had a share, could not be divided without the aid of Parliament, it was ordered that his report should be confirmed, and that the committee of the estate should be at liberty to apply to Parliament for an act to empower him, or the committee or com-

(*b*) See Bramwell's Analytical Table of Private Statutes, tit. Lunatics. (*d*) *In re Russ*, 4 February, 1828. An act was obtained. Private Acts, 9

(*c*) See 2 Bl. Comm. 344; Cruise's Dig. tit. 33, Private Acts, *ante*, p. 369. Geo. 4, c. 20.

mittees for the time being of the estate of the lunatic, to sell and dispose of certain property belonging to him; and it was ordered that the committee should join with the other partner in the disposal of the co-partnership property, in such manner, and under such powers of leasing, sale, partition, and exchange, as therein mentioned, and under such other powers and provisos as might be necessary for the purpose of disposing of the whole of such property to the best advantage, for the benefit of all parties interested therein (e). After the act had been obtained, in the last case, it was referred to the Master to inquire and certify what was the best mode to be pursued with regard to the separate property of the lunatic comprised in such act, with reference to the powers therein contained for disposal thereof (f).

In another case it was ordered, that the committee of a lunatic's estate should be at liberty to apply to Parliament for obtaining an act of Parliament, for authorizing the sale of such parts of an estate to which the lunatic was entitled as tenant in tail under a particular will, as the Lord Chancellor, or other person intrusted with the care of lunatics, should direct; and for enabling such committee or trustees to invest the money in the purchase of other lands, to be settled to the same uses, with power of granting leases: and that such act should contain a clause directing such a fund to be created, by investment of part of the purchase money, in the 3 per cent. Consol. Bank Annuities, as would be sufficient to produce an annual sum of a certain amount for the maintenance of the lunatic (g).

Private acts have been also obtained for authorizing the granting of leases of the estates of lunatics (h); but such acts are not now often necessary, as the general powers contained in the statute, enabling committees to lease, are in most cases sufficient (i).

(e) *In re Craven*, 15 March, 1827. An act was obtained in this case. See Private Acts 7 & 8 Geo. 4, c. 56. An act was obtained *In re Newport*, 10 Geo. 4, c. 30.

(f) *In re Craven*, 1 May, 1828.

(g) *In re Warriner*, 23 Mar. 1830.

(h) See Private Acts—*In re Newport*, 4 Geo. 3, c. 2; *In re Duchess of Chandos*, 33 Geo. 3, c. 79; *In re Sir Thomas Smyth*, 59 Geo. 3, c. 39.

(i) See *ante*, pp. 341, 342.

SECTION III.

Of Conveyances of Estates and the Transfer of Funds vested in Lunatics as Trustees or Mortgagees.

1. THE statute now in force, both in England and Ireland, respecting the conveyance of estates, and the transfer of funds vested in lunatic trustees or mortgagees, is the 11 Geo. 4 & 1 Will. 4, c. 60; but, as it is often necessary to consider how the law stood previously to the passing of that act, with the view of determining the validity of titles depending upon orders formerly made, it may be useful in this place, as in the preceding sections of this chapter, to advert shortly to the repealed statutes, and the decisions upon them. It should be remembered, that, if a conveyance is obtained under the order of the Court, it will not be valid unless the party comes within the provisions of the act (*k*).

By statute 4 Geo. 2, c. 10, persons being idiot, lunatic, or *non compos mentis*, having estates in lands, in trust only for others or by way of mortgage, or their committees, were enabled, and might have been compelled, by the order of the Lord Chancellor of Great Britain, to convey lands so vested in them, in like manner as trustees or mortgagees of sane memory were compellable to convey. By the Irish statute of the 5 Geo. 2, c. 8, the Lord Chancellor of Ireland was enabled to make similar orders as to lands in that country. Under the statute 4 Geo. 2, c. 10, a trustee found lunatic by the Master's report, could not have been ordered to convey unless a commission had issued (*l*); but where a commission had issued, the Court ordered the lunatic and his curator to join in the conveyance (*m*). It was also decided, that a sur-

(*k*) *In re Janaway*, 7 Price, 690.

(*l*) *Ex parte Gillam*, 2 Ves. jun. 587.

(*m*) *Ex parte Marchioness of An-*

nandale, Anbl. 80; *Ex parte Lewis*, 1 Ves. sen. 298; *ante*, p. 19.

render of a copyhold estate could not be obtained, under that statute, from the lunatic heir of a person who had covenanted to surrender copyholds to the uses of a settlement (n).

By statute 1 & 2 Geo. 4, c. 114, the Lord Chancellor of Great Britain was enabled to appoint persons, on behalf of those being idiot, lunatic, or *non compos mentis*, to convey lands vested in them in trust, or by way of mortgage, although they had not been found such by inquisition. The statute of the 6 Geo. 4, c. 74, repealed the statutes of the 4 Geo. 2, c. 10, and the 1 & 2 Geo. 4, c. 114, and enacted, that when any person seised of any lands or any estate or interest therein, upon any trusts, or by way of mortgage, should be idiot, lunatic, or of unsound mind, it should be lawful for the committees of such persons, or any person to be appointed as thereafter mentioned, in the name of the idiot, lunatic, or person of unsound mind, by the direction of the Lord Chancellor of Great Britain, to convey or otherwise assure such lands to such persons, and in such manner as he should direct. And by the 4th section of the 6 Geo. 4, c. 74, it was enacted, that when and so often as the persons seised or possessed as aforesaid, being idiot, lunatic, or of unsound mind, should not have been found such by inquisition, it should be lawful for the Lord Chancellor to order or appoint such persons as to him should seem meet, on behalf of the person or persons being idiots, lunatics, or of unsound mind, (but not having been found such by inquisition), to convey or otherwise assure such lands. It was held, that a trustee, to come within the statute of the 4 Geo. 2, c. 10, must be a trustee without interest, and without duties to perform, for the simple purpose of parting with the estate (o). But, by the statute 6 Geo. 4, c. 74, section 10, it was enacted, that the several provisions thereinbefore contained should extend to cases in which a trustee might have some beneficial estate or interest in the

(n) *Ex parte Currie, in re Hub-* 149; and see ——— v. *Handcock,*
bald, 1 Jac. & Walk. 642. 17 Ves. 383; *Ex parte Chastaney,*

(o) *Ex parte Tutin,* 3 Ves. & Bea. Jac. Rep. 56.

lands, funds, or securities vested in him, and also to cases in which the trustee might have some duties to perform. And by statute 7 Geo. 4, c. 43, the provisions therein contained, for enabling trustees in Ireland to convey, were extended to cases of trustees having a beneficial interest or duties to perform.

2. The statutes of the 6 Geo. 4, c. 74, and the 7 Geo. 4, c. 43, and the Irish statute of the 5 Geo. 2, c. 8, are repealed by the statute 11 Geo. 4 & 1 Will. 4, c. 60; and, by the 3rd section of the last act it is enacted, "That where any person seised or possessed of any land upon any trust, or by way of mortgage, shall be lunatic, it shall be lawful for the committee of the estate of such person, by the direction of the Lord Chancellor of Great Britain, being intrusted by virtue of the King's sign manual with the care and commitment of the custody of the persons and estates of persons found idiot, lunatic, or of unsound mind, to convey such land, in the place of such trustee or mortgagee, to such person, and in such manner, as the said Lord Chancellor shall think proper; and every such conveyance shall be as effectual as if the trustee or mortgagee, being lunatic, had been of sane mind, memory, and understanding, and had made and executed the same." And it is further enacted (n), "That where any stock shall be standing in the name of any person who shall be a lunatic, *as a trustee or executor*, alone or jointly with any other person, or shall continue to be standing in the name of a deceased person whose executor shall be lunatic, or shall be otherwise vested in or transferrable by any person who shall be lunatic, for the benefit of some other person, it shall be lawful for the Lord Chancellor, intrusted as aforesaid, to direct the committee of the estate of any such lunatic to transfer or join in transferring such stock to or into the name of such person, and in such manner as the said Lord Chancellor shall think proper, and also to order such person appointed as aforesaid to receive and pay over, or join in receiving and paying over, the dividends of such stock, in such manner as the said

(n) 11 Geo. 4 & 1 Will. 4, c. 60, s. 4.

Lord Chancellor shall direct; and every such transfer, receipt, and payment, shall be as effectual as if the person being lunatic had been of sane mind, memory, and understanding, and had transferred, received, and paid, or joined in transferring, receiving, and paying such stock or dividends." And it is further enacted (o), "That where any such person as aforesaid, being lunatic, shall *not have been found such by inquisition*, it shall be lawful for the Lord Chancellor, intrusted as aforesaid, to direct any person whom the said Lord Chancellor may think proper to appoint for that purpose, in the place of such last-mentioned lunatic, to convey or join in conveying such land, or to transfer or join in transferring such stock, and receive and pay over the dividends thereof, as hereinbefore is mentioned; and every such conveyance, transfer, receipt, or payment, shall be as effectual as if the said person being lunatic had been of sane mind, memory, and understanding, and had made, done, or executed the same; but where any sum of money shall be payable to such lunatic, no such last-mentioned order shall be made, if such sum of money shall exceed 700*l.*; and where any sum not exceeding 700*l.* shall be payable to such lunatic, and any such order shall be made, the Lord Chancellor, intrusted as aforesaid, shall direct to whom, and in what manner, the money so payable shall be paid; and every payment made in pursuance of such direction shall effectually discharge the person paying the same from the money which he shall so pay" (p). It is also provided (q), that every order to be made in pursuance of that act by the Lord Chancellor, intrusted as aforesaid, shall be signified upon petition in the lunacy or matter; and such person as hereinafter is mentioned, shall be the petitioner, whe-

(o) 11 Geo. 4 & 1 Will. 4, c. 60, s. 5.

(p) It seems that this section extends only to cases where the lunatic is either an *executor, trustee, or mortgagee*, having a beneficial interest in the fund, in his own right not exceeding 700*l.*; and that it does not apply

to the case of a lunatic not so found by inquisition, who fills none of such characters, although his interest may not exceed that sum. See *post*, Chap. x. s. 3.

(q) 11 Geo. 4 & 1 Will. 4, c. 60, s. 11.

ther such person be or be not under any legal disability; (that is to say), if the same shall relate to a conveyance, transfer, receipt, or payment, to or in such manner as may be directed by any person beneficially entitled, then, upon the petition of the person or some or one of the persons beneficially entitled to the land, stock, or dividends to be conveyed, transferred, received, or paid; and if the same shall relate to a conveyance in order to vest any land or stock in a new trustee duly appointed, then upon the petition either of the trustee or some or one of the trustees in whom the same shall be proposed to be vested, or of any person having an interest therein; and if the same shall relate to the conveyance of an estate in mortgage, then, upon the petition of the person or some or one of the persons entitled to the equity of redemption thereof, or of the person or some or one of the persons entitled to the monies thereby secured, or the committee or some or one of the committees of the person entitled to such monies if a lunatic. It was decided, that a petition, praying that the committee of a lunatic might be ordered to transfer property vested in a lunatic as a trustee within the 6 Geo. 4, c. 74, s. 3, ought to be intitled in the lunacy, and need not be intitled in the matter of the act (r).

The Lord Chancellor may direct a bill to be filed in cases where, on account of the length of time since the creation or last declaration of a trust, the title of the party claiming a conveyance or transfer may appear to require deliberate investigation in the presence of the parties interested, or where it shall appear to the Lord Chancellor, intrusted as aforesaid, not proper to make an order upon petition. Any committee directed by the act to make any conveyance or transfer, may be compelled by the order to be obtained as directed by the act, to execute the same in like manner as trustees of full age and of sane mind are compellable to convey and transfer (s). Every person being in other respects a trustee, is declared to be so, notwithstanding he may have some beneficial estate or interest in the same subject, or may have

(r) *In re Fowler*, 2 Russ. 449. (s) 11 Geo. 4 & 1 Wm. 4, c. 60, ss. 12 & 13.

some duty as trustee to perform; but in every such case, and in every case of a mortgagee, (not being a naked trustee), the Lord Chancellor, intrusted as aforesaid, if he shall think it requisite, may direct a bill to be filed to establish the right of the party seeking the conveyance or transfer (*t*).

The act extends to every case of a constructive trust, or trust arising or resulting by implication of law; but in every such case, where the alleged trustee has or claims a beneficial interest adversely to the party seeking a conveyance or transfer, no order shall be made for the execution of a conveyance or transfer, until after it has been declared by the Court of Chancery, in a suit regularly instituted in such Court, that such person is a trustee for the person seeking a conveyance or transfer; but the act does not extend to partitions, or cases of election in equity, or to a vendor, except to the case thereby provided for (*u*).

3. An order has been lately made by Lord Chancellor *Brougham*, that no petition, relating to lunatic trustees under the act of 11 Geo. 4 & 1 Wm. 4, c. 60, be brought on for hearing, unless two days' notice shall have been given to the Secretary of lunatics, and to all parties interested (*v*).

When it is desired to obtain a reconveyance of property vested in a lunatic, either as a trustee or mortgagee, a petition (*w*) must be presented, either by the committee of the

(*t*) 11 Geo. 4 & 1 Wm. 4, c. 60, the administration of the trust property out of his hands; for the question of the insanity of a party ought not to be determined upon *ex parte* statements and affidavits alone, but the trustee should have an opportunity of answering them; and, therefore, the party making such an application ought to be required to produce, in the first instance, a satisfactory affidavit, as well of the insanity of the trustee, as of notice of the intended application having been given to him or his agents. See *ante*, p. 35, n. (*a*); p. 101, n. (*f*).

(*u*) Id. s. 18.

(*v*) Order in Lunacy, 22nd Feb. 1832.

It has been the practice to refer petitions of this kind to a Master of the Court of Chancery, without requiring proof of notice of the intended application having been given to the trustee, or even an affidavit of his being a lunatic or of unsound mind. As every person ought to have an opportunity of disproving the charge of insanity, notice ought to be given to the trustee alleged to be a lunatic, of the intention of the parties to apply to the Court for an order to take

(*w*) See Forms of such Petitions in the Appendix.

estate, or by the mortgagor, or by some person having a beneficial interest in the trust property or money secured on mortgage, stating the deed creating the trust or mortgage, and such other facts as are necessary to shew the right of the party seeking to obtain the transfer; upon this petition, it will be referred to the Master to inquire and certify whether the party be a lunatic trustee or mortgagee within the meaning of the act of the 11 Geo. 4 & 1 Wm. 4, c. 60. If the Master finds that the party is a lunatic mortgagee within that act, another petition must be presented for confirming his report; upon which he will be directed to compute the principal and interest due in respect of the mortgage; and an order will be made, that, upon payment by the mortgagor to the committee of the estate of the lunatic, of what the Master shall compute for such principal and interest to the time of payment, the committee of the estate of the lunatic be at liberty, in his name and on his behalf, to reconvey the estate comprised in the mortgage to the mortgagor, or as he shall direct; such reconveyance to be settled by the Master in case the parties differ about the same. And a further order will be made for referring it to the Master to tax the costs incurred by both parties in obtaining the orders, and that such costs (after deducting the expense of the reconveyance, which will be directed to be paid by the mortgagor) be paid by the committee out of the lunatic's estate, and allowed in passing his accounts, and that notice of attending the Master be given to the mortgagor (*x*).

Where the Master finds the party to be a *lunatic trustee* within the act, on confirming his report, the committee of the estate of the lunatic will be ordered to convey the land, or transfer the funds vested in him as such trustee, upon payment, by the party making the application to the committee, of the costs occasioned by, and consequent on, the petitions and orders, such costs having been taxed, and the conveyances settled, by the Master, in case the parties differ about the same.

In some cases, where stock standing in the name of a lu-

(*x*) *In re Baker*, 1827.

natic, either alone or jointly with other persons, as trustees or executors under a will, has been ordered to be transferred by the committee of the lunatic into the names of the other trustee, or new trustees, in trust for the parties entitled, the Lord Chancellor has directed all parties claiming any interest under the will in question, to execute a release and indemnity to the committee of the lunatic against all claims and demands, on account of the stocks so directed to be transferred (y).

In one case, on the confirmation of the Master's report approving new trustees of a will in the place of the lunatic, it was ordered, that a proper release and indemnity of the lunatic and his estate should be given and executed to him and his committee, by such of the parties claiming any shares under the will in question, as the Master should approve, (such release to be settled by him in case the parties differed); and, upon its execution, the committee was ordered to transfer stock in the lunatic's name, into the names of the new trustees; and the costs of the proceedings were directed to be paid to the committee out of the trust fund (x).

But where stock standing in the name of a lunatic, as surviving trustee and executor under a will of a testator, was ordered to be transferred to the party beneficially entitled, and, from the length of time which had elapsed since the death of the testator it might fairly be presumed that all his debts and legacies had been paid, and his assets duly administered, such transfer was directed to be made, without requiring any release or indemnity (a).

4. When a lunatic trustee or mortgagee *has not been so found by inquisition*, and a conveyance is desired to be obtained, the Lord Chancellor will, on the petition of the mortgagor (b), or of the persons beneficially interested in the money due on mortgage or the trust property, refer the matter to a Master in Chancery, to inquire and certify

(y) *In re Palmer*, 29th March, 1828; *In re Craven*, 8th July, 1829. See *Simmons v. Bolland*, 3 Mer. 547; *Vernon v. Egmont*, 1 Bligh, New Ser. 544.
 (x) *In re Brand*, 24th May, 1831.
 (a) *In re Steers*, 24th July, 1829.
 (b) See Forms of such Petitions in the Appendix.

whether the trustee or mortgagee be an idiot, lunatic, or of unsound mind; and in case the Master shall find the party to be so, then to inquire and certify whether he is seised or possessed of the estate mentioned in the petition, or any and what part or parts thereof, upon any and what trust, or by way of any and what mortgage, and for whom, within the act of the 11 Geo. 4 & 1 Will. 4, c. 60, and whether he has any beneficial interest in the estate; and in case the Master shall find the party to be such trustee or mortgagee, then to inquire and certify who are the most proper persons to be appointed on his behalf, and in his name, to convey the estate or interest vested in him; and due notice of attending the Master will be directed to be given to all parties interested. On the inquiry before the Master the parties must produce the deeds creating the trust or mortgage, and the affidavits of one or more medical men, as to the lunacy or unsoundness of mind of the party from whom the conveyance is sought to be obtained, and such other evidence as the Master shall require for establishing the right of the persons requiring the conveyance. If the Master finds, by his report, that the party is of unsound mind, that he is seised of the estates mentioned in the petition, either as a mortgagee or trustee within the act, and that he has approved of a person to be appointed to convey on behalf of such party; on another petition being presented, such report will be confirmed, (unless sufficient reason should be shewn against it), when the Lord Chancellor will appoint the person named in the report to convey, and, in the case of a mortgage, direct such person to convey upon payment of the principal money and interest due thereon; and also, upon payment by the mortgagee of the costs of the orders and applications to be taxed by the Master, in case the parties differ about the same.

Where the Master finds that the party is a lunatic, or of unsound mind, and possessed of funds within the meaning of the act, and that such trustee has no beneficial interest therein, on the confirmation of the Master's report an order will be made, that the proper officer of the Bank or other public company do transfer, or, if there are other trustees,

join in transferring the funds vested in the lunatic to the parties interested, who will be directed to pay the costs of all parties.

On the petition of the parties entitled to the equity of redemption of an estate, it was referred to the Master to inquire whether a mortgagee, who had not been found a lunatic by inquisition, was an idiot, lunatic, or of unsound mind, and if so, whether he was seised of the estate mentioned in the petition, as a trustee or mortgagee within the meaning of the act 11 Geo. 4 & 1 Will. 4, c. 60, and whether he had any and what beneficial estate or interest therein; and if the Master found the party to be such mortgagee, the Master was to certify whether any thing and what was due for principal and interest on the mortgage, and whether the said mortgagee was entitled thereto, or to any and what part thereof, in his own right, and for his own benefit, or in trust for any other persons, and whom. And, if it was found that such mortgagee was entitled to such principal and interest for his own benefit, then it was further ordered, (in the event of such money and interest not exceeding the sum of 700*l.*), that the said Master should inquire and certify who were the most proper persons to be appointed on the behalf of the lunatic mortgagee, to receive the amount to be so found due to him, and in his place to reconvey the estate in mortgage (*c*). The Master having found that the party was a mortgagee within the act, and that he was entitled to the principal and interest due on the mortgage, in his own right, and for his own benefit, on the confirmation of such report, it was ordered that it should be paid to the person approved by the Master, who was directed to settle and take such security for the due application of such mortgage money and interest, as he might consider proper and sufficient, and the costs (except those of the reconveyance) were directed to be paid out of such money (*d*).

In order to obtain a transfer of any stock vested in a lunatic not so found by inquisition, it will be referred, on the petition of the parties beneficially interested, to the

(*c*) *In re Huntsman*, 17th August, 1831.

(*d*) *Id.* 21st Feb. 1832.

Master in rotation of the Court of Chancery to inquire and certify whether the party is an idiot, lunatic, or of unsound mind; and, if the Master find in the affirmative, then, whether the trustee is possessed of the fund in question, either alone or jointly with any other persons, and whom, as a trustee upon any and what trusts within the meaning of the act, and whether the party has any and what beneficial interest therein, and whether there are any and what incumbrances affecting the same (e). The Master found by his report under the last reference, that a testator had by his will directed that, in case either of his daughters should marry during the widowhood of his wife with the consent of his trustees for the time being, they should thereupon advance and pay to such daughter a portion of their respective shares of the trust funds bequeathed to them; and that one of the trustees was of unsound mind and had no beneficial interest in the trust fund; and that one of such daughters had married with the consent of the sane trustees. The Lord Chancellor, on the petition of the married daughter and her husband, confirmed the Master's report, and ordered the proper officer of the West India Dock Company, in the place of the lunatic trustee, to join with the other trustees in transferring part of the West India Dock Stock (standing in the names of all the trustees), as part of the portion of the daughter under the will, into the names of the trustees appointed by articles made on her marriage, upon the trusts thereby declared (f).

The Lord Chancellor can, if he think proper, on being satisfied that a trustee is of unsound mind, and that the property sought to be transferred is vested in him upon trust, and that he has no beneficial interest therein, order a conveyance and transfer of lands and money in the funds to new trustees without any reference to the Master (g).

If the stock or fund which is required to be transferred belongs to a married woman, and the husband applies to

(e) *In re Comber*, 13th May, 1831. (g) *In re The Earl of Liverpool*,

(f) *Id.* 11th Aug. 1831. 11th Aug. 1828.

receive it, the wife must be examined in Court in the usual way, if resident in this country, or, if not, by commissioners abroad, to be appointed for that purpose, in order to consent to the proposed transfer or payment. Thus, where stock in the 3 *per cent.* Consol. Bank Annuities was standing in the name of a lunatic trustee, on the petition of the husband and wife, it was ordered that the wife should be at liberty to attend certain commissioners at Calcutta, who were to examine her apart from her husband, as to whom and in what manner, and for what purposes, she was willing and desirous that such stock should be transferred or disposed of; the commissioners having certified that the wife, on her examination, declared that she was desirous that the stock should be transferred, and paid to her husband for his own use and benefit, and that the wife did freely and voluntarily consent to the same, an order was made, on the petition of the husband and wife, for transfer of such stock and the payment of the dividends thereon, to certain persons named in a power of attorney executed by the husband and wife, for his sole use and disposal (*h*).

5. By statute 11 Geo. 4 & 1 Will. 4, c. 60, s. 22, the Lord Chancellor, intrusted as aforesaid, may in certain cases appoint any person to be a new trustee, by an order to be made on a petition to be presented for a conveyance or transfer under that act, after hearing all such parties as the Court shall think necessary; and thereupon a conveyance or transfer shall be executed, so as to vest such land or stock in such new trustee, either alone or jointly with any surviving or continuing trustee, as effectually as if such new trustee had been appointed under a power in any

(*h*) *In re Nolley*, 19 November, 1830.

An office copy of the examination and declaration of the wife, with the joint certificate of the commissioners of the due taking of such examination, an office copy of the certificate of a Notary Public residing at Calcutta, verifying the signature of the

wife, and an office copy of the affidavit of the due signing of the examination and certificate, and an office copy of the affidavit verifying the signature of the affidavit, and the joint affidavit of the husband and wife, and the letter of attorney of the petitioners, were produced, on making the above order.

instrument creating or declaring the trusts of such land or stock, or in a suit regularly instituted.

Where the petition of the surviving trustee stated a deed conveying real estate to three trustees, upon certain trusts, with a power for the surviving or continuing trustees or trustee to appoint new trustees, the death of one of them, and that another trustee had, subsequently to the execution of the trust deed, become and then was of imbecile and unsound mind, and incapable of managing his affairs, and a deed poll of the other trustee appointing two new ones in the place of the deceased trustee and the imbecile trustee, it was referred to the Master in rotation of the Court of Chancery, to inquire and certify whether such trustee was an idiot, lunatic, or of unsound mind, or incapable of managing his affairs; and, if so, then to inquire and certify whether he was seised or possessed of the estate mentioned in the petition, or of any part thereof, either alone or jointly with any other persons, and whom, within the meaning of the act of the 11 Geo. 4 & 1 Will. 4, c. 60; and whether such trustee had any beneficial interest therein: and in case the Master should find such trustee to be so seised or possessed, either alone or jointly with any other trustees, but who were deceased or unwilling or incapable to act in the trusts, then he was to inquire and certify, whether there was any power under such deed, or otherwise, to appoint new trustees of the estate of which the lunatic was so seised, and by whom and by whose direction such power had been or ought to be exercised, and whether any persons had been duly appointed new trustees in pursuance of such power, and whether such persons as had been so appointed were then living and willing and capable to act in the trusts; but, if the Master should find that there was no such power, then it was further ordered, that he should inquire and certify who was the most fit person to be appointed such trustee in the room of the lunatic: and, on such new trustee being duly appointed as aforesaid, or approved by the Master, it was further ordered, that the Master should approve of a proper person in the place of the lunatic to convey the estate so vested in

him; and due notice of attending the Master was directed to be given to all parties interested (*k*). The Master, under the last reference, having found that the party was a lunatic trustee within the act, and that he had no beneficial interest in the property, and that the deed contained a power for the appointment of new trustees, under which new ones had been duly appointed, it was ordered that the person named by the Master should join with the other trustees in conveying the trust property in the place of the lunatic, so that the same might become vested jointly in one of the former trustees and the two new trustees, upon the trusts of the deed (*l*).

Where the Master had found that stock was standing in the names of two deceased trustees and a lunatic, upon the trusts of a settlement, and that there were no incumbrances affecting the same, and that the trustees had not any beneficial interest therein—On the petition of the persons proposed as new trustees, and of the parties beneficially interested in the fund, it was referred to the Master to inquire and certify whether there was any power in the settlement to appoint new trustees of the trust funds mentioned in the petition, and by whom, and by whose direction such power (if any) was to be exercised, and, if there was no such power, then the Master was to inquire and certify whether two particular persons were proper to be appointed new trustees in the place of the lunatic, or what persons it would be proper to appoint as such new trustees. The Master, by his report having found that there was no such power, and that he was of opinion that the two persons proposed were fit to be appointed new trustees, the Lord Chancellor ordered the Master's report to be confirmed, and appointed such two persons to be new trustees, in the place of the two deceased trustees and the lunatic, and ordered the committee of his estate to transfer the funds standing in the books of the Bank of England in the names of the deceased trustees and the lunatic, into the names of the new trustees, to be by them held upon the subsisting trusts of the settle-

(*k*) *In re Piggott*, 2nd July, 1831.

(*l*) *S. C.* 30th August, 1831.

ment; and the committees were ordered to receive the dividends due up to the time of the transfer, with liberty for them to retain thereout their costs of the applications to the Court and the transfer, such costs to be taxed by the Master in case the parties differed about the same; and the residue of such dividends was to be paid to the new trustees, to be by them applied according to the settlement (m).

6. Questions have been frequently raised, as to the payment of the costs incurred by proceedings under the statutes for obtaining conveyances from lunatic trustees and mortgagees; and the decisions reported upon that subject are not uniform. Thus, where a lunatic had been reported to be a trustee within the 4 Geo. 2, c. 10, and the Court thereupon ordered his committee to convey, and the case stood over for the purpose of determining whether the committee should have his costs, the Lord Chancellor determined, that the rule was, that the estate of the *cestui que trust* should not bear the expense, but that it must be paid out of the lunatic's estate (n). It appears, however, that, at the hearing of that case, no question as to costs was made, and that a direction to that effect was added for the indemnity of the committee, who had omitted to obtain his costs from the *cestui que trust* (o).

Notwithstanding the case last cited, the general rule seems to be, that the costs of the committee of a *lunatic trustee* conveying under the statute are to be paid by the *cestui que trust*. Thus, in a case where a lunatic had been reported to be a trustee within the statute for the grantee of an annuity, and a question arose as to the committee's costs, Lord Chancellor *Eldon*, after having been furnished with a statement of the practice on this subject, finally ordered, that the committee's costs of the original petition and subsequent proceedings should be paid by the grantee of the annuity and the assignees of the grantor in equal moieties; and declared the general rule to

(m) *In re Stracey*, 4 February, 290. See *Ex parte Cant*, 10 Ves. 1831. 554.

(n) *Ex parte Brydges*, Coop. R. (o) See 1 Turn. R. 327.

be, that the costs of the committee of a *lunatic trustee* conveying under the statute must be paid by the *cestui que trust* (p). But, where a trustee refused to execute a conveyance, which had been settled and approved by the Master, in consequence of which a further petition was presented, to direct him to execute the deed in question; as no sufficient reason appeared why he had not before done so, the Court would not allow him the costs occasioned by such petition (q). So also, where an estate had been conveyed to trustees for the benefit of creditors, and an application was made for a commission of lunacy against one of such trustees, who, after having contracted for the sale of an estate, became of unsound mind and incapable of completing the sale; it was held, that the petitioners must take the order at their own expense, and, if the commission issued, must pay the expenses of it, being for their benefit up to the time of perfecting the title to the estate in question: and the consideration as to their reimbursement, if any other person should adopt the commission, was reserved (r).

But the costs incurred by the reference and the necessary orders for enabling the committee of a lunatic, who is *beneficially entitled as mortgagee*, to convey to the mortgagor (s), must be paid out of the lunatic's estate, whether the application be made by the mortgagor, or by the committee which is the usual course. Thus, on a petition by a mortgagor, the mortgagee having become a lunatic, for an order under the statute 4 Geo. 2, c. 10, a question arose whether the costs of the petition and reference should be defrayed by the mortgagor or out of the lunatic's estate. The matter having stood over, that the practice might be inquired into, Lord Chancellor *Eldon* said, that the only difficulty arose from the form of the petition; and that he found, where there is a mortgage and the mortgagee had become a lunatic, the usual course was for the mortgagor to state that

(p) *Ex parte Pearce*, 1 Turn. R. 149.

325.

(s) See *Wetherell v. Collins*, 3

(q) *In re Frank*, 24 July, 1829. Madd. 255; *Martin's case*, 5 Bing.

(r) *Ex parte Tutin*, 3 Ves. & Bea. 160.

he is willing to pay the money due on the mortgage to the committee, who then presents the petition for the reference; after he has put himself in a situation to be able to convey, the subsequent costs are defrayed by the mortgagor; but all the costs antecedent to the committee's having that capacity, were paid out of the lunatic's estate. In this case, the mortgagor presented the petition, which was the same thing, being one step towards giving the committee the capacity to convey, and the expense of it must fall on the lunatic's estate (*f*). It was true, that, in an action, the mortgagor might be made to pay the whole sum without any deduction, but that the Court approved of an application of this sort on the part of the committee, instead of an action, which he would not be allowed to bring, if the mortgagor was ready to pay (*u*). A mortgagee, by improper and vexatious conduct, will, in some cases (as, a tender of the mortgage money and interest, and a refusal to receive it), not only be deprived of his own costs, but compelled to pay those of the mortgagor (*v*).

But, where the lunatic is a *bare trustee*, and has no beneficial interest in the money due on mortgage, the costs of the necessary applications and orders for obtaining a conveyance from his committee, must be paid by the persons beneficially interested, or by the mortgagor. Thus, where the Master, in a reference under 6 Geo. 4, c. 74, on the petition of the persons entitled to the equity of redemption of a real estate, had found by his report that a lunatic was a mortgagee of such estate as a trustee, and that he was seised thereof as a trustee for the purchaser of it—An order was made, that, upon payment of the principal and interest to the committee of the estate, such committee should convey the premises to such purchaser; and it was referred to the Master to tax the costs of the petitioners and of the

(*f*) *Ex parte Richards*, 1 Jac. & Walk. 264. 583; *Loftus v. Smith*, 2 Sch. & Lef. 657; — *v. Trecothick*, 2 Ves. &

(*u*) *Ibid.* Bea. 181; *Quarrel v. Beckford*, 1

(*v*) *Harvey v. Tebbutt*, 1 Jac. & Walk. 197; *Detillin v. Gale*, 7 Ves. Madd. R. 269, 285; 1 Ball & B. 121, n.

committee of the estate of the lunatic, incurred by the petition for the order of reference, and the application to confirm the Master's report and the order to convey; and such costs were directed to be retained by the committee out of the principal money and interest to be received in respect of the mortgage (*w*). And where a petition was presented by a party entitled to the equity of redemption of a bond and heritable subjects in Scotland, which had been mortgaged to the lunatic's father, who, by his will, bequeathed the principal money to the petitioner, praying a confirmation of the Master's report, finding the lunatic a trustee within the 6 Geo. 4, c. 74, and that the committee of the lunatic might be ordered to execute a release of the mortgage to the petitioner accordingly, and that the costs of the petition, report, and application might be taxed and paid out of the personal estate of the testator, or out of the lunatic's estate—Lord Chancellor *Lyndhurst* decided, that the lunatic ought not to bear any expense, as he took no beneficial interest, and was a mere naked trustee. His Lordship said, he never heard of a trustee being required to pay any expense for the transfer of property to another trustee; and considered, that, whatever expenses might have been incurred for that purpose, must be paid by the parties requiring the transfer; and he refused to make the order for payment of the costs out of the lunatic's estate (*x*).

And in another case, where, on the death of a mortgagee in fee, the legal estate in certain premises descended to his heir-at-law, but the mortgage debt went to the executors of the mortgagee; the heir-at-law was of unsound mind, but no commission of lunacy had issued against him—The mortgagor presented a petition under 6 Geo. 4, c. 74; and the Master, under the usual reference, found that the heir-at-law was of unsound mind, and that he was seised of the mortgaged premises upon trust for the executors of the mortgagee, until the mortgage money and interest were paid, and, after payment thereof, in trust for the mortgagor, his

(*w*) *In re Tarback*, 17th July, 1829. (*x*) *In re Davidson*, 11th Aug. 1829.

heirs, and assigns, within the meaning of the act; and he approved of one of the executors as a proper person to convey on behalf and in the name of the lunatic. The mortgagor then presented a petition, praying, that, upon the payment of the principal and interest due on the mortgage, the executor named might be appointed and ordered to convey the premises to the petitioner and his heirs. The executors were willing to receive their principal and interest, and the only question was, as to the costs of the proceedings and the petition—Lord Chancellor *Lyndhurst* said, the jurisdiction of the Court is limited to the person petitioning and to the person found to be of unsound mind, either by inquisition or by the Master under a reference made in pursuance of the statute, and the Court has no authority to make an order affecting a person who is neither a petitioner nor a person of unsound mind, unless he consents. The Court cannot order these executors to pay costs, it cannot order them to receive the principal and interest due to them; they are willing to be redeemed upon payment of their costs; but the mortgagor must take the boon upon the terms offered. In *Ex parte Richards (y)*, the lunatic was the person beneficially entitled to the mortgage debt, and the Court, by virtue of its jurisdiction in lunacy, had full authority to deal with his interest according to its discretion. The only other interest which existed there, was that of the mortgagor; and he, by preferring his petition, gave the Court jurisdiction. So, in *Ex parte Pearse (z)*, the person of unsound mind was a trustee—first, for the grantee of an annuity, and then for the grantor; who having both concurred in a petition, Lord *Eldon* thought that the costs ought to be borne by them equally; but if the grantor had been the sole petitioner, the Court could have had no jurisdiction over the grantee, and could not have thrown upon him any portion of the costs. The Lord Chancellor ordered all the costs to be paid by the mortgagor, the petitioner (*a*).

By statute 11 Geo. 4 & 1 Will. 4, c. 60, s. 25, it is enacted, that the Lord Chancellor, intrusted as aforesaid, may

(y) *Ante*, p. 391.

(z) *Ante*, p. 390.

(a) *Ex parte Clay, In re Towers*,

7th Aug. 1830.

order the costs and expenses of and relating to the petitions, orders, directions, conveyances, and transfers to be made in pursuance of that act, or any of them, to be paid and raised out of or from the land or stock, or the rents or dividends, in respect of which the same respectively shall be made, or in such other manner as the said Lord Chancellor shall think proper (*b*).

(*b*) See orders for payment of costs since this statute, *ante*, pp. 382, 384, 389, and the Appendix.

CHAPTER IX.

OF PROCEEDINGS AT LAW, BY AND AGAINST LUNATICS
AND THEIR COMMITTEES.

SECTION I.

Of Actions by and on the behalf of Lunatics.

IT was formerly held, that idiots, madmen, and such as were born deaf and dumb, were incapable of suing, on account of their want of reason and understanding; but actions can now be maintained in their names and prosecuted on their behalf (a). The committee of an idiot or lunatic being considered as a bailiff or servant, and having no interest, except for their benefit, cannot maintain an action on their behalf in his own name, but such action must be brought in the name of the *non compos*, whether it be an action of trespass, ejectment, covenant, or of any other kind (b).

If an idiot sue, it is said that he must appear in person; and any one who prays to be admitted as his friend may sue for him: so, if an action be brought against him, he must appear in his proper person, and any one who can make a better defence shall be admitted to defend for him: but if an idiot has been allowed, however irregularly, to plead by attorney, and the parties proceed to trial, the verdict and judgment will be binding upon him; but a lunatic, or one

(a) Co. Litt. 135. b.

Poph.140; *Cook v. Darston*, Brownl.(b) *Drury v. Fitch*, Hutt. 16; *Cox & Goulds*. 197; *Knipe v. Palmer*, 2 *v. Dawson*, Noy, 27; *Thorn v. Coward*, 2 Sid. 124; *Fulcher v. Griffen*, Wils. 130.

who becomes *non compos mentis*, must appear by guardian if he be within age, and by attorney if he be of full age (c).

It is the common practice, on the petition of the committee, to refer it to the Master to inquire whether it will be proper to commence an action on behalf of the lunatic, and, on his reporting in favour of a particular action, to direct the committee to commence it. Thus, an inquiry was directed to be made by the Master, whether proceedings ought to be instituted against a tenant for recovering compensation in damages for dilapidations which he had suffered of a messuage in his occupation belonging to the lunatic, in breach of the covenants contained in his lease (d). And in another case, an order was made, founded on the Master's report, that the committee of the lunatic's estate should be at liberty to bring actions of ejectment against such of the tenants of the estate mentioned in the report, of which the lunatic was seised as tenant in tail, as refused to attorn and pay rent to such committee (e).

It seems that a person may be held to bail upon the oath of the committee of a lunatic (f). And judgment was allowed to be entered on an old warrant of attorney, where the plaintiff, being a lunatic, did not swear that the money was unpaid, but another person did, who had received the interest upon the bond ever since the plaintiff had become lunatic (g).

It may be proper to observe in this place, that, where a man has been found a lunatic by inquisition in England, it will not enable the committee to sue for a debt owing to the lunatic in the Courts of Scotland, but the suit must be carried on there in the lunatic's own name; and that a *curator* of a lunatic's estate appointed in Scotland, cannot on that title maintain an action in England (h).

(c) *Brook's Abr.* tit. *Idiot*; 4 Rep. 124 b; *Co. Litt.* 135. b., and note by Harg.; *Dennis v. Dennis*, 2 Saund. Rep. 328; *Dennis v. Phrasier*, 2 Keble, 691, 752; *Bac. Abr.* title "Idiots and Lunatics" (G).

(d) *In re Buckle*, 13th Jan. 1830.

(e) *In re Lewis*, 16th June, 1829.

(f) *Stewart v. Graham*, 19 Ves. 315.

(g) *Coppendale v. Sunderland*, Barnes, 42.

(h) *Morison v. Earl of Sutherland*, 2 Vol. of Suppl. to Dict. of Decisions, 199.

The writ of *habeas corpus* lies in all cases for inquiring into the cause of any person being deprived of his liberty; and therefore, where any person is confined as a lunatic, such writ may be obtained on proper affidavits, directing the person who has the custody of the alleged lunatic to bring him before the Court for examination as to the cause of his detention; but, if it appears by the affidavit of a physician or some competent person, that the party is actually a lunatic, and in such a state of mind as not to be fit to be taken out of the custody in which he has been placed, and more especially if a commission of lunacy is about to be issued to inquire of his lunacy, the Court will enlarge the time for the return of the writ according to the circumstances of the case (i). Before a writ of *habeas corpus* is granted in a case of this kind, a previous inspection by a medical man is sometimes directed (k).

Upon motion for a *habeas corpus* to bring up the body of a party who was confined in a lunatic asylum, the Court granted only a conditional rule; but ordered that a physician in the mean time, and at all reasonable times, should have free access to the alleged lunatic at such asylum, in the absence of the physician in whose care and custody he was. Upon shewing cause, it appeared that a commission of lunacy had issued against the party, upon which an inquisition was soon to be taken; and it not appearing satisfactorily from the affidavits that the party was free from derangement, the Court enlarged the time for shewing cause until the first day of the following term, in order that the fact of the party being a lunatic or not might be ascertained under the commission (l).

The Court will refuse to grant liberty of access to, and inspection of, a lunatic, where the application comes from a party who had no pretence for demanding it (m).

If the party confined as a lunatic, upon being brought into Court, appears to be free from insanity, he ought to be set

(i) *Rex v. Clarke*, 3 Burr. 1362.

(l) *Ex parte Carpenter*, 1 Smith

(k) *Rex v. Turlington*, 2 Burr. & Batty, 81.

115; *Rex v. Wright*, Id. 1099; *Rex v. Harty*, cited 1 Smith & Batty, 82.

(m) *Rex v. Clarke*, 3 Burr. 1363.

at liberty by the order of the Court⁽ⁿ⁾. But, where the husband had confined his wife in a madhouse, and she had still reason to be apprehensive of danger from him, the Court would not permit him to take her away, but allowed her to go to the house of a friend ^(o).

Where a person entitled to certain property on the death of a lady, a lunatic, in default of appointment, preferred a petition for liberty of access, either personally or by physicians, in order to ascertain whether she was in a state of mind competent to execute a valid appointment—Lord *Eldon* refused to make the order, as there was no instance of one having been made upon the principle of *quia timet*, and because such visit might be attended with dangerous consequences, by irritating the lady ^(p).

If the party to whom the writ of *habeas corpus* is directed omit to make any return, the Court will issue an attachment *nisi* without a previous rule to return the writ. Thus, where a *habeas corpus* was directed to a physician to bring up the body of a lunatic under his care, to which he made no return, and an attachment was moved for on an affidavit of service of the writ, the Court held that where the liberty of the subject is concerned, there ought to be all the expedition possible, and granted an attachment *nisi*, &c. Whereupon the physician returned, that, before the service of the writ, he had delivered the lunatic to her husband, and that he did not know where she was, nor could he produce her; and this was held a sufficient answer ^(q).

In a recent case, a lady just come of age, and entitled to considerable property under the will of her uncle, and to such further annual income, under another will, as the trustees should think proper to allow, had been decoyed away by a person who induced her to go to Gretna Green, where they went through the ceremony of marriage; and was afterwards taken from her husband, and placed under the care of some of her friends; when an application for a *habeas*

⁽ⁿ⁾ *Rez v. Turlington*, 2 Burr. 1115.

1115. See also 9 Geo. 4, c. 41, s. 37. ^(p) *Ex parte Lyttleton*, 6 Ves. 7.

^(o) *Rez v. Turlington*, 2 Burr. ^(q) *Rez v. Wright*, 2 Str. 915.

corpus was made on behalf of her husband. It was contended, that she ought not to be brought up under the *habeas corpus*, because it appeared by the evidence of her mother, governess, and others, that she was a person of weak mind, and subject to violent fits of passion; and it was sworn by three medical men, who had known her from an early age, that she was a person of unsound mind, and utterly unable to take care of herself, and that they believed that she was totally incapable of understanding the nature of the marriage contract. The time for returning the writ was enlarged, and, in the meantime, two physicians named by the Chief Justice and the attorneys on both sides, were to visit and examine the lady (*r*). Under such direction, the lady was visited by such physicians, who certified (amongst other things) that they had examined her for an hour and upwards, and were convinced that she was labouring under a very considerable degree of mental imbecility; that she had apparently no conception whatever of the great importance of the late transaction she had been engaged in, and expressed various doubts as to its nature; that she was perfectly indifferent and frivolously careless as to whom she lived with; and manifested so much indecision of character, that, though her imbecility did not amount to fatuity, yet her intellect was evidently so weak as to render her an easy victim of artful designs.

It was agreed and allowed by the Court, that the return to the writ should be, that the lady was not the wife of the party, in order that he might have an opportunity of *traversing such return*, and bringing the question of her sanity before a jury for their decision (*s*). It may be observed, that, by stat. 56 Geo. 3, c. 100, s. 3, power is given to the Judges before whom a writ of *habeas corpus* is returnable, to inquire into the truth of the facts set forth in the return.

Before any further proceedings had been taken in the above case, an application was made to the Lord Chancellor for a commission of lunacy against the lady, which was granted, and will very shortly be heard.

(*r*) *Rex v. Kelly and Another*, (s) *Id.* 11th May, 1832.
King's Bench, 3rd May, 1832.

A medical man is not warranted, merely on statements made by the relations of a person supposed to be insane, in sending men to take him into custody and confine him, unless he is satisfied, from those statements, that such a step is necessary, to prevent some immediate injury being done by the individual, either to himself or to other persons; and, if access cannot be had for the purpose of examination, application should be made to the Lord Chancellor, that the party may be taken up under his authority.

In an action of trespass, for assaulting and imprisoning the plaintiff, and forcing him to go along certain public streets, to which the defendants pleaded *not guilty*. It appeared that the plaintiff was a gentleman of property, but of very parsimonious and eccentric habits, and resided in a small house in York-street, Lambeth. The first defendant was an eminent physician, well known in that part of the medical profession whose practice is confined to cases of insanity; and the facts, as far as related to the assault and imprisonment, were as follows:—About six o'clock in the evening of the 1st November, 1829, two men (who were the other defendants) went to the plaintiff's house, and induced him to come out, laid hold of him, and told him that he must go with them. He refused to go, and called to some of his neighbours who were passing, to come to his assistance. They did so, and questioned the men as to their authority. They said they had authority, and produced a paper, purporting to be signed by the physician, "authorising the bearer to take charge of the plaintiff, and condemn him to his own house, he being insane."

The bystanders remonstrated with the men, who said they did not want to use the plaintiff ill, but would take him and use him as a gentleman,—they would take him either to his own house or to an hotel. He refused to go anywhere with them, and resisted their attempts to move him. Upon which, one of them who carried a bag, told him that if he was not quiet, they had implements in that bag which would make him so. He got away, by a violent effort, from the man with the bag, and the watch coming up, all the parties went before the constable; and the matter being

investigated, ended in the plaintiff's being set at liberty, and the two men committed to the watch-house, to be taken before the magistrate next day. The bag was examined by the constable, and found to contain screws, straps, a strait waistcoat, &c. On the investigation next day, at Union Hall, the physician admitted that the men acted by his authority, and that he had never seen the plaintiff; and, in answer to a question by the magistrate, he said, that it was usual to act if the friends applied, without having seen the person. Lord *Tenterden*, C. J. (in summing up) said—"It is admitted on both sides that your verdict must be for the plaintiff, and the only question is, as to the amount of damages which you are to give; and, with respect to this point, it is material to consider that the plaintiff was taken on suspicion of his being insane. Certainly, the course taken by the doctor has been such as cannot by law be justified. He ought not to have sent two men with such instruments as these appear to have been sent with, merely upon statements made by relations, unless those statements were such as to satisfy him that those steps were necessary to prevent the party from doing some immediate injury either to himself or others. From the statement made by the doctor, when the parties were before the magistrate, it seems that it is usual, on the application of the family, to act in this manner. I confess I am sorry to hear it so said, for it certainly is not right; and although there may be difficulty in getting access to a party labouring under insanity, yet the proper course is, if access cannot be obtained, to apply to the high authority, which has cognizance over such matters, to get the party taken up, in order that he may be examined. The question for your consideration, under all the circumstances, will be, whether there was reasonable and probable cause for the plaintiff's brothers to consider him as insane, and whether, in consequence of their so considering him, they made the application to the doctor; for, if such should be your opinion, probably you will not go very high in your estimate of the damages." The jury gave a verdict for the plaintiff—damages 500*l.* (*t*).

(*t*) *Anderdon v. Burrows and Others*, 4 Carr. & Payne, 210—214.

An action will lie against a person for maliciously, and without any reasonable or probable cause, having signed a certificate, that a person was insane, and in a state requiring to be confined, in consequence whereof a party has been seized and detained in custody as a lunatic; or, such a certificate might be considered as a libel, in which case an indictment would lie against the person who signed it.

An action for an assault and false imprisonment may be maintained by a person who is improperly taken and detained in custody as a lunatic. In answer to such an action the defendant may plead, as a justification, that the plaintiff was a dangerous lunatic, and committed to his care under the certificate of medical men (*v*). In such cases it is for a jury to decide, whether or not the party who has signed the certificate or detained another in custody, is justified in adopting such steps, which will depend upon whether the party was insane or not at the time. But the keeper of an asylum for lunatics is not justified in receiving a person into his custody, although decidedly insane, without the certificate required by the statute (*w*). An action will lie for maliciously suing out a commission of lunacy against a person; but, to support an action for a conspiracy in issuing a commission of lunacy, malice, and a want of probable cause, must be proved. On proof of a total want of probable cause, malice may be implied; but, although express malice be proved, some slight evidence of a want of probable cause must be given (*x*); and it seems that such an action cannot be sustained, unless it be shewn that the commission had been superseded, or that the party had been found by the inquisition to be of sound mind (*y*).

In the case of the *The King v. Harvey and Chapman* (*x*), it was held to be an indictable offence to publish falsely of the

(*v*) *Chawner v. Warburton*, tried before Lord *Ellenborough* in the Court of King's Bench in July, 1813. See Annual Register for 1813, p. 284.

(*w*) 9 Geo. 4, c. 41, ss. 29, 30. See *post*, Chap. xii. s. 2.

(*x*) *Turner v. Turner*, 1 Gow, N. P. 20.

(*y*) See *Whitwell v. Hall*, 2 Barn. & Adolph. 695; *Matthews v. Dickinson*, 7 Taunt. 399.

(*z*) 2 Barn. & Cress. 257; 3 Dow. & Ryl. 464.

King, or of any other person, that he laboured under mental derangement. At the trial, the libel was proved in the usual manner, and it was admitted by the counsel for the defendants, that the libel imputed that the King laboured under insanity, and that the assertion was untrue; but it was urged to the jury, that the defendants believed the fact to be true, and that they were warranted in so doing by rumours which had been prevalent on the subject. The Lord Chief Justice, in his address to the jury, after stating the import of the publication, proceeded as follows:—"To assert falsely of his Majesty, or of any other person, that he labours under the affliction of mental derangement, is a criminal act. It is an offence of a more aggravated nature to make such an assertion concerning his Majesty, than concerning a subject, by reason of the greater mischief that may thence arise. It is distinctly admitted by the counsel for the defendants, that the statement in the libel was false in fact, although they assert that rumours to the same effect had been previously circulated in other newspapers. Here the writer of this article does not seem to found himself upon existing rumours, but purports to speak from authority; and inasmuch as it is now admitted that the fact did not exist, there could be no authority for the statement. In my opinion, the publication is a libel calculated to vilify and scandalize his Majesty, and to bring him into contempt among his subjects. But you have a right to exercise your own judgment upon the publication, and I invite you to do so." The jury found the defendants guilty. A person who publishes that which is calumnious concerning the character of another, must be presumed to have intended to do that which the publication is necessarily and obviously calculated to effect, unless he can shew the contrary; and the *onus* of proving it lies upon him (a).

By the statute 21 Jac. 1, c. 16, *twenty years* is the time of limitation in any writ of *formedon*; and consequently,

(a) *Rex v. Harvey and Chapman*, Ryl. 464; and see *Rex v. Sir F. 2 B. & C. 257*; *S. C. 3 Dowl. & Burdett*, 4 Barn. & Ald. 95.

twenty years is also the limitation in every action of ejectment, for no ejectment can be brought unless the lessor of the plaintiff is entitled to enter on the lands; and by that statute no entry can be made, unless within twenty years after the right shall accrue. If a right of entry accrues to a person whilst *non compos mentis*, and he afterwards dies under disability, his heir may, notwithstanding, enter (*b*); for the right of a *non compos* is not prejudiced by the laches of himself or those acting on his behalf. It is provided by the second section of the above act, "if any person or persons that shall be entitled to any such writ or writs, or that shall have such right or title of entry, shall be, at the time of the said right or title first descended, accrued, come, or fallen, within the age of one-and-twenty years, *feme covert*, *non compos mentis*, imprisoned, or beyond the seas, that then such person and persons, and his and their heirs, shall or may, notwithstanding the said twenty years be expired, bring his action or make his entry as he might have done before this act; so as such person and persons, or his or their heir or heirs, shall, within ten years next after his and their full age, discoverture, *coming of sound mind*, enlargement out of prison, or coming into this realm, or death, take benefit of and sue forth the same, and at no time after the said ten years."

The ten years do not run at all while there is a continuance of disabilities, but they run without intermission from the time that the disabilities first cease (*c*). This proviso of the statute has been construed to mean that the heir of every person, to whom a right of entry has accrued during any of the disabilities there stated, shall have ten years from the death of his ancestor to whom the right *first* accrued during the period of disability, and who died under such disability (*d*). And such clause extends only to the persons on whom the right *first* descended; and, when the statute has once begun to run, no subsequent disability

(*b*) Litt. s. 405; 4 Rep. 125; Gilb. Ten. 53, Watk. ed.; *Burcher's case*, Hob. 137.

(*c*) *Cotterell v. Dutton*, 4 Taunt. 825.

(*d*) *Doe v. Jesson*, 6 East, 80.

will prevent its operation (*e*). And there is no distinction in that respect between the heir of one seised in fee, and the heir of a donee in tail (*f*).

By the third section of the statute 21 Jac. 1, c. 16, all actions of trespass *quare clausum fregit* or otherwise, detinue, trover, account, and case, (except upon accounts between merchants), debt on simple contract, or for arrears of rent, are limited to six years after the cause of action accrued; and actions of assault, menace, battery, mayhem, and imprisonment, must be brought within four years, and actions for words within two years, after the injury com-

(*e*) *Doe d. Duroure v. Jones*, 4 Term. Rep. 310; and see *Sturt v. Mellish*, 2 Atk. 610, 614.

(*f*) *Tolson v. Kaye*, 3 Brod. & Bing. 217. See *ante*, p. 245—247.

By the bill now in progress through Parliament for the limitation of actions relating to real property, it is proposed to be enacted, that, after the 31st December, 1832, no person shall make an entry, or distress, or bring an action to recover any land or rent, but within twenty years next after the time at which the right of such person, or of the person through whom he claims, to make such entry or distress, or to bring such action, shall have first accrued.

And it is further provided, that if, at the time at which the right of any person to make an entry or distress, or bring an action to recover any land or rent, shall have first accrued, as aforesaid, such person shall have been under any of the disabilities of idiocy, lunacy, or unsoundness of mind, then such person, or the person claiming through him, may, notwithstanding the period of twenty years thereinbefore limited shall have expired, make an entry or distress, or bring an action to recover such land or rent, at any time within ten

years next after the time at which the person to whom such right shall first have accrued shall have ceased to be under any such disability, or shall have died (which shall have first happened). But such remedies cannot be pursued by a person under any disabilities, but within forty years next after the time at which such right shall have first accrued. And no further time is to be allowed for a succession of disabilities after the death of the person to whom the right first accrued. By the same bill it is proposed to abolish writs of *formedon* and *dum fuit non compos mentis*.—See First Report of Commissioners of Real Property, dated 19th May, 1829, pp. 77, 78.

In two other bills now before the House, one for shortening the time of prescription, and the other the time for claiming tithes, are contained provisions that the time during which any person otherwise capable of resisting any claim to the matters therein mentioned shall be an idiot or *non compos mentis*, shall be excluded in the computation of the periods therein mentioned, except only in cases where the right or claim is thereby declared to be absolute and indefeasible.

mitted. And, by the seventh section of that act, it is provided, "that if any person or persons that shall be entitled to any such action of trespass, detinue, action *sur trover*, replevin, actions of account, actions of debt, actions of trespass for assault, menace, battery, wounding, or imprisonment, actions upon the case for words, shall be, at the time of any such cause of action given or accrued, fallen or come within the age of twenty-one years, *feme covert*, *non compos mentis*, imprisoned, or beyond seas, that then such person or persons shall be at liberty to bring the same actions, so as they take the same within such times as are before limited, after their coming to or being of full age, of *sane memory*, at large, and returned from beyond the seas, as other persons having no such impediment should be done."

If a person abroad, of non-sane memory, comes into this kingdom and then goes abroad again, his non-sane memory continuing, his privilege as to being out of the kingdom is gone, but that as to non-sane memory will begin to run from the time he shall return to his senses (*f*).

When the plaintiff would excuse himself for not commencing his action in time, by reason of his being under either of the disabilities mentioned in the statute, such disability must be specially stated in the replication; and it must be added, that the action was commenced within six years after the removal of it; and if the disability be traversed, the plaintiff must prove the existence and continuance of it (*g*). But the existence of any of the above disabilities does not prevent the right of suing during their continuance (*h*).

By statute 4 Anne, c. 16, s. 17, all suits and actions in the Court of Admiralty for seamen's wages, must be commenced within six years after the cause of suit or action arose. By the 18th section of this act, it is provided, if any persons, who shall be entitled to any such suit or action, shall be, at the time of any such cause of suit or action, *non compos mentis*, that then such persons shall be at liberty to bring the same actions, within six years after being of *sane memory*.

(*f*) 2 Atk. 614.

(*g*) Peake on Evidence, p. 275; 13 East, 439.

(*h*) *Chandler v. Vilett*, 2 Saund. R. 121 a, n. 5.

The general rule of law is, that all sales in open market shall be good, not only between the parties, but as to all other persons. Sales in market *overt*, by a stranger, will bind an infant, or *feme covert*, having interest in the goods, either in their own right, or as executors or administrators; and it will also bind *idiots*, persons *insane*, beyond the sea, or in prison (*i*).



SECTION II.

Of Proceedings at Law against Lunatics.

ALTHOUGH a *non compos* is not liable to the ordinary punishment for crimes (*j*), yet, if he commit a trespass against the persons or property of others, or do them bodily injury, he is compellable to make satisfaction in damages, to be recovered by a civil action; for, in such cases, the intention is immaterial, if the act done be prejudicial (*k*).

The Courts of common law will not discharge a defendant who has been arrested out of custody on filing common bail, on the ground that he was insane at the time of the arrest (*l*), or afterwards became so (*m*); nor will they discharge his bail, on the ground of the insanity of their principal, although a commission of lunacy may have issued against him, under which he has been found a lunatic (*n*). The Court also refused to enlarge the time for the bail to render their principal, on an affidavit, that he was a lunatic,

(*i*) 2 Inst. 713; and see Long on Sales of Personal Property, p. 103. (*l*) *Nutt v. Verney* and Others, 4 Term Rep. 121.

(*j*) See *post*, Chap. xii. sect. 1. (*m*) *Kernot* and Another v. *Norman*, 2 Term Rep. 390.

(*k*) See 2 East, Rep. 104; *Weaver v. Ward*, Hob. 134; Bac. Abr. tit. Idiots and Lun. (E); 2 Roll's Abr. 547, pl. 4; Bacon's Elements of the Laws of England, p. 31; 1 Hale's P. C. 16. (*n*) *Ibbotson v. Lord Galway*, 6 Term Rep. 133; *Steel v. Alan*, 2 Bos. & Pull. 362. See *ante*, pp. 356, 357.

it not appearing that he was in such a state as to occasion any immediate peril of life, either to himself or those about him (*o*). The bail, however, may have a writ of *habeas corpus*, directed to a keeper of a lunatic asylum, to bring up their principal, notwithstanding his lunacy, in order to surrender him in their discharge, to the warden or marshal of the prison (*p*). But where the return to a writ of *latitat* stated that the defendant was insane, and could not be removed without great danger, and continued so till the return of the writ, the Court of King's Bench refused an attachment against the sheriff, and left the party to his remedy by action (*q*).

If a *non compos* defendant be within the power of another person, who prevents access to him, a rule may be made, that service of the declaration, and also of the rule, upon such person, shall be good service on the *non compos* (*r*). Where the tenant of lands is a lunatic, a declaration in ejectment may be served on the person who has the care of the lunatic's person and the management of his affairs, although it does not appear that such person has been appointed a regular committee; and the Court will grant a rule *nisi* for judgment; and such rule may be to shew cause generally; and it is not necessary that it should be directed to any particular person (*s*).

When actions have been commenced against lunatics, so found by inquisition, the Lord Chancellor, on the petition of their committees, shewing that there are grounds for defending them, will refer it to the Master to inquire whether it will be proper to make any and what defence. In a case, where a traverse of the inquisition was pending, the Lord Chancellor declared that the committees were at liberty to defend an action against the lunatic; but that, during that time, he had no authority to make any order as to the costs (*t*).

(*o*) *Cock v. Bell*, 13 East, 355; and see 2 Chitty's Rep. 104.

(*p*) *Pillop v. Sexton*, 3 Bos. & Pull. 550.

(*q*) *Cavenagh v. Collett*, 4 Barn. & Ald. 279.

(*r*) *Doe v. Roe d. Wright*, Barnes, 190.

(*s*) *Doe d. Lord Aylesbury v. Roe*, 2 Chitty's R. 183.

(*t*) *In re Sir G. O. P. Turner*, 12 November, 1824.

It is laid down that if an idiot, after having been so found by office, be sued in any action upon a bond or writing executed by him, he cannot plead his *idiocy*, but a writ of *supersedeas*, suggesting the inquisition, shall be sent by the King to the Judges (*u*).

Generally speaking, Courts of equity will not interfere to restrain proceedings at law against lunatics, merely on the ground of their mental incapacity (*v*).

The mode in which persons of unsound mind may take advantage of the act for the relief of insolvent debtors is prescribed by 7 Geo. 4, c. 57, s. 73, continued by 2 Will. 4, c. 44 (*w*).

There are several old authorities (*x*) in the English law, in support of the maxim, *that a person shall not be allowed to stultify himself*, or, in other words, that he shall not be permitted to allege that his own acts are void, as having been performed by him whilst in a state of mental incapacity; but that advantage of such defect could be taken only by his representatives. The authorities upon this subject are conflicting; and it does not appear to be now clearly settled to what extent the above maxim prevails (*y*).

In the time of Edward I. *non compos* was a sufficient plea to avoid a man's own bond (*z*); and there is a writ in the Register (*a*), for the alienor himself to recover lands aliened by him during his insanity, *dum fuit non compos mentis suæ ut dicit*, &c. But, under Edward III., a scruple began to arise, whether a man should be permitted to *blemish* himself, by pleading his own insanity (*b*); and afterwards, a defendant in assize having pleaded a release by the plaintiff since the last continuance, to which the plaintiff replied,

(*u*) 4 Rep. 126 b; Show. P. C. 153.

(*v*) See *post*, p. 432.

(*w*) See Cooke's Practice of Insolvent Debtors Court, p. 143; *ante*, p. 84.

(*x*) Litt. s. 405; Co. Litt. 247. b.; 4 Rep. 123 b; Perk. s. 23. See *ante*, pp. 252—264.

(*y*) See 2 Bl. Comm. pp. 291, 292; 1 Powell on Contracts, 14, 15; 1 Fonbl. Tr. Eq. p. 48, n.

(*z*) Britton, Chap. xxviii. fol. 66.

(*a*) Fol. 228. See also Memorand. Scacch. 22 Edw. 1, (prefixed to Maynard's Year Book, Edward 2,) fol. 23.

(*b*) 5 Edward 3, 70.

(*ore tenus*, as the manner then was,) that he was out of his mind when he gave it, the Court adjourned the assize, doubting, whether, as the plaintiff was sane both then and at the commencement of the suit, he should be permitted to plead an intermediate deprivation of reason; and the question was asked, how he came to remember the release, if out of his senses when he gave it (c).

Under Henry VI., this way of reasoning, (that a man shall not be allowed to disable himself, by pleading his own incapacity, because he cannot know what he did under such a situation,) was seriously adopted by the Judges in argument (d), upon a question, whether the heir was barred of right of entry by the feoffment of his insane ancestor. Fitzherbert (e) seems to have been of opinion, that a party might take advantage of his own insanity by plea or writ, to avoid his alienation when of unsound mind.

In an action of debt upon a bond, the defendant pleaded, that, at the time of the execution of it, he was *de nonsane memory*, to which the plaintiff demurred; and it was held, that the plea was bad, and that the opinion of Fitzherbert was not law (f). In an action upon the case, against an innkeeper, the defendant pleaded, that he was of *nonsane memory*, by sickness, when the plaintiff lodged with him; and it was adjudged, upon demurrer, for the latter, and that the defendant could not say that he was of nonsane memory, nor disable himself in this case, any more than in debt upon an obligation (g).

In a recent case (h), Mr. Justice *Littledale* is reported to have said—"That there is no doubt that a deed, bond, or other specialty, may be avoided by a plea of lunacy, if at the time it was executed the contracting party was *non compos mentis*, but that such rule of law did not apply to the case of necessaries (i) supplied to a person who is, gene-

(c) 35 Assis. pl. 10.

(d) 39 Henry 6, 42.

(e) See *ante*, p. 262.

(f) *Stroud v. Marshall*, Cro. Eliz. 398.

(g) *Cross v. Andrews*, Cro. Eliz. 622; 1 Roll. Abr. 2, (D).

(h) *Bagster and Others, v. Earl of Portsmouth*, 7 Dowl. & Ryl. 618.

(i) In *Manby v. Scott*, 2 Sid. 112, it was said, that an idiot, like an infant, was bound by a contract for necessaries for his household. See 5 B. & C. 172; 7 D. & Ryl. 616.

rally speaking, of sound mind, but insane on some particular subject; and that an inquisition, finding a party of unsound mind, both before and at the time of the contract, would not make any difference." But, in another case, Lord *Tenterden*, C. J., is reported to have held, that no person can be suffered to stultify himself, and to set up his own lunacy as a defence, unless it can be shewn that he has been imposed upon, in consequence of his mental imbecility (*k*); and appears to have intimated, that, in the case of an unexecuted contract, imbecility of mind may be set up as a defence, although he did not decide that question either way (*l*).

In the Ecclesiastical Court a party may come forward and maintain his own past incapacity, to annul his marriage (*m*).

If, however, the plea of insanity will not avail, it seems clear, that lunacy may be given in evidence, to avoid a deed under the plea of *non est factum* (*n*). So also, intoxication, which is a species of madness, may be given in evidence by the defendant, upon a plea of *non est factum* to a deed, of *non concessit* to a grant, and of *non assumpsit* to a promise (*o*), although this is contrary to the law, as laid down by Lord *Coke* (*p*).

It has been decided, that insanity cannot be set up as a defence to an action brought to recover the value of goods which have been supplied suitable to the rank and condition of a person who was afterwards found to be of unsound mind, where the vendor had not notice of his imbecility, and where no fraud or imposition could be imputed to him. Thus, in an action of *assumpsit*, for goods sold and delivered to the defendant, who gave in evidence an inquisition taken under a commission of lunacy, by which the defendant was found of unsound mind at the time when

(*k*) *Brown v. Joddrell*, 3 Carr. & *Faulder v. Silk*, 3 Campb. 125.

Payne, 30.

(*l*) *Bagster v. Earl of Portsmouth*, 7 Dowl. & Ryl. 617.

(*m*) 1 Hagg. Cons. Rep. 414. See *post*, Chap. xi.

(*n*) *Yates v. Boen*, 2 Str. 1104;

(*o*) *Cole v. Robins*, Bull. N.P. 168;

Pitt v. Smith, 3 Campb. 33; and see *Cooke v. Clayworth*, 18 Ves. 16;

Butler v. Mulvihill, 1 Bligh, 137. See *ante*, p. 259.

(*p*) *Co. Litt.* 247. a.; 4 Rep. 123 b.

the goods were supplied, Lord *Tenterden*, C. J., held, that, as the articles were suitable to the station and fortune of the defendant, and as the plaintiffs, at the time of making the contracts, had no reason to suppose him of unsound mind, and could not be charged with practising any imposition upon him, they were entitled to recover; and, under that direction, the jury found a verdict for the plaintiffs, with leave for the defendant to move to enter a nonsuit. And, on a motion for a rule *nisi* for that purpose, his Lordship further observed, at the time when the orders were given and executed, the defendant was living with his family, and there was no reason to suppose that the plaintiffs knew of his insanity; and that the case was very distinguishable from an attempt to enforce a contract not executed, or one made under circumstances which might have induced a reasonable person to suppose the defendant was of unsound mind. The latter would be cases of imposition; and his Lordship desired, that his judgment might not be taken to be that such contracts would bind, although he was not prepared to say, that they would not (g). And, in the same case, Mr. Justice *Bayley* observed—"Imposition and fraud, generally speaking, are grounds for vacating all contracts; and, with respect to the case of a person of unsound mind, if it can be proved that he has been defrauded, or an undue advantage taken of his imbecility, a Court of law will not enforce his contract. But where there is no imposition practised, and the goods supplied appear to be suitable for the condition and degree of the party receiving them, and which, in the ordinary habits of life, he would be likely to require, the mere fact of his being of unsound mind, and incapacitated from making his own contracts, will not deprive a tradesman of his right of suing in a Court of law for the value of the goods for which he has given credit. There may be great difficulty in predicating, on the first view, that a person is of unsound mind. It is well known that there are many individuals capable of speaking and acting most rationally, and who are of perfectly sound mind as to all the

(g) *Baxter v. The Earl of Portsmouth*, 5 Barn. & Cress. 170; S. C. 7 Dowl. & Ryl. 614.

ordinary transactions of life, but, on some particular subjects, suffer under an aberration from sound reason. If persons of this description make an application for credit to a tradesman, who is not aware of their infirmity on some particular points, and he *bond fide* supplies them with goods, which are suitable to their state and degree, it would be most unjust, that his claim in a Court of law should be defeated by the fact that a commission of lunacy had been awarded, and his debtor found, on inquest, to be insane. There is no suggestion that the plaintiffs have not *bond fide* given the defendant credit. Exhibiting about him no appearance of mental incapacity, he goes to the plaintiff's house and orders carriages, which are afterwards used by him. They are suitable to his condition and degree in life; and such as would have been supplied by other persons, if not by the plaintiffs. Under these circumstances, law and justice require that the plaintiffs should be allowed to maintain an action against the lunatic. If the friends and relations of such a person are satisfied that he is incapable of conducting his own affairs, it is competent for them to adopt such measures as shall prevent him from exposure to imposition: but an imposition would be practised upon the plaintiffs, if, under the circumstances of this particular case, the plea of lunacy could prevail" (r).

The relations of a party who has been found a lunatic by inquisition, will not be allowed to set up his lunacy as a defence to an action, unless it be shewn that he has been imposed upon, in consequence of his mental imbecility. Thus, in an action of *assumpsit* for work and labour and goods sold and delivered, where the defendant was charged as a member of an institution called the Athenaeum, of which he acted as president during the time the demand was accruing, and had been subsequently declared a lunatic under an inquisition, from a period before that time; and the defence, which was conducted by his relations, was, that he was of unsound mind at the time the goods were supplied, and therefore incapable of contracting. At that time, his rela-

(r) *Bagster v. Earl of Portsmouth*, 7 Dowl. & Ry. 617, 618; S. C. 2 Carr. & Payne, 178.

tions had not interfered, but had allowed him to conduct his affairs as usual, and no facts were stated to shew that the plaintiff was aware of the defendant's malady, or had in any way been guilty of fraud. Lord *Tenterden* said, that he was not unwilling to receive the evidence offered; he thought, however, the defence would not avail, unless it was shewn that the plaintiff imposed on the defendant. The old cases went the length of saying, that a party should in no case be allowed to set up his own insanity. That was too general a rule, if it could be shewn that any means had been used to impose upon a person of weak or unsound mind, that, in such a case as this, as in all other cases of fraud, was an answer (*s*). And in a case where an action was brought for goods sold and delivered and money lent, and it was proved that, at the time of the transaction in question, the defendant was manifestly insane, and that fraudulent advantage had been taken by the plaintiff—Chief Justice *Best* left it to the jury to say, whether the plaintiff, at the time he dealt with the defendant, knew of his insanity; if he did, it was a gross fraud, and the jury ought to find for the defendant; as they accordingly did (*t*). So, where a person who was perfectly imbecile in mind was imposed upon, and induced to sign a promissory note drawn in an unusual form, such note was held bad, even in the hands of an indorsee (*u*)—Lord *Tenterden*, C. J. told the jury, "That the question was, whether the defendant, at the time he put his name to the note, which was drawn in an unusual form, was or was not conscious of what he was doing; for, if he was, there must be a verdict for the plaintiff; but should they be satisfied that he was not conscious of what he was doing, and that he was imposed upon, by reason of his imbecility of mind, they ought to find for the defendant. It was a hard case either way, but it was very important that Courts of justice should afford protection to those individuals who were unfortunately unable to be their own guardians."

(*s*) *Browne v. Joddrell*, 1 Moody Malk 106, note (*b*).

Malk. N. P. C. 105; S. C. 3 Carr. (u) *Sentence v. Poole*, 3 Carr. & Payne, 1.

Lery v. Barker, 1 Moody &

CHAPTER X.

OF PROCEEDINGS IN COURTS OF EQUITY BY AND AGAINST
LUNATICS AND THEIR COMMITTEES.

SECTION I.

*Of Proceedings in Equity by Lunatics and their
Committees.*

IDIOTS and lunatics must sue in Courts of equity by the committees of their estates, and, in such suits, the committees, as well as the lunatic, should be parties; and if the lunatic is not named a party in a bill or information on his behalf, it is good cause of demurrer (a). Sometimes, indeed, informations have been exhibited by the Attorney-General on behalf both of idiots and lunatics, considering them as under the peculiar protection of the Crown (b), and particularly, if the interest of the committee has clashed with that of the lunatic (c). But, in such cases, a proper relator ought to be named; and, in a case where an information was filed at the relation of a lunatic, the Court directed, that all further proceedings should be suspended until a proper person should be named as a relator, who might be responsible to the defendants for the costs of the suit, in case the information should be dismissed (d).

(a) 1 Cas. in Ch. 19, 153; 1 Eq. 3 Br. C. C. 440; S. C. 2 Dick. 748.
Cas. Abr. 279; Wy. Pr. Reg. 272. See ante, pp. 222, 223.

(b) *Attorney-General v. Parkhurst*, 1 Cas. in Ch. 112; *Attorney-General v. Woolrich*, Id. 153.

(c) *Attorney-General v. Parnther*, Dick. 378.

(d) *Attorney-General at relation of G. Vaughan, a lunatic, v. Tyler and Others*, 2 Eden, 230. See 1

Where a person found a lunatic has had no committee, such an information has been filed, and the Court has proceeded to give directions for the care of the property of the lunatic, and for proper proceedings to obtain the appointment of a committee (*e*).

Persons incapable of acting for themselves, though not idiots or lunatics, or infants, have been permitted to sue by their next friend, without the intervention of the Attorney-General (*f*).

In a case where a bill was filed by a son to avoid a lease granted by his father, on the ground that the latter was a lunatic when it was granted, the Court would not relieve the plaintiff, because he had not made the Attorney-General a party, but ordered him to amend his bill if he thought fit (*g*).

If an idiot or a lunatic exhibiting a bill appears, upon the face of it, to be thus incapable of instituting a suit alone, and no next friend or committee is named in the bill, the defendant may demur; but if the incapacity does not appear upon the face of the bill, the defendant must take advantage of it by plea. This objection extends to the whole bill, and advantage may be taken of it, as well in the case of a bill of discovery merely, as in the case of a bill for relief. For the defendant, in a bill for a discovery only, being always entitled to costs after a full answer as a matter of course, would be materially injured by being compelled to answer a bill exhibited by persons whose property is not in their own disposal, and who are therefore incapable of paying the costs (*h*)—If a bill is filed in the name of an idiot or lunatic, so found by inquisition, the defendant may plead the inqui-

(*e*) *Attorney-General* on behalf of Chancery, Decree 1st Dec. 1760. *Maria Lepine*, a lunatic, at the relation of *John Fox*, and also *Maria Lepine*, and Earl and Countess *Howe* and Others, 26th March, 1793; 3rd April, 1794.

Decree on supplemental bill, 4th March, 1779. See *Wartnaby v. Wartnaby*, 1 Jac. R. 379.

(*g*) *Leigh v. Wood*, Rep. temp. Finch, 135.

(*f*) *Elix. Liney*, a person deaf and dumb, by her next friend, against *Thomas Witherby* and Others, In

(*h*) Mitf. Pl. 153, 4th ed. See *Wartnaby v. Wartnaby*, 1 Jac. R. 377.

sition in abatement of the suit (i). A bill for tithes by the bishop and sequestrator during the incapacity of the incumbent, was dismissed, because neither the incumbent nor his committee was party (k).

It seems that a bill may be ordered to be taken off the file, if filed in the name of a plaintiff who is in a state of mental incapacity; but where a suit has been instituted by the direction of the plaintiff when in a sound state of mind, the proceedings will not be stayed on the ground of the plaintiff's having subsequently become imbecile (l). If a plaintiff become a lunatic, a supplemental bill may be filed in the joint names of the lunatic and of the committee of his estate, in order to answer the same purpose as a bill of revivor, in procuring the benefit of the former proceedings (m).

It was held, that a charge in a bill "that a person was of a weak and feeble understanding, approaching almost to idiocy," was an allegation sufficiently precise, (no demurrer having been taken), to put in issue that such power was of *nonsane memory*, but that such allegation would not have been sufficient on a plea, nor on a bill if demurred to (n). But the Court will not retain a bill to examine the point of lunacy only (o).

The committee ought, previously to instituting a suit on behalf of a lunatic, to obtain the sanction of the Lord Chancellor, and therefore it is usually referred to the Master, to inquire into the nature of the right or interest of the lunatic in the property claimed, and to certify whether it will be proper, that any proceedings should be adopted for recovering it, or for ascertaining the rights of the lunatic (p). If the Master reports, that it will be proper for the committee to institute a suit, he will be ordered, in the name and on the behalf of the lunatic, to file a bill in Chancery, or to take

(i) Mitf. Pl. 229, 4th ed.

(k) Bishop of London v. Nicholls, Bumb. 141.

(l) Wartnaby v. Wartnaby, 1 Jac. R. 377.

(m) See Brown v. Clarke, 3 Wood. Lect. 378, note, where the form of

such a bill is stated.

(n) Carew v. Johnstone, 2 Sch. & Lef. 280.

(o) Bonner v. Thwaites, Toth. 130. See ante, p. 262.

(p) In re Reynolds, 3 April, 1827

such other proceedings as the nature of the case may require (*q*).

It seems to have formerly been a rule, that the lunatic should not join with his committee in a suit, to be relieved against any act done during his lunacy (*r*), though he might be a party to a suit, to enforce performance of an agreement entered into prior to the lunacy (*s*), and this was because it was thought, that it would subvert the old principle of law, which forbids a man's stultifying himself (*t*). But after the lunatic is so found by inquisition, his committee may avoid his acts retrospectively, from the time he is found to have been *non compos*, as has been often done (*u*); but the committee must file a bill for the purpose (*v*). In a case where a bill was brought by a lunatic and his committee, to set aside a settlement which had been obtained from him by the defendant, before the issuing of the commission of lunacy, but subsequently to the time wherein he was found to have been a lunatic—the defendant demurred, expressly upon the ground that it was against a known maxim of law, that any person should be admitted to stultify himself: but the Court overruled the demurrer, and said, that rule was to be understood of acts done by the lunatic to the prejudice of others, that he should not be admitted to excuse himself on pretence of lunacy; but not as to acts done by him to the prejudice of himself. Besides, here the committee is likewise plaintiff, and the several charges of lunacy are made by him on behalf of the lunatic; and it has been always held, that the defendant must answer in that case, although the settlement was not unreasonable in itself (*w*).

The Court of Chancery will not, as a matter of course, interfere to set aside contracts entered into and completed by a lunatic, without any fraud in the parties dealing with him, even where they are overreached by an inquisition taken in lunacy, and may be void at law; but the interfer-

(*q*) *In re Webb*, 7 July, 1828; *In re Sir T. Smith*, 14 November, 1827; *In re Frank*, 31st Jan. 1828.
 (*r*) *Wy. Pr. Reg.* 272.
 (*s*) *Attorney-General v. Woolrich*, 1 Ch. Cas. 153; *Vin. Abr. tit. Lunatic*, (C. 2).
 (*t*) See *ante*, p. 409.
 (*u*) See *ante*, Chap. vi.
 (*v*) *Ex parte Roberts*, 3 Atk. 6.
 (*w*) *Ridler v. Ridler*, 1 Eq. Cas. Abr. 279; 1 Ch. Cas. 19.

ence of the Court will depend very much upon the circumstances of each particular case; and where it is impossible to exercise the jurisdiction in favour of the lunatic, so as to do justice to the other party, the Court will refuse relief, and leave the lunatic to his remedy (if any) at law.

Thus, where a party, in May, 1800, attended a public sale by auction of building materials, which continued three days, and purchased several lots, to the amount in the whole of 3923*l.* 11*s.* 6*d.*—Immediately after the conclusion of the sale he sold stock, paid considerable sums to the defendant on account, and gave him promissory notes, and a warrant of attorney to confess judgment, for other sums. He afterwards resold, at a loss, part of the materials so purchased. He had been afflicted with an inflammatory fever in 1796; and upon the 25th of August, 1800, a commission of lunacy issued against him, under which he was found a lunatic, from the 1st May, 1797, without lucid intervals. A traverse of the inquisition was taken by the defendant upon the trial, of which a verdict was found for the Crown. A bill was afterwards filed by the lunatic and his committee, praying that the defendant might be decreed to repay to the committee the money paid by the lunatic; that the purchases of the several lots made by the lunatic might be set aside; the notes given by him in payment of part of the purchase money delivered up; and for an injunction. Much contradictory evidence was produced as to the state of mind of the lunatic, and his conduct at the sale; which, on one side, was represented to be most extravagant, in bidding far beyond the value &c., and, on the other side, as directly the reverse. The Master of the Rolls, Sir *William Grant*, said “it is impossible to give the plaintiff the relief he prays, or any relief, except upon the ground that he was a lunatic at the time the contract took place. The establishment of that fact is indispensably necessary. That fact is controverted by the defendant. But it is also contended, that even admitting it, there is no equity. As to that fact, upon the evidence, I should feel great doubt, and would have it tried. But it is said, it has been tried by the trial upon the traverse. It struck me at first, that there was nothing definite in

that, but that he was a lunatic at the time of the inquiry: it would have been more satisfactory, if the jury had found, in the terms of the issue tendered, that he was a lunatic on the day of the contract. The weight of evidence, as applied to the particular time of the purchase, is in favour of the defendant; and even if the evidence of insanity was clear, I must have held the lunatic to have enjoyed a lucid interval at that time upon the balance of the evidence. But, suppose him to be considered in strictness a lunatic at that time, without lucid intervals, the question is, how far the plaintiff, upon that supposition even, is entitled to the equitable interposition of this Court to restore him the possession of all the money he has paid in consequence of the contract. The ground taken is, first that whether the defendant did or did not know his situation, if the fact turns out that he was a lunatic, all his purchases are absolutely void, and all that followed upon them must be set aside; but, also, that the defendant was informed of the situation of this person; and therefore the conscience of the defendant is affected; that situation being, upon the last day of the sale, communicated to the defendant and the auctioneer. I do not believe the defendant gave credit to the information he received, and proceeded *malá fide*. Then it comes to the mere fact, that he was a lunatic. The question with reference to that is, how far, under all the circumstances, this Court will interfere to set aside the whole of the lunatic's transactions, supposing them void at law. That will depend very much upon the circumstances; and no general rule can be laid down upon it. *With regard to purchases that have not been completed, and cases in which it is possible to replace the parties, there is no reason why this Court should not interfere to administer its ordinary equity; as it can do that in general in a much better way than a Court of law; even supposing that Court would consider the mere law of the case, in the same way as this Court would.* But there may be other cases, in which the inconvenience would be so great that this Court would leave the party to law. The inconvenience of carrying back the finding is extremely great, if that is to be followed through all the legal consequences. Assuming it to be the legal con-

sequence, that every act of the lunatic subsequent to that time is absolutely void, nothing can be more inconvenient than for this Court to give effect to that legal consequence; setting aside every dealing in the course of his trade; giving an account of all he lost; the parties who have dealt with him to take the chance of the transaction, being a losing one, and make it good; and the transaction being strictly void, this Court acting upon that, and, though the parties cannot be replaced, obliging them to refund, though producing the great injustice, that they cannot have that for which the money was paid, or cannot have it in the same manner. In this case the defendant could not have it in the same manner. The money was paid, the transaction completed, the party suffered to deal with the property as his own, to sell it. If it sold to advantage, he or his family would have kept the profit, and the objection would not have been made; but now that it has turned out otherwise, not by circumstances to be imputed to the defendant, (for there is nothing upon the evidence to shew the loss was occasioned by an exorbitant price paid to him), a Court of equity is called upon to make the defendant refund; and to give to the one party all the money he has paid, and to the other, not what the property was worth, but what that property, under all the circumstances, produced to the lunatic. That would be most inequitable and unjust; and if this is the principle, I must act upon it in all cases, where the lunacy is carried back ten or twelve years.

“ If the plaintiff is right, therefore, in saying all this is void at law, let him resort to law, and recover if he can. But there is no ground for a Court of equity to advance his remedy; when it is impossible to exercise the jurisdiction so as to afford any chance of doing justice to the other party. Where this Court does interfere, it endeavours to put the parties in the same situation; that is, where the contract is void. Here, if the defendant could be placed in *malá fide*, as having notice, that would be a distinct and different ground for the interference of a Court of equity. But, upon the simple ground, that the contract may have been void (and whether it was or was not I will not determine), the consequences are so extensive and so inconvenient, that I

cannot think this Court ought to give the plaintiff the relief he prays." And the bill was accordingly dismissed, without costs (y).

An order, upon petition of the committee, although no bill has been filed, will be made to restrain tenants of a lunatic's estate from committing waste (x).

A writ of *ne exeat regno* will be granted, upon an affidavit made by the committee of a lunatic on his behalf (a).

A bill will not lie in a lunatic's lifetime to perpetuate the testimony of witnesses to his will, made before his lunacy (b). For, in order to support a bill to perpetuate testimony, the plaintiff must have in contemplation of law a present interest, although it is immaterial how minute the interest may be; and how distant the possibility of its falling into possession. On the other hand, though the contingency may be ever so proximate and valuable, yet, if the party has not, by virtue of that, an estate, the Court does not deal with him; and, therefore, although a lunatic is intestate, in the most hopeless state, under a moral and physical impossibility (though the law would not so regard it,) that he should ever recover, even if he was *in articulo mortis*, and the bill was filed at that instant by the heir-at-law, or by the next of kin, of the lunatic, they could not qualify themselves as having an interest in the subject of the suit (c). But they may enter into contracts with respect to their expectations and possibilities; the evidence upon which they may perpetuate (d).

Where a creditor, under a commission of bankruptcy, is deranged, and unable to superintend his business, the Court of Chancery, although no commission of lunacy has issued, will, upon petition, order another person to prove on his behalf, and to vote in the choice of assignees (e); and where a creditor is disabled, by age and imbecility of mind,

(y) *Niell v. Morley*, 9 Ves. 478—482.

(x) *In re Creagh*, 1 Ball & Beatty, 108; *ante*, p. 348.

(a) *Stewart v. Graham*, 19 Ves. 312.

(b) *Sackvill v. Ayleworth*, 1 Vern. 105; *ante*, p. 336.

(c) *Smith v. Attorney-General*, cited 6 Ves. 269; *Allan v. Allan*, 15 Ves. 133; and see 2 Jac. & Walk. 451; *Mitf. Pl.* 51—53, 4th ed.

(d) 6 Ves. 261.

(e) *Ex parte Malby*, 1 Rose, B. C.

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from proving, by his own oath, a debt against the estate of a bankrupt, the commissioners will be directed to admit the proof upon such evidence as shall be satisfactory to them, though the debt be of considerable amount (*f*).

A reference may be made to the Master, in cases of lunacy, to expunge scandalous or impertinent matter contained in proceedings in lunacy (*g*).

The statutes (*h*) of limitation do not expressly extend to equitable claims, but Courts of Equity act by analogy to those statutes; and, therefore, generally, if a party does not prosecute his equitable title within the period which he must have made his claim, if legal, in a Court of law, he will be barred in equity (*i*), except in cases of fraud (*k*). The legal provisions have been so strictly adhered to, that persons labouring under any of the disabilities specified in the statute of limitations, have been allowed the same time as they would be entitled to in the case of a legal claim (*l*). Thus, redemption of a mortgage of lands of a married woman, on account of her disability of coverture, was decreed to her heir after a sale and the lapse of a long period (*m*). And Lord *Talbot* said, "That the Court of Chancery had not in general thought proper to exceed twenty years, where there was no *disability*, in imitation of the first clause of the statute of limitations; so, after the disability removed, the time fixed for prosecuting in the proviso, (which is ten years), ought in like manner to be observed" (*n*).

In one case the Court refused, after the lapse of twenty years, and two subsequent purchases, at the suit of the

(*f*) *Ex parte Clarke, In re Waugh*, 2 Russ. 575. Ves. 480; 14 Ves. 91; 2 Sch. & Lef. 607, 630; 1 Ball & B. 62, 156; 4 Br.

(*g*) *Ex parte Le Heup*, 18 Ves. 221; *In re Frank*, 24th Mar. 1830. P. C. 198.

(*h*) See *ante*, pp. 403—405, n. (*f*). 441; *Blake v. Foster*, 2 Ball & Beat.

(*i*) 1 Cox's Rep. 149; 1 Ball & B. 166; 19 Ves. 96; 1 Sch. & Lef. 429; *Stu.* 471.

Cholmondeley v. Clinton, 2 Jac. & Walk. 175, 191. (*m*) *Cornel v. Sykes*, 1 Ch. Rep. 193.

(*k*) 3 Br. C. C. 633, 639, n.; 4 Br. C. C. 258; 2 Ves. jun. 87; 5 (*n*) *In Belch v. Harvey*, 3 P. Wms. 287, note. See 17 Ves. 184.

son of a *non compos*, to impeach a conveyance executed by the latter (*o*).

No petition of appeal from any decree or sentence of any Court of equity in England or Ireland, or of any Court in Scotland, will be received by the House of Lords after *five years* from the signing and enrolling, or extracting, of such decree or sentence and the end of the next session ensuing the said five years, unless the person entitled to such appeal be *non compos mentis*; in which case, such person may be at liberty to bring his appeal for reversing any such decree or sentence, at any time within five years next after his *coming of sound mind*, and the end of the next session of Parliament ensuing the said five years (*p*).



SECTION II.

Of Suits against Lunatics.

IDIOTS and lunatics defend suits in equity by their committees (*a*), who are, by order of the Court, appointed guardians for that purpose, as a matter of course (*b*); and, if it happens that an idiot or lunatic has no committee (*c*), or the committee has an interest opposite to that of the person whose property is intrusted to his care (*d*), an order may be obtained for appointing another person as guardian for the purpose of defending a suit (*e*).

(*o*) *Winchcomb v. Hall*, 1 Ch. Rep. 41. See 1 Fonbl. Eq. 334, n. (*t*). See *ante*, p. 282. See *Whalley v. Whalley*, 1 Mer. 436. S. C. 3 Bligh, p. 1. See Chap. vi. s. 3.

(*b*) *Westcomb v. Westcomb*, 1 Dick. 233, citing *Torin v. Jervois*, 19th Oct. 1750.

(*c*) *Howlett v. Wilbraham*, 5 Madd. 423.

(*p*) Lords' Journals, 24th March, 1726.

(*d*) *Snell v. Hyatt*, 1 Dick. 287. See *Lloyd v. ———*, 2 Dick. 460.

(*e*) *Howlett v. Wilbraham*, 5 Madd. 423.

Howorth, Toth. 130.

In many cases, it is not prudent in committees to take upon themselves the responsibility of defending suits instituted against lunatics without having obtained the direction of the Lord Chancellor, who, on application by petition, usually refers the consideration of the propriety of defending suits to the Master (*f*).

The practice of the Court of Chancery in appointing guardians for persons who cannot be found to be lunatics, or of unsound mind, by inquisition, was compared by Lord *Eldon* to the power exercised by that Court with respect to infants; and he said that such practice, and that of paying the expenses out of the property of such persons, could be justified only by the necessity of taking care of them (*g*).

If a person, who is in the condition of an idiot or lunatic, though not found such by inquisition, is made a defendant, the Court, upon information of his incapacity, will direct a guardian to be appointed; but if the demand in question was considerable, it was said that the regular way would have been to have taken out a commission of lunacy (*h*). In another case, where a motion was made that the answer of a defendant, who was a trustee only under a will without any beneficial interest, might be taken without oath and without signature, upon the ground that the defendant was in so infirm a state, both of body and of mind, as to be wholly incapable of putting in an answer—Lord *Eldon* observed, that the usual course in such a case is, to appoint a guardian for that purpose, and that it was much better, where there is no commission, to throw round a person, under such circumstances, the protection of some capable person, than to let her answer at all hazards; but no order was made in this case (*i*).

On the motion of a plaintiff in a cause, a guardian will be appointed to put in an answer for a defendant who is a lunatic, if such fact is verified by affidavit (*k*). If the fact

(*f*) See *ante*, pp. 179, 203, 204.

(*k*) *Howlett v. Wilbraham*, 5 Madd.

(*g*) *Sherwood v. Sanderson*, 19 Ves. 283, 289.

423; *Attorney-General v. Waddington*, 1 Madd. Ch. Pr. 321; *Pryce v.*

(*h*) *Anon.* 3 P. Wms. 111, n.

Page, *Ibid.* note.

(*i*) *Wilson v. Grace*, 14 Ves. 172.

of the defendant's being, from infirmity of mind, incompetent to answer, be disputed, it will be referred to the Master to inquire into it; and in one case an order was made for the defendant to attend the Master, with liberty for him to call in such medical assistance as he might think necessary in making such inquiry (*l*). Where it appeared in evidence that a defendant was both senseless and dumb, and incapable of instructing his counsel to draw his answer, it was ordered that no attachment, or other process of contempt should be awarded against the defendant for not answering without the special order of the Court (*m*). Where the defendant became impaired in his mind after the decree, a guardian was appointed him, by whom he might produce books, &c (*n*).

If a bill is brought against a lunatic, stating him to be such, it is a matter of course to apply to the Court for a commission to assign him a guardian, and to take his answer by such guardian; but if the bill does not state the defendant to be a lunatic, in that case an affidavit or other evidence will be required to shew his lunacy, before he can be permitted to answer by guardian (*o*). But where it was stated by the bill that one of three defendants thereto was a lunatic, and another his committee duly appointed by an order of the Court of Chancery, and the third, the receiver and manager of the estate in question, it was held, that the defendant, the committee, was, in that character, fully competent to sustain the defence of the lunatic, without an order of the Court of Exchequer appointing him his guardian (*p*). The practice is the same with respect to idiots and such persons as by age or infirmity are reduced to a second infancy. A dumb man has been directed to answer a bill, and also interrogatories, in person. But a person not only dumb, but too senseless to instruct counsel to draw an answer, would not be permitted to answer personally (*q*).

(*l*) *Lee v. Ryder and Others*, 6 Madd. 294; Reg. Lib. B. 1821, fol. 435.

(*m*) *Altham v. Smith*, Cary, Rep. 93.

(*n*) *Gason v. Garnier*, 1 Dick. 286.

(*o*) 1 Fowl. Exch. 422.

(*p*) *Ibid*.

(*q*) Toth. 140, Wy. Pr. Reg. 292.

In a case where it was clear that a man was incompetent to put in an answer to the bill filed against him, Lord *Redesdale* said, he could only (like an infant) have answered by another person. If he had been so brought into Court upon an attachment, and an answer had been put in by the guardian appointed by the Court, on an apprehension that he was not of such an unsound mind, that a commission of lunacy ought to have been taken out, yet of such imbecility that a guardian was necessary, then the answer of the guardian ought to have been merely, that he knew nothing of the matter, and submitted his case to the protection of the Court (r). The distinction between town and country causes is not attended to in cases of commissions to assign guardians to persons *non compos mentis*, which may be executed any where. The orders for the commissions having been drawn up, passed, and entered, names of commissioners must be left with the clerk in Court of the defendants, for insertion in the commissions; which differ in no respect from those to appoint guardians to infants, except in stating the parties incapable from the unsoundness of their understanding; the proceedings, *mutatis mutandis*, are the same as under commissions to appoint guardians to infants (s).

It is provided by a recent statute (t), that, if it shall appear to the satisfaction of the Court, that any prisoner confined for a contempt is an *idiot, lunatic, or of unsound mind*, although no commission has issued, the Court shall appoint a guardian to put in his answer and discharge the defendant, providing for the costs in any of the ways pointed out by that act, as shall seem just; and if the Court shall see fit, the defence may be made by such guardian *in forma pauperis*.

If a defendant in a cause becomes a lunatic, a supplemental bill must be filed against him and his committee (v); and if a new committee is appointed, the Court will direct

(r) *Carew v. Johnston*, 2 Sch. & a. 15, rule 9. Lef. 293.

(s) Hind. 251. See Harr. Ch. Pr. A. 1815, fol. 556; and see 1 Sim. & by Newl. 361—366. A. 1815, fol. 556; and see 1 Sim. & Stu. 356; 2 Madd. Ch. 523.

(t) 11 Geo. 4 & 1 Will. 4, c. 36,

him to be named in all the future proceedings in the cause, whether such change of committees takes place before or after the decree in the suit (*w*).

Insanity is a good defence to a bill filed against a lunatic for specific performance of an agreement. Thus, where a bill was filed against a lunatic and his committees to obtain specific performance of an agreement dated 9th March, 1802, for the sale of an advowson, and the defendant had been subsequently found a lunatic under a commission of lunacy, from the 1st of May 1792, with lucid intervals—Two grounds of defence were taken by the answer of the lunatic by his committee:—*First*, that he was a lunatic at the time of the execution of the contract:—*Secondly*, that the plaintiff knew his situation, and took advantage of it to induce him to sign the agreement in question. An issue was directed to try whether the defendant was a lunatic on the day on which he executed the agreement in question, and if so, whether he executed the same agreement during a lucid interval (*x*). It is the usual practice in such cases to direct an issue to try the fact of insanity (*y*).

Courts of equity will not only sustain contracts completed by the lunatic whilst sane; but, under some circumstances, will enforce such as were entered into previously to the commencement of the lunacy, but incomplete at that time; for such a change in the condition of a party entering into an agreement will not alter the relative rights of the parties if they can be enforced. As, where the legal estate is vested in trustees, a Court of equity ought to decree a performance; but formerly, if the legal estate was vested in the lunatic himself, a Court of equity could not afford any adequate relief (*x*). It seems to have been the practice in such cases for the Court to decree that the lunatic should execute a conveyance when he recovered his understanding, and that, in the meantime, the other party should hold and enjoy the land (*a*). Sir *William Grant* observed—That it did not

(*w*) *Lyon v. Mercer*, 1 Sim. & Stu. 356. (*x*) *Owen v. Davies*, 1 Ves. sen. 82; *Hall v. Warren*, 9 Ves. 605.

(*x*) *Hall v. Warren*, 9 Ves. 605. (*a*) *Pegg v. Skinner*, 1 Cox, C. C.

(*y*) See *ante*, pp. 252, 260, 261, 265. 23.

appear to him, that if a party was satisfied with that which in truth was no title, but only an enjoyment under the order of the Court, he ought not to have all the Court could give him (a). But, by statute 11 Geo. 4 & 1 Will. 4, c. 65, s. 27, it is enacted, "That when any person, who shall have contracted to sell, mortgage, let, divide, exchange, or otherwise dispose of any land, shall afterwards become lunatic, and a specific performance of such contract, either wholly or so far as the same shall have been decreed by the Court of Chancery, either before or after such lunacy, it shall be lawful for the committee of the estate of such lunatic, in the place of such lunatic, by the direction of the Lord Chancellor, intrusted as aforesaid, to be signified by an order to be made on the petition of the plaintiff or any of the plaintiffs in such suit, to convey such land in pursuance of such decree, to such person and in such manner as the Lord Chancellor, intrusted as aforesaid, shall direct; and the purchase money, or so much thereof as remains unpaid, shall be paid to the committee of such lunatic."

An inquisition of lunacy will not protect a lunatic against an action (b), and a commission of bankruptcy is a species of action against which lunacy cannot be used as a defence (c), if the act of bankruptcy was committed when the party was sane; for a lunatic under the influence of that visitation cannot commit an act of bankruptcy (d). Lord *Eldon*, however, is reported to have said—That where one of the partners was a *lunatic*, it was clear that a joint commission of bankrupt could not be taken out against the other partners (e). But, by the present bankrupt act (f), a commission may be issued against some partners, not including all the firm; and may be superseded as to one or more, without affecting its validity as to the other.

The insanity of one of the *partners* in a firm does not *ipso facto* determine the *partnership*; and the interference of the Court in such a case, whether in a suit or in lunacy,

(a) *Hall v. Warren*, 9 Ves. 605. 1793.

(b) *Ante*, Chap. ix. s. 2.

(e) *Ex parte Layton*, 6 Ves. 440.

(c) *Anon.* 13 Ves. 590.

(f) 6 Geo. 4, c. 16, s. 16.

(d) *Ex parte Priddy*, 8th June,

must have reference to the particular character of the disease as permanent or temporary, the terms of the contract, and the nature of the undertaking, as imposing on the lunatic an obligation of active interference, for the performance of which he is disqualified, or reserving to him a right of inspection, by the suspension of which the safety of his estate is hazarded (*g*).

Where a bill was filed by one partner against another, for the purpose of dissolving a partnership, although the other partner, who, having been insane, had recovered—Sir *L. Kenyon*, M. R., laid down, as a general rule, that, where there are two partners, both of whom are to contribute their skill and industry in carrying on the trade, the insanity of one of them, by which he is rendered incapable to contribute that skill and industry on his part, is a good ground to put an end to the partnership, not by the authority of either of the partners, but by application to a Court of justice; and this for the sake, as well of the partner who is rendered incapable, as of the other; for it would be a great hardship upon a person so disordered, if his property might be continued in a business which he could not control nor inspect, and be subject to the imprudence of another. And he said, that if one of the partners had been insane at that time, he should have had no hesitation in decreeing a dissolution of the partnership (*h*). In that case, it was referred to the Master to inquire and state whether the defendant was in such a state of mind as to be capable of conducting the business in which he was a copartner with the plaintiff, according to the terms of the articles of partnership (*i*). The Master reported, that, in his opinion, the defendant was in such a state of mind as to be capable of conducting the business. Exceptions were taken to the report, when an issue was directed to try the question in the terms of the refer-

(*g*) *Wrexham v. Hudleston*, 1 Part., pp. 159, 160.
 Swanst. 514—518; *S. C.* cited 2 (*h*) *Sayer v. Bennet*, 1 Mont. on
 Ves. sen. 35. See Wats. on Part. Part. p. 17, notes; *S. C.* 1 Cox, 107.
 pp. 360, 382, 2nd ed.; Gow on Part., (*i*) *Sayer v. Bennet*, 1 Mont. on
 pp. 221, 222, 3rd ed.; Collyer on Part. 19, notes.

ence to the Master; but it does not appear that any subsequent proceedings took place (*k*).

Lord *Eldon*, in one case, adverted incidentally to this subject, and said—That if a case had arisen in which it was clearly established by testimony, as far as it could, that the party was what is called an incurable lunatic, and he had by the articles contracted to be always actively engaged in the partnership, and it appeared that he could not perform his contract, it would be very difficult for a Court of equity to hold one man to his contract, when it was perfectly clear that the other could not execute his part of it (*l*).

When a *partner* has been found a lunatic by inquisition, the Lord Chancellor, in the exercise of his jurisdiction in lunacy, will generally refer it to the Master to inquire what course should be pursued with respect to the management of the concerns of the partnership, and, in some cases, will order it to be dissolved and the accounts to be settled.

In one case, where a manufactory had been carried on by two brothers as partners, one of whom was found to be a lunatic by inquisition, on the petition of the *sane* brother, it was referred to the Master, to inquire and certify whether it would be for the benefit of the lunatic's estate to continue such trade or business in copartnership, and under what provisions, or whether it would be more beneficial to his estate to dissolve the partnership, and to have the concerns thereof finally adjusted and settled; and if he should be of that opinion, then he was directed to certify the proper time and best manner to dispose of the lunatic's interest in such copartnership (*m*).

The Master, by his report, certified his opinion, that it would *not* be for the benefit of the lunatic's estate to continue the copartnership with his brother, but that it would be more beneficial to dissolve the same, and to have the concerns thereof finally settled, and that it would be advisable to dispose of the lunatic's interest with as little delay as possible, at such time and in such manner as to the bro-

(*k*) *Wats. on Part.* 382, 383. *Bea.* 303.

(*l*) *Waters v. Taylor*, 2 *Ves. &* (*m*) *In re Nunn*, 6th July, 1829.

ther should appear most beneficial, with the exception of the premises where the manufactory was carried on, which the Master was of opinion should be sold or underlet.

The Master's report was confirmed, when it was ordered, that the lunatic's brother should, under the direction and subject to the approbation of the Master, take the necessary steps for winding up and discontinuing, or, if practicable, for disposing of, the lunatic's share of the partnership trade, with as little delay as possible, with liberty for the brother to sell and dispose of the machinery, stock, and other property of the partnership trade, either together or separately, and by private contract, or public auction, or otherwise, at such period, for such prices, and in such manner as he might judge most for the benefit of the lunatic's estate, with full power for the brother to exercise his discretion in making such disposition, upon condition that he should not himself become the purchaser of any part thereof; and it was ordered, that the brother, within one month after such sales should have been completed, or as soon after as the produce could be ascertained, should leave with the Master a full account of such sales, to be verified by affidavit. The Master was also directed to take an account of the produce of the lunatic's interest in the partnership property, and of the profits and losses thereof, and to state the clear balance due to the latter; and to certify whether any allowance ought to be made to the brother for his services in the management of the trade from its commencement to its termination (*n*).

If the property of a lunatic be taken in execution, the Court of Chancery will not, in general, restrain the proceedings at law (*o*). But, in a case where an injunction had been obtained to stay a trial at law against a lunatic, and the trial, notwithstanding, had been allowed to proceed, the Lord Chancellor said, that execution would not be allowed to be taken out without the leave of the Court of Chancery (*p*).

(*n*) *Id.* 25th Feb. 1830. See *ante*, pp. 373, 374, where a Private Act was obtained for selling partnership property. (*o*) *Ex parte Dikes*, 8 Ves. 79. (*p*) *Barrett v. Tickell*, Jac. R. 154.

Where persons withdraw themselves beyond the seas, or otherwise abscond, to avoid being served with the process of Courts of equity, a recent statute (g) directs certain steps to be taken, and if the defendant does not appear, the Court will order that the plaintiff's bill be taken *pro confesso*, and make a decree, and issue process to compel the performance of such decree. By the fifth section of that act it is enacted, that if any decree shall be made in pursuance of that act, against any person being out of the realm, or absconding, at the time such decree is pronounced, and such person shall, within seven years after the making such decree, return, or become publicly visible, then and in such case he shall likewise be served with a copy of such decree, within a reasonable time after his return or public appearance shall be known to the plaintiff; and in case any defendant against whom such decree shall be made, shall, within seven years after the making such decree, happen to die before his or her return into this realm, or appearing openly as aforesaid, or shall, within the time last before mentioned, die in custody before his or her being served with a copy of such decree, then his or her heir, if such defendant shall have any real estate sequestered, or whereof possession shall have been delivered to the plaintiff, and such heir may be found, or if such heir shall be a *feme covert*, infant, or *non compos mentis*, the husband, guardian, or committee of such heir respectively, or if the personal estate of such defendant be sequestered, or possession thereof delivered to the plaintiff, then his executor or administrator (if any such there be), shall be served with a copy of such decree, within a reasonable time after it shall be known to the plaintiff that the defendant is dead, and who is his heir, executor, or administrator, or where he may be served therewith.

On a motion by a defendant in a suit, to get rid of a decree *pro confesso*, and that he might be at liberty to put in an answer on his own affidavit, that he had been de-

(g) 11 Geo. 4 & 1 Wm. 4, c. 36, which repealed 5 Geo. 2, c. 25, and part of 45 Geo. 3, c. 124.

ranged, the Court held that the alleged imbecility could not be so proved, and required other evidence of it than that of the party himself, extending to the whole period of the suit (*r*).

By the Irish act (*s*), for the relief of mortgagees, and for making the process in Courts of equity more effectual against mortgagors who abscond, and cannot be served therewith, and against persons, who, being served, refuse to appear, it is provided, that, if any person shall file a bill of foreclosure, in any Court of equity in Ireland, against any person having an estate, and not being resident therein; in case it shall appear by affidavit to the Court, that such defendant is out of the said kingdom, and has been so for twelve months next preceding such affidavit, it shall be lawful for the Court to order, that the service of a *subpœna* to appear and answer upon the steward, agent, receiver or manager of the said defendant, and leaving a copy thereof at his last place of abode in Ireland, be deemed good service; and on the defendant neglecting to appear or answer within four terms after such service, the plaintiff shall be at liberty to proceed in his suit to have his bill taken *pro confesso*, in the same manner as if the defendant had appeared.

The seventh section of that act provides, that, where any defendant to any bill filed in Chancery or the Exchequer, shall appear to the said Courts to have been duly served with process of *subpœna* to answer such bill, and shall stand out process of contempt to a sequestration, and neglect to appear on such service by his six clerk or attorney, such Court may appoint a clerk in Court to appear for such defendant, and such proceedings may be had, as if such defendant had actually appeared. And by the eighth section of the above act it is provided, that all persons who shall, at the time any decree in pursuance of that act shall be made against them, be of *nonsane memory*, shall have two years from the time of service of such decree upon them,

(*r*) *Knight v. Young*, 2 Ves. & Bea. 184.

(*s*) Irish stat. 7 Geo. 2, c. 14, s. 2, explained by 13 Geo. 2, c. 9.

after the removal of such disability, to make their defence, and shew cause against the same.

If a party is a lunatic at the time of the decree, and, on recovering his mind, the decree is served on him, the Court must allow him to put in an answer, and then there is an end of the decree, and the Court will proceed as in any other case, and the whole matter will be gone over again (*t*).

An heir of a person, described in the eighth section of the above act, is entitled to take advantage of it. Thus, where a decree of foreclosure had been obtained, on sequestration in Ireland, in 1777, in pursuance of that act, against an absent mortgagor, known by the plaintiff to be incompetent, from mental imbecility, to conduct his affairs, and advantage had been taken in the account of the state of the defendant, and of his absence, and of his having nobody to manage his defence; and a sale had been made in 1780, in pursuance of such decree, to the person conducting the suit; on a bill filed by the heir of the mortgagor, such sale was set aside as fraudulent, and an inquiry was directed into the circumstances; and it was declared, that the equity of redemption of the mortgagor was not barred by the decrees and proceedings in the suit (*u*).

SECTION III.

Of Orders made by the Court of Chancery respecting the Application of the Property of Lunatics, not so found by inquisition, for their Maintenance.

THE Court of Chancery has in some cases, where there is a fund belonging to lunatics under the control of the Court, and the income arising from it has been too small to bear the

(*t*) 2 Sch. & Lef. 304. (*u*) *Carew v. Johnston*, 2 Sch. & Lef. 280.

expenditure of a commission of lunacy, directed a reference to the Master to inquire into the state of mind of the party, and made orders for the application of such fund towards the maintenance of such persons, although not so found by inquisition. Thus, where it appeared by a petition that there were funds in Court belonging to the petitioner, who, since the death of her husband, had been, and then was, in an insane state of mind, and totally incapable of managing herself or her affairs, although, on account of the small amount of her fortune, being the income for life of an Exchequer annuity of forty pounds, the dividends of 2,000*l.* Bank stock, and of 300*l.* East India stock, no commission of lunacy had issued—The Court referred it to the Master, to inquire what was the state of mind, and age, and condition in point of health of the petitioner, and whether she was in a capacity to take care of herself and her own affairs, and also by whom, and in what manner, she had been maintained, and what would be proper to be allowed for her support (*w*). And a similar reference was made in a previous case (*x*).

In a case where an application was made to have an allowance for the maintenance of a person of insane mind, the Lord Chancellor objected, because a commission of lunacy had not issued, and without it, he did not see how the executors or trustees could be justified; but being told that the expense of a commission and the consequent orders would be 120*l.*, and that the life income was no more than 79*l.* a-year, on the authority of the cases last cited, it was referred to the Master, to see what was proper to be done, and to inquire into the insanity of the party (*y*).

In another case, on a petition that a fund in Court belonging to the plaintiff, or the interest of it, might be paid to the plaintiff's wife, for the maintenance of him and his family, in consequence of his imbecile state of mind (not amounting to lunacy), and incapacity to do legal acts, and it appearing to be for the benefit of the family that the interest

(*w*) *Price and Others v. Bedford* Others, Reg. Book, 15th May, 1782. and Another, Reg. Book 1784, p. 227. (*y*) *Machin v. Salkeld*, 2 Dick.

(*x*) *Eldridge v. Croucher* and 634.

should be so paid, it was accordingly ordered to be paid from time to time (s).

In one case, the Court, on the production of affidavits as to the state of mind and amount of fortune of a party, ordered dividends to be applied for maintenance without a reference to the Master. In that case, the whole property of a lady in a weak state of mind, unable to manage her affairs, and who had been for some time under the protection of her maternal uncle, consisted of 1,700*l.* 3 *per cent.* Consolidated Bank Annuities, and money to the amount of about 300*l.* which were bequeathed by wills and a codicil to trustees, in trust to place the same out at interest for the support and maintenance of the lady, as they should judge proper, so long as she should remain in her unhappy situation; but, if she should be restored to her health and former state of mind, to pay the principal to her. A bill had been filed by the uncle, as the next friend of the lady, against the person in whose name the stock was standing, praying a transfer of the stock and payment of the cash balance to the Accountant-General, to be laid out; and that the necessary directions might be given for her support and comfort; the defendant by his answer offered to transfer the stock and pay the balance as the Court should direct. No further proceedings were had in the cause till a petition was presented by the plaintiff, suggesting that the property was not sufficient to defray the expense of a commission of lunacy; and prayed that it might be referred to the Master to inquire and report what was the state of mind and condition in point of health of the petitioner, and whether she was in a capacity of taking care of herself and her affairs; also by whom and in what manner she had been and was maintained—what was her fortune—who was in the receipt thereof; and that the defendant might transfer the stock and pay the balance of cash to the Accountant-General in trust in the matter of the petitioner, or to the credit of the cause; and that after taxation and payment of the defendant's costs, the residue of the cash and all future dividends upon the stock, might be paid to the peti-

(s) *Bird v. Lefevre*, 4 Bro. C. C. 100.

tioner, the maternal uncle, from time to time, to be applied in the maintenance of his niece—Lord Chancellor *Loughborough* said, it was in effect a petition for a commission of lunacy, and he was afraid of establishing the precedent; but, on being informed that by great parsimony a commission cost 100*l.*, he said, he was doing an irregular thing, but might as well do it completely; and, therefore, upon producing affidavits of the state of the petitioner's mind, and the amount of her fortune, he would, without a reference, order payment of the dividends of the two next quarters, or a year; and then they must apply again by short petition, as the Court must know her state of mind, and the amount of her fortune, from time to time. The order was drawn up for payment of the dividends of the two next quarters (*a*).

In a case where a commission of lunacy had issued against a lady, under which the jury found a verdict that she was not a lunatic, and was sufficient for the government of herself and her property; on a petition being presented against this verdict, from which the nature of the case appeared to be imbecility of mind in a great degree proceeding from epilepsy—Lord *Eldon* observed, that every person about this lady was satisfied that some care should be thrown round her, and that it was fit to put a control upon those who might be proper persons to have the care of her property. His Lordship would not then subject her to another commission; but directed two physicians, who had not been consulted, to confer with those who had been consulted on a former occasion, to read the evidence, and afterwards to visit her for the purpose of determining whether her state of mind was competent to the management of her affairs; as it did not seem a case of insanity (*b*). An order was afterwards made for payment of the dividends of the Bank annuities, from time to time as they became due, to the lady for her separate use, during her life, or until further order of the Court; and the lady or any other person or persons authorized by her, either by deed or will, executed by her in the presence of and attested by three

(*a*) *Eyre v. Wake*, 4 Ves. 795. (*b*) *Ridgway v. Darwin*, 8 Ves. 65.

or more credible witnesses, were to be at liberty to apply to the Lord Chancellor concerning the capital of the Bank annuities, or any part thereof, as they should be advised, to the intent that such order might be made respecting the same as should be just and for the benefit of the lady, or any person or persons who should be entitled to the same Bank annuities under her will so executed as aforesaid (c).

Where a defendant of unsound mind was entitled, under the decree of the Court of Chancery, to an annuity of 125*l.* it was ordered that the same should be carried over to the credit of the cause to his account, subject to further order, with liberty for him, or any one duly authorized on his behalf, to apply concerning the same as he should be advised (d).

It seems that the separate estate of a married woman, in a state of incapacity, will not be ordered to be paid to her husband, if he is possessed of sufficient means for providing for her comfortable maintenance. A testator by will directed the share of his daughter, a married lady, in his residuary and real estates, to be held by trustees upon trust, to lay out the same in their own names, and to pay the dividends for the sole and separate use of his daughter during her life, independently of her husband. Various payments had been made into the name of the Accountant-General, on account of the lady's share in the property. At the date of the will, and for many years preceding, the lady had been, and still continued, of unsound mind, though no commission of lunacy had been taken out against her. She resided with her brother in Scotland, but was maintained by her husband; and their only child, a son, was at the University of Cambridge. The husband presented a petition, stating the circumstances that he had not any fortune with his wife on his marriage; and that no settlement had been since made on her by him; and praying a reference to the Mas-

(c) *Ridgway v. Darwin and Others*, Lord Harcourt.

Reg. Book, B. 1802, fol. 576. See (d) *Gallwey and Others v. Christie and Others*, Reg. Lib. A. 1830, fol. 1057, where it is said, that a similar order was made by

ter, whether it would be for the benefit of the lady, regard being had to the circumstances of the petitioner, and the state of his family, that the whole or any part of the income arising from her share of the testator's estate, should be paid to the petitioner, or otherwise applied for her maintenance. Lord Chancellor *Eldon* observed, this is a case of great importance and delicacy. Upon the facts stated by this petition, the testator must be supposed to have been aware of the situation of this lady; and the terms of the will are in direct opposition to this application; and said, that he had searched, and could find no authority in the least governing him in a case of this nature. Without prejudice to the question, what might be done thereafter, an inquiry was directed how the lady had been maintained, and at whose expense, since the testator's death; whether her husband was of ability to maintain her, due regard being had to her comfort; and whether any of the separate maintenance should be applied for her use, to whom, and upon what securities. There is a distinction between the application of a stranger, and of the husband himself, able to maintain her, and not maintaining her as he ought, in which case his petition would be dismissed (*e*).

Where an application was made for an order to dispense with the attendance of barristers, there being none within twenty miles distance, on a commission of lunacy proposed to be executed in the country, the only object of which was, that proof might be made before the Master, under the usual decree upon a creditor's bill upon a bond for 300*l.*, which, with 80*l.* due for interest, was the only property of the party, a woman of too imbecile a mind to be capable of making proof herself—Lord Chancellor *Eldon* said, he might save the expense of a commission, which in such a case would be ruinous, by permitting the Master to receive any evidence that would be satisfactory to him, by analogy to the usual practice of taking the answer of a person of weak mind by guardian; and made an order in the cause, that the Master should be at liberty to receive any proof,

(*e*) *Brodie v. Barry*, 2 Ves. & Bea. 36. See *ante*, pp. 155, 156.

that should appear to him satisfactory, although no proof should be made by the party herself, or by any committee (*f*).

Applications have occasionally been made to the Lord Chancellor, for the purpose of obtaining his order for directing the property belonging to lunatics, (not so found by inquisition), in the hands of third persons, to be applied for their benefit, where such lunatics have not been subject to the jurisdiction of the Court as parties to a suit, but it seems that the Chancellor has no jurisdiction to interfere in such cases (*g*).

In a case where it appeared by the petition, that a person of unsound mind, and unable to manage her affairs, but against whom no commission of lunacy had issued, was entitled to a legacy of 200*l.* and an annuity of 50*l.*, and that her next of kin were incompetent, from their situation in life and circumstances, to support her; that the sum necessary for her support was 40*l. per annum*; and that the expenses of a commission of lunacy would so reduce her estate as not to leave sufficient for her comfortable maintenance—The petition pray-

(*f*) *Herbert v. Matthews*, 19 Ves. 611. See *ante*, pp. 442, 443.

(*g*) See *ante*, p. 378, n. (p).

It seems very desirable that some method should be provided in such cases, as are mentioned in the subsequent part of this section, for enabling trustees and others to apply or invest the property belonging to persons *who are decidedly insane*, in some way for their benefit, without putting their estates to the heavy expense incurred by a commission of lunacy. It deserves consideration, whether it would be proper that power should be given to the Lord Chancellor, upon a petition being presented, and the incapacity of the party being established by the *most satisfactory* evidence, to direct by whom, and in what manner, the property belonging to such lunatics in the

hands of other persons should be applied for the benefit of the former, requiring the person to whom the trust was confided to give security, and making him accountable to the Court of Chancery, on a summary application by petition. As little discretionary power as possible ought to be given over the liberty and property of others; but it is apprehended, that the abuse of the power proposed to be given in this case, might be prevented by proper legislative provisions, and by due vigilance and caution on the part of those to whom its exercise was entrusted, and by giving the party alleged to be a lunatic notice of the application for the order, and a right of shewing cause or appealing against any order proposed to be made, or made.

ed a reference to one of the Masters, to inquire into her state of mind, and whether she was of capacity to take care of herself and of her affairs, and the state and amount of her fortune, and that the care and custody of her person and estate might be granted to the petitioner; and that the arrears of the annuity, and the growing payments thereof, might be applied towards her maintenance—Lord Chancellor *Lyndhurst* refused to make the order prayed, and a commission of lunacy afterwards issued (*h*).

Petitions of a similar nature to the last have been presented to Lord Chancellor *Brougham*, sitting in lunacy. In one case, it appeared by the petition of the acting trustees and executors under two wills, that two sisters, who were considered incurable lunatics, and under confinement in a lunatic asylum, were entitled, for life, to the interest of the sum of 1780*l.* Reduced 3 *per cent.* Annuities, standing in the names of trustees, and to two annuities of 40*l.* each, directed to be paid by the trustees under a will; and that the whole income of the two lunatics amounted to the annual sum of 133*l.* 8*s.* which was barely sufficient to support them; and that there was no surplus to pay the expenses of issuing a commission of lunacy; and that the trustees under the wills were anxious to continue to pay the said annuities and dividends to one of the petitioners, under the sanction of the Lord Chancellor. The petitioners prayed, that it might be referred to one of the Masters in Chancery, to inquire and certify the state of mind of the lunatics, and of what their fortunes consisted; and that, if the Master should find, that they were of unsound mind and incurable, and that their fortunes only consisted of the said income of 133*l.* 8*s.*, then that the trustees under the wills might be directed to pay such income to one of the petitioners, to be by him applied for the maintenance of the said lunatics. But the Lord Chancellor refused to make any order on such petition (*i*).

In another case, it appeared by the petition of the sister of another lunatic, that, for nearly two years, the latter had

(*h*) *In re Crompton*, 7 June, 1828.

(*i*) *In re Scott*, 21 December, 1831.

been unable to govern herself or to manage her affairs, and remained without the prospect of any material improvement in her state of mind; that the lunatic was entitled, under one will, to the sum of 116*l.*, and on the death of two other persons would become entitled to the further sum of 150*l.*; and that, under another will, the lunatic was entitled to 200*l.*, and would become entitled to the further sum of 150*l.*; that the executors acting under such wills, although able to pay to the lunatic 235*l.* or thereabouts, (being part of the bequests so given to the said lunatic as aforesaid), yet declined to do so, alleging that her insane state of mind rendered her incompetent to give them a legal discharge for the same; that the lunatic had no property whatever to maintain herself and children, except what she might become entitled to under the said wills; and that the parish having refused to grant relief to the said lunatic and her children, she and her daughter were living at the house of the petitioner; that the petitioner was seriously inconvenienced by having to support the lunatic and her children, and was unable, of her own resources, to place the lunatic at any establishment for the reception of insane persons, or to afford proper medical advice; that no commission of lunacy had been applied for or issued against the said lunatic, on account of the value of her property being too small to bear the expense of such commission. The petition prayed the Lord Chancellor to direct that the several sums of money then due, and from time to time thereafter to become due to the lunatic under such wills, might be paid to the petitioner for the maintenance of the lunatic, and for the maintenance, education, and placing out in the world of her two children; and that it might be referred to one of the Masters in Chancery to tax the costs of the application, and that the amount of such costs might be paid out of the lunatic's property. The Lord Chancellor refused to make an order on the petition (i).

And in another case it appeared, by the petition of the sister of another lunatic, that the latter, being of the age of fifty-six years, had, for the period of twenty-five years past,

(i) *In re Winton*, 21st Dec. 1831.

laboured under a considerable degree of mental derangement, and was quite incapable of managing herself or her affairs, and had for some time past been confined in a lunatic asylum under the management of a physician, who was of opinion that there was no probability whatever of her recovery; that the whole property of the lunatic consisted of the sum of 514*l.* 16*s.* Bank 3 *per cent.* Annuities, and the annual sum of 50*l.* 5*s.* arising from the rents of estates, and the interest of a mortgage debt, to two fourths of which the lunatic was absolutely entitled. The dividends of the Bank Annuities had been received under a power of attorney, until the death of the person to whom it had been granted by the lunatic during her mental capacity, and applied for her maintenance; that the petitioner had received the income arising from the whole of the property of the lady, (except such Bank Annuities), and applied the same towards her maintenance, but the amount being quite inadequate for that purpose, the petitioner had made good the deficiency out of her own estate. The petition stated that the expenses which would be unavoidably attendant on the proceedings under a commission to inquire of the lunacy, would amount to the sum of 150*l.* at the least, and would materially decrease the property of the lunatic, the income whereof, including the dividends of the stock, was insufficient for her support. The petition prayed that the Accountant-General or one of the Cashiers of the Bank of England might be ordered to receive the dividends then due on the stock, and to pay the same to the petitioner towards reimbursement of the monies already expended by her, on account of the lunatic, and that the Accountant-General or Cashier might also be ordered to receive the dividends thereafter to become due on the stock, and pay the same to the petitioner from time to time during the lifetime and insanity of the lunatic, in order to be applied towards her future maintenance and support. The Lord Chancellor refused to make an order according to the prayer of the petition, but directed the petition to stand for a commission of lunacy, to be issued on filing the necessary affidavits, in case the parties thought proper to apply (*k*).

(*k*) *In re Astley*, 21st Dec. 1831.

The three last petitions stood over the long vacation for Lord Chancellor *Brougham's* consideration, and, on giving judgment (*l*), he observed that he had no jurisdiction to make the orders prayed, as the lunatics were not parties to any suit in Chancery; and that the circumstances disclosed by the petitions rendered his interference, if possible, very desirable; but, after having anxiously considered the cases on the subject, the result of his examination was, that he had no jurisdiction to make such orders as were prayed, in cases where no commission of lunacy had issued, and where the lunatics were not before the Court as parties to a suit. He expressed his opinion that the jurisdiction was established, and had been well exercised in the cases of lunatics who were before the Court as parties to suits; but that it had already been carried far enough, and that he would not extend it; and if the jurisdiction was defective, it could be remedied only by the Legislature.

(*l*) 21st Dec. 1831.

CHAPTER XI.

OF PROCEEDINGS IN THE ECCLESIASTICAL AND OTHER
COURTS RESPECTING THE MARRIAGE OF LUNATICS.

IT seems to have been formerly considered, that, by the common law, which differed in this respect from the civil, the marriage of an idiot was valid (*a*). But it is now settled that idiots cannot marry, for marriage is a civil contract, the basis of which is consent, which idiots are incapable of giving, and therefore of entering into that or any other contract (*b*). And, for the same reason, lunatics are disabled from marrying, except during lucid intervals; and their marriages, as well as those of idiots, are absolutely void (*c*). Want of reason must, of course, invalidate the most important contract of life, the very essence of which is consent. It is not material, whether the want of consent arises from idiocy or lunacy, or from both combined. If the incapacity be such, arising from either or both causes, that the party is incapable of understanding the nature of the contract itself, and incapable, from mental imbecility, to take care of his or her own person and property, such an individual cannot dispose of her person and property by the matrimonial contract, any more than by any other contract (*d*). But, it has

(*a*) Roll's Abr. 357; Shepp. Abr. and see 2 Phill. 19.
tit. Idiot; 1 Sid. 112; Harg. Co. (*c*) *Turner v. Mayers*, 1 Hagg.
Litt. 80. s., note (1); 1 Bl. Comm. Cons. R. 414; *Browning v. Reane*, 2
438. Phill. 69.

(*b*) *Morrison's case*, coram Delegates, 1745; *Cloudesley v. Evans*,
Prerog. 1763; *Parker v. Parker*,
1757, cited 1 Hagg. Cons. R. 417; Blair's Dict. 6293.
(*d*) 2 Phill. 70. See 1 Stair's
Inst. by Brodie, pp. 24, 28, n.; Erskine's
Inst. by Ivory, pp. 117, 199;

been held in the Ecclesiastical Court, that a person born deaf and dumb, if *compos mentis*, may contract matrimony by signs (*e*).

It is provided by the statute of the 15 Geo. 2, c. 30, that the marriages of lunatics and persons under phrensies (if so found lunatics under a commission, or committed to the care of trustees by any act of Parliament), before they are declared of sound mind by the Lord Chancellor, or the majority of such trustees, shall be void (*f*). By the statute of the 51 Geo. 3, c. 57, the provisions of the above-mentioned act are extended to Ireland. These statutes render the marriages in question void, although they may have been contracted during lucid intervals (*g*). When a commission of lunacy has been taken out, the conclusion against the marriage will be founded on the statute (*h*); where there has been no such commission, the matter is to be established on evidence. The statute has made provisions against such marriages, even in lucid intervals, till the commission has been superseded. In other cases, the Court will require it to be shewn by strong evidence, that the marriage was clearly had in a lucid interval, if it is first found that the person was generally insane (*i*).

The Spiritual Court has the sole and exclusive cognizance of questioning and deciding directly the legality of marriage, and of enforcing specifically the rights and obligations respecting persons depending upon it; but the temporal Courts have the sole cognizance of examining and deciding upon all temporal rights of property; and so far as such rights are concerned, they have the inherent power of deciding incidentally, either upon the fact or legality of marriage (*j*).

It is a common practice, in the Court of Chancery, where no

(*e*) Swinburne on Marr. sect. 15. person. Com. Dig. tit. Idiot, (D. 1.)

(*f*) This act is stated to have been passed to meet the case of Mr. Newport, the natural son of the Earl of Bradford, who left him a very large fortune, with remainder to another

(*g*) 1 Hagg. Cons. R. 417.

(*h*) 15 Geo. 2, c. 30.

(*i*) 1 Hagg. Cons. R. 417.

(*j*) Starkie on Ev. 931.

commission of lunacy has issued, and the party is before the Court, to direct an issue to try whether the party was of sound mind at the time of the contract of marriage, and if he was, it is of no consequence in what state he might have been, either before or after (*k*). Where a young lady had been insane, and, with her father's consent, was married during a lucid interval, Lord Chancellor *Eldon* afterwards examined her, and found that she was affected with a certain degree of morbid feeling; and it appeared in evidence, that, without any apparent foundation for the notion, she always believed that somebody had poisoned her. As she was a ward of the Court, and no commission of lunacy existed, an issue was directed, to try whether she was of sound mind at the time of the marriage; and it was found that she was of sound mind (*l*).

By the present marriage act (*m*), it is provided, that, where the father is *non compos mentis*, or where the guardian or mother, whose consent is requisite, is *non compos mentis*, or beyond the seas, or unreasonably refuses to consent, the Court of Chancery may authorize the marriage.

Where it is sufficiently proved in the Ecclesiastical Court that a party was deranged at the time of marriage, it will be pronounced void. And in that Court, a party who was insane at the time of contracting a marriage, may himself, on recovering his senses, institute a suit to set aside his marriage, on the ground of his own incapacity at the time. The learned Judge laid it down, as perfectly clear in law, that a party may come forward to maintain *his own past* incapacity, and that a defect of capacity invalidates the contract of marriage, as well as any other contract (*n*). But the degree of proof must be stronger than ordinary, when a person brings a suit or allegation of his own incapacity, by exposing to view the changes of his mind (*o*). The committee of one

(*k*) See *Ex parte Ferne*, 5 Ves. 832.

(*l*) 1 Dow P. C. 178.

(*m*) 4 Geo. 4, c. 76, s. 17. The 26 Geo. 2, c. 33, contained a simi-

lar provision.

(*n*) *Twiner v. Meyers*, 1 Hagg. Cons. R. 414.

(*o*) *S. C.* 418.

non compos may also institute a suit for nullity of marriage, on account of the alleged incapacity of the party, at the time of contracting it (*p*). But the finding of the jury under a commission of lunacy is only a circumstance, and a part of the evidence in support of the unsoundness of mind at the time of the marriage, as the Ecclesiastical Court requires to be satisfied by its own evidence, that grounds of nullity existed (*q*).

References have been sometimes made to the Master to inquire whether it is proper that any steps should be taken for avoiding the marriages of persons who have been found lunatics by inquisition, and their committees have been ordered to institute a suit in the Ecclesiastical Court for that purpose. Where a party had been found a lunatic from a period antecedent to his marriage, and a petition of his committees stated that he was insane, and had not a lucid interval at the time of the celebration of the marriage, and was wholly unfit to sanction the same, and that the person he had married was a loose character, and the Master had certified that it would be proper to try the question of the insanity of the lunatic at the time of marriage in the Ecclesiastical Court—it was ordered that the committees should be at liberty to institute and prosecute such proceedings in the Ecclesiastical Court as they should be advised, for the purpose of having the marriage declared void (*r*). In another case, it was referred to the Master to inquire and certify whether any and what proceedings were necessary to be taken by the committee of the estate of the lunatic with respect to his marriage, and as to the validity of certain deeds (*s*). An order founded on the Master's report, was afterwards made, that the committee of the person and estate of the lunatic should be at liberty, in his name and on his behalf, to commence and prosecute such proceedings in

(*p*) 2 Phill. 160; *Fust v. Bowerman*, cited in 2 Hagg. Cons. R. 171; The Earl of *Portsmouth v. The Countess of Portsmouth*, 3 Add. 63.
 (*q*) 1 Hagg. Eccl. Rep. 356; 2
 Phill. 90; see *ante*, p. 64.
 (*r*) *In re Smith*, 6 November, 1818.
 (*s*) *In re The Earl of Portsmouth*, 5 Aug. 1823.

the proper Ecclesiastical Court as he might be advised, for declaring such marriage to be void (*v*).

In all suits of nullity of marriage brought by or on the part of the husband, the wife *de facto* is regularly entitled, as well to alimony pending the suit, as to payment of all such costs as she incurs in her defence. And the Ecclesiastical Court will refuse to proceed in a suit by the committee of the husband for setting aside a marriage, even although fraud is imputed to the wife in procuring it, until funds have been provided by such committee to enable the wife to conduct her defence (*w*).

Where a marriage *de facto* was solemnized under circumstances of clandestinity, inferring fraud and circumvention, between a person of weak and deranged mind, and the daughter of his trustee and solicitor (who had great influence over him, and by whom he was clearly considered and treated as of unsound mind), it was pronounced null and void; and the pretended wife condemned in costs.

Thus, in a suit of nullity of marriage, instituted by the Earl of Portsmouth, acting by his committee, against Mary Ann Hanson, falsely calling herself countess of Portsmouth, to have a marriage in fact solemnized between them declared to be null and void in law.

The proceedings originated in the following circumstances:—In January, 1823, a commission issued to inquire into the alleged lunacy of Lord Portsmouth. The inquisition was executed. Very long proceedings took place. The matter was strenuously contested. A great number of witnesses were examined; and the finding of the jury was, “that Lord Portsmouth is of unsound mind, so that he is not sufficient for the government of himself and his property, and has been in the same state of unsound mind from the 1st of January, 1809.” In consequence of this finding, a distant relation was appointed committee; and, by an order made in the Court of Chancery, the committee was directed

re The Earl of Portsmouth, of Portsmouth, 3 Addams, 63; *Smith v. Smith*, in Arches Court, 1818, 3. 1824. *untess of Portsmouth v. Earl* cited *ibid*.

to institute proceedings in the Ecclesiastical Court, "for the purpose of annulling and declaring such marriage void." A long libel was given in, setting forth in detail the mental condition and unsound conduct of Lord Portsmouth, and the measures pursued to effect the marriage; his birth in December, 1767; the death of his father in 1797; the great weakness of his mind from the earliest period; his first marriage in 1799; the settlement on that marriage, the solicitor of his family being one of the trustees named in such settlement. The libel went on to state, that, after that marriage, his mental weakness increased, until at length he became of unsound mind; that he so continued and still continues of unsound mind—averring, therefore, that he was from his birth, and before his first marriage, not of "unsound," but only of "weak" mind, which afterwards became *unsound*. The libel then proceeded to allege a variety of facts from that marriage till the death of his first wife, as indicating unsoundness of mind, and proving that he was treated as a person incapable of managing his own property, and was always kept under a certain degree of superintendence and restraint. It further recounted Lord Portsmouth's conduct on the death of his first wife, in November, 1813, and the circumstances attending his second marriage, on the 7th of March following, to shew that such marriage was not the act of a person of sound mind, but was effected by fraud and circumvention. It then detailed the subsequent conduct of Lord Portsmouth, and the treatment he experienced, in continuation and confirmation of his former unsoundness. It mentioned the birth of a female child at Edinburgh, in July, 1822; his removal from thence just before that event by some of his family, and the subsequent proceedings under the inquisition already mentioned. This being the general substance of the libel, it prayed "that the marriage may be declared null, by reason of the Earl being at the time of unsound mind, and incapable of forming such a contract; and also by reason of the fraud and circumvention practised on him upon that occasion; and that Mary Ann Hanson may be condemned in the costs of suit."

On the part of Lady Portsmouth, an allegation in reply

was given in, setting forth that Lord Portsmouth was possessed of a capacity and understanding fully equal to the ordinary transactions of life; was so considered and treated by all persons, till removed from Edinburgh on the 2nd of July, 1822; corresponded with his friends; mixed in society like other noblemen and gentlemen; in 1790, on coming of age, suffered recoveries with his father, and made a new settlement of his family property. It explained the arrangements on his first marriage, and detailed his observations upon it. It alleged that he settled accounts with his agents, attended public meetings and committees, prosecuted an offender, and was examined as a witness in 1802; was much affected at the death of his wife; that the second marriage was freely entered into, was his own act, and the result of no fraud; that his family wrote letters of congratulation on that marriage; that, in 1814, his brother applied for a commission of lunacy, which was refused; that, subsequently, in 1815, Lord Portsmouth executed a will and codicil, exercised his functions as a peer, and cohabited with Lady Portsmouth till removed by force from Edinburgh; and it exhibited many of his letters. This allegation consisted of above thirty articles, and fifty-seven witnesses were examined in support of it. The allegation on the other side consisted of nearly fifty articles supported by sixty witnesses and upwards.

Sir *John Nicholl* observed, in giving judgment—"The law of the case admits of no controversy, and none has been attempted to be raised upon it. When a fact of marriage has been regularly solemnized, the presumption is in its favour; but then it must be solemnized between parties competent to contract, capable of entering into that most important engagement, the very essence of which is consent; and without soundness of mind there can be no legal consent—none binding in law: insanity vitiates all acts. That considerable weakness of mind, circumvented by proportionate fraud, will vitiate the fact of marriage, whether the fraud is practised on his ward by a party who stands in the relation of guardian, as in the case of *Harford* against

Morris (x), which was decided principally on the ground of fraud; or, whether it is effected by a trustee, procuring the solemnization of the marriage of his own daughter with a person of very weak mind, over whom he has acquired a great ascendancy. A person incapable from weakness of detecting the fraud, and of resisting the ascendancy practised in obtaining his consent to the contract, can hardly be considered as binding himself in point of law by such an act. At all events, the circumstances preceding and attending the marriage itself, may materially tend to shew the contracting party was of unsound mind, and was so considered and treated by the parties engaged in fraudulently effecting the marriage. In respect of Lord Portsmouth's unsoundness of mind, the case set up is of a mixed nature, not absolute idiocy, but weakness of understanding—not continued insanity, but delusions and irrationality on particular subjects. Absolute idiocy, or constant insanity, would have carried with them their own security and protection; for, in either case, the forms preceding, and the ceremony itself, could not have been gone through without exposure and detection; but here a mixture of both, by no means uncommon, is set up—considerable natural weakness, growing at length, from being left to itself and uncontrolled, into practices so irrational and unnatural as in some instances to be bordering upon idiocy, and in others to be attended with actual delusion—a perversion of mind—a deranged imagination—a fancy and belief of the existence of things which no rational being, no person possessed of the powers of reason and judgment, could possibly believe to exist.”

“ It appeared, that, in February, 1814, Lord Portsmouth was brought to London by his medical attendant, and delivered up to his trustees, Hanson being one, and then in town—that day week he was married to the daughter of Mr. Hanson. The confidential solicitor of the family, one of the trustees, who had a great ascendancy over him—who owed him every possible protection—married him to one of his daughters! It is unnecessary to state the

jealousy with which the law looks at all transactions between parties standing in those relations to each other."

"The whole transaction will bear but one interpretation: every part of it is the act of the Hansons! Lord Portsmouth is a mere instrument in their hands, to go through the necessary forms; the settlement is begun in forty-eight hours after Lord Portsmouth's arrival in London! The contents of that settlement—the mode in which it is prepared—the concealment of the whole from the friends and the other trustees, who were in town, some in the same house with Lord Portsmouth—all these particulars bear the same character. The necessary forms are gone through, but, in support of these mere forms, not a witness is produced to shew that this nobleman was conducting himself as a man understanding what he was doing, or capable of judging, or acting as a free and intelligent agent: nothing tending to shew that he was a person of sound mind—nothing in his conduct inconsistent with unsoundness of mind; every circumstance conspires to prove that he was the mere puppet of the Hanson family, and that the celebration of this marriage was brought about by a conspiracy among them, to circumvent Lord Portsmouth, over whom they, and particularly the father, had a complete ascendancy and control, so as to destroy all free agency and rational consent on his lordship's part to this marriage. A marriage so had, wants the essential ingredient to render the contract valid—the consent of a free and rational agent. The marriage itself, and the circumstances immediately connected with it, do not tend to establish restored sanity; it was neither 'a rational act,' nor was it 'rationally done'—the whole 'sounds to folly,' and negatives sanity of mind. The Hansons, in the mode of planning and conducting the transaction, shew that they treated and considered Lord Portsmouth as a person of unsound mind; and Lord Portsmouth in submitting, acquiescing, and not resisting, confirms his own incompetency. Even if no actual unsoundness of mind, strictly so called—if no insane derangement had existed—if only weakness of mind—and all admit he was weak—yet, considering the passiveness and timidity of his character

on the one hand, the influence and relation of Hanson, his trustee, on the other, and the clandestinity and other marks of fraud which accompanied the whole transaction, the learned Judge was by no means prepared to say, that, without actual derangement in the strict sense, the marriage would not be invalid; but, in his judgment, Lord Portsmouth was of unsound mind, as well as circumvented by fraud." Upon the whole, the Court pronounced the marriage in fact solemnized between the Earl of Portsmouth and Miss Hanson, to be in law null and void, he being at that time not of sound mind sufficient to enter into such a contract; and that the celebration of such marriage was effected by fraud and circumvention: and, on the latter ground, the Court granted the prayer for costs (y).

Where a suit was brought by the father to annul the marriage of a party of competent age, without setting up any special interest, but averring the insanity of the son at the time; and the only question was, whether the person before the Court was the proper person to plead it—the Court held that the father could not sustain the suit, no commission of lunacy having been obtained (x).

Where a lunatic, after having been so found by inquisition, married, and his committee presented a petition for the purpose of taking the opinion of the Court, whether any steps should be adopted in the Ecclesiastical Court to have the marriage declared void—Lord Chancellor *Eldon* referred it to the Master to see what proceedings ought to be taken, who having stated in his report that the marriage was void by operation of the statute alone, and that no proceedings were necessary to be had in the Ecclesiastical Court to have the marriage declared void, such report was confirmed by the Lord Chancellor on the petition of the committee (a).

The rights of property arising out of a marriage contract, must be understood of one which is contracted by persons

(y) *The Countess of Portsmouth*
v. *The Earl of Portsmouth*, 1 Hag-
gard's Eccl. Rep. 355.

(x) 1 Hagg. Cons. R. 414, note.
(a) *Ex parte Turing*, 1 Ves. &
Bea. 140, and note. See *ante*, p. 447.

of competent understandings; and, therefore, the right of curtesy or dower will not attach where a marriage is *void* on account of the *lunacy* of one of the parties, although, if there was a valid marriage, the subsequent insanity of either of them will not prevent such interests taking effect as in other cases (*b*).

A marriage has been declared void in the Ecclesiastical Court, on the ground of one of the parties being incompetent from mental incapacity to contract, even after the death of such person; and administration of the effects of a wife was refused to the husband, on the ground that his marriage had been illegally contracted (*c*).

The committee of a lunatic may institute proceedings in the Ecclesiastical Court, without obtaining the sanction of the Lord Chancellor, against the wife of the lunatic for adultery (*d*). In a further proceeding in the case last cited, Lord *Stowell* said, "that he was not aware of any case which had occurred precisely similar; it must therefore be decided, not on express authority, but on principle, or rules of analogy drawn from other authorities, which are clear and undisputed. The question resolves itself into two points:—*first*, whether a lunatic is put out of the protection of the law; and, *secondly*, if he is not, whether there is any other mode in which redress can be obtained. On the first, there can be no doubt; and it never can be asserted that the wives of lunatics should be universally released from the duties of their marriage vow. It would be an imputation on the law of this country, to suppose that it had not provided some remedy against such a mischief. Then, in what way is this protection to be afforded? It must be in the same way as in other cases, by the committee. The lunatic cannot personally institute the suit, and, therefore, he must act by his ordinary guardian. It is true, as has been observed, that, in complicated matters, the committee ordinarily applies to the Lord Chancellor for authority to sue; but the learned Judge did not know that it would

(*b*) Co. Litt. 30. b., and note by Harg.—Bac. Abr. tit. Idiots and Lun. See *ante*, p. 338.

(*c*) *Browning v. Rease*, 2 Phil. 69.

(*D*).

(*d*) *Parnell v. Parnell*, 2 Phill. 158.

be advisable to promote a suit before the Lord Chancellor, preparatory to proceedings of this nature. The Ecclesiastical Court has no authority over the committee, to require that he should make an application to it. It is bound to receive his plea when brought, as matter of right. On these grounds, and upon principle, the powers of the committee must be upheld, to protect the lunatic from the greatest of all possible injuries (e)."

To marry, or procure the marriage of an idiot by contrivance, is a criminal offence, for which an information may be filed by the Attorney-General (f). Also, to marry a *non compos*, the custody of whom has been granted by the Great Seal, is a contempt of the Court of Chancery, for which the offender may be committed (g). The Lord Chancellor has sometimes ordered the property of a *non compos* who has married, to be secured (h).

(e) *Parnell v. Parnell*, 2 Hagg. Chanc. 203; *S. C.* 1 Eq. Cas. Abr. Cons. R. 170, 171. 278.

(f) *Smart v. Taylor*, 9 Mod. 98; (h) *Packer v. Wyndham*, Prec. in *S. C.* 2 Eq. Cas. Abr. 584. Chanc. 412; 2 Eq. Cas. Abr. 583;

(g) *Mrs. Ashe's case*, Prec. in *Gilb. Ch.* 276.

CHAPTER XII.

OF CRIMINAL OFFENCES COMMITTED BY, AND AGAINST
LUNATICS.

SECTION I.

Of Crimes committed by Lunatics.

THE essence of a crime consists in the *animus* or intention of the person who commits it, considered as a free agent, and in a capacity of distinguishing between moral good and evil. The man under the influence of real madness, has properly no will, but commits actions unconsciously and insensibly, and, therefore, cannot be made answerable for their consequences, in the same manner as persons in their senses.

A man totally and permanently mad, cannot be guilty of a crime, and is not amenable to the laws of his country as a criminal, although the law has provided for his safe custody.

If a man subject to *temporary fits* of complete and perfect madness commits a crime, he is not liable to punishment for such acts as were done in the midst of his delirium, but for those committed in his lucid intervals, he is as liable to punishment as any other man, and if on his trial he pleads insanity, it will be incumbent on him to prove that the act with which he stands charged was committed at a time when he was actually insane. And if a person liable to *partial insanity*, which only relates to particular subjects or notions, upon which he talks and acts like a madman; still, if he has as much reason as enables him to distinguish between right

and wrong, he will be liable to that punishment which the law attaches to his crime.

In the case of Lord Ferrers, who was tried before the House of Lords for murder; it was proved that his Lordship was occasionally insane, and incapable, from his insanity, of knowing what he did, or judging of the consequences of his actions. But the murder was deliberate, and it appeared, that when he committed the crime, he had capacity sufficient to form a design and know its consequences. It was urged, on the part of the prosecution, that complete possession of reason was unnecessary to warrant the judgment of the law, and that it was sufficient, if the party had such possession of reason as enabled him to comprehend the nature of his actions and discriminate between moral good and evil. And he was found guilty and executed (a).

In Arnold's case, who was tried at Kingston before Mr. Justice Tracy, for maliciously shooting at Lord Onslow, it appeared clearly that the prisoner was, to a certain extent, deranged, and that he had greatly misconceived the conduct of Lord Onslow; but it also appeared, that he had formed a regular design, and prepared the proper means for carrying it into effect. The learned Judge left the case to the jury, observing, "that the fact for which the prisoner was indicted, was proved beyond all manner of contradiction; but whether the shooting was malicious, depended upon the sanity of the man, whether the prisoner had the use of reason and sense? If he was under the visitation of God, and could not distinguish between good and evil, and did not know what he did, though he committed the greatest offence, yet he could not be guilty of any offence against any law whatsoever; for guilt arose from the mind, and the wicked will and intention of the man. If a man be deprived of his reason, and consequently of his intention, he could not be guilty; and if that be the case, though he had actually killed Lord Onslow, he was exempted from punishment; punishment being intended for example, and to deter other persons from wicked designs; but the punishment of a madman, a per-

(a) Lord Ferrers' case, 19 Howell's St. Tr. 947.

son without design, can have no example. On the other side, it is not every frantic and idle humour of a man, that would exempt him from justice, and the punishment of the law. It must be a man that is totally deprived of his understanding and memory, and did not know what he was doing, more than an infant, a brute, or a wild beast; such a one was never the object of punishment; therefore he left to the jury the consideration, whether the condition the prisoner was proved to be in, shewed that he knew what he was doing, and was able to distinguish whether he was doing good or evil, and understood what he did; and as it was admitted on the part of the prisoner, that he was not an idiot, and, as a lunatic might have lucid intervals, the jury was to consider what he was at the day when he committed the fact in question. There were many circumstances about buying the powder, and the shot, his going backward and forward; and, if they believed he had the use of his reason, and understood what he did, then he was not within the exemption of the law, but was as subject to punishment as any other person (b)."

In Parker's case, who was indicted for aiding the King's enemies, by entering into the French service, in the time of war between France and this country, the defence of the prisoner was rested upon the ground of insanity; and a witness on his behalf stated, that his general character from a child was that of a person of very weak intellects; so weak that it excited surprise in the neighbourhood when he was accepted for a soldier. But the evidence for the prosecution, had shewn the act to have been done with considerable deliberation, and possession of reason; and that the prisoner, who was a marine, having been captured by the French, and carried into the isle of France, after a confinement of about six weeks, entered voluntarily into the French service, and stated to a captive comrade, that it was much more agreeable to be at liberty, and have plenty of money, than remain confined in a dungeon. The Attorney-General replied to this defence of insanity, that, before it could have any

(b) *Arnold's case*, 16 Vol. Howell's St. Tr. pp. 764, 765.

weight in rebutting a charge so clearly made out, the jury must be properly satisfied, that at the time when the crime was committed, the prisoner did not really know right from wrong. And the jury, after hearing the evidence summed up, without hesitation pronounced the prisoner guilty (c).

Thomas Bowler was tried at the Old Bailey on the 2nd July, 1812, for shooting at, and wounding William Burrowes. The defence set up for the prisoner was, insanity occasioned by epilepsy; and it was proved, that the prisoner was seized with an epileptic fit on the 9th July, 1811, and was brought home apparently lifeless, since which time a great alteration in his conduct and demeanor was perceived; that he would frequently rise at nine o'clock in the morning, eat his meal almost raw, and lie in the grass exposed to the rain; and that his spirits were so dejected, that it was necessary to watch him, lest he should destroy himself. Mr. Warburton, the keeper of a lunatic asylum, deposed that it was characteristic of insanity occasioned by epilepsy for the patient to imbibe violent antipathies against particular individuals, even his dearest friends, and to have a desire of taking vengeance upon them, from causes wholly imaginary, which no persuasion could remove; and that yet the patient might be rational and collected upon every other subject. He had no doubt of the insanity of the prisoner, and said he could not be deceived by assumed appearances. A commission of lunacy was also produced, dated 17th June, 1812, and an inquisition taken upon it, whereby the prisoner was found insane, and to have been so from the 30th March, preceding. Mr. Justice *Le Blanc*, after summing up the evidence, concluded by observing to the jury, that it was for them to determine whether the prisoner, when he committed the offence with which he stood charged, was incapable of distinguishing right from wrong, and not under the influence of any *illusion* in respect of the prosecutor which rendered his mind at the moment insensible of the nature of the act he was about to commit; since, in that case, he would

(c) *Parker's case*, tried by a special commission in Horsemonger Lane, 11 February, 1812, for high treason, 1 Coll. on Lun. 477.

not be legally responsible for his conduct. On the other hand, provided they should be of opinion that, when he committed the offence, he was capable of distinguishing right from wrong, and not under the influence of such an illusion as disabled him from discerning that he was doing a wrong act, he would be amenable to the justice of his country, and guilty in the eye of the law. The jury, after considerable deliberation, pronounced the prisoner guilty, and he was afterwards executed (*d*).

In *Bellingham's case*, who was tried for the murder of Mr. Perceval, a part of the prisoner's defence, not urged by himself, but by his counsel, was insanity; and, upon this part of the case, *Mansfield*, Chief Justice, is reported to have stated to the jury, that, in order to support such a defence, it ought to be proved by the most distinct and unquestionable evidence, that the prisoner was incapable of judging between right and wrong; that, in fact, it must be proved beyond all doubt, that, at the time he committed the atrocious act with which he stood charged, he did not consider that murder was a crime against the laws of God and nature; and that there was no other proof of insanity which would excuse murder, or any other crime. That, in the species of madness called lunacy, where persons are subject to temporary paroxysms, in which they are guilty of acts of extravagance, such persons committing crimes when they are not affected by the malady would be, to all intents and purposes, amenable to justice; and that, so long as they could distinguish good from evil, they would be answerable for their conduct. And that, in the species of insanity in which the patient fancies the existence of injury, and seeks an opportunity of gratifying revenge by some hostile act, if such person be capable in other respects of distinguishing right from wrong, there would be no excuse for any act of atrocity which he might commit under this description of derangement (*e*). The prisoner was found guilty, and executed.

(*d*) *Bowler's case*, Old Bailey, 2nd July, 1812. See 1 Coll. on Lun. p. 673; Annual Reg. 54 Vol. p. 309. (*e*) *Bellingham's case*, Old Bailey, 15th May, 1812; 1 Coll. on Lun. 636. The doctrine of Chief Justice

James Hadfield was tried in the Court of King's Bench, in the year 1800, on an indictment for high treason, in shooting at the King in Drury Lane theatre; and the defence made for the prisoner was insanity. It was proved, that he had been a private soldier in a dragoon regiment, and, in the year 1793, received many severe wounds in battle, near Lisle, which had caused partial derangement of mind, and he had been dismissed from the army on account of insanity. Since his return to this country he had been annually out of his mind, from the beginning of spring to the end of the dog days, and had been under confinement as a lunatic. When affected by his disorder, he imagined himself to hold intercourse with God; sometimes called himself God, or Jesus Christ, and used other expressions of the most irreligious and blasphemous kind; and also committed acts of the greatest extravagance; but at other times he appeared to be rational, and discovered no symptom of mental incapacity or disorder. On the 11th of May preceding his commission of the act in question, his mind was very much disordered, and he used many blasphemous expressions. At one or two o'clock on the following morning, he suddenly jumped out of bed, and alluding to his child, a boy of eight years old, of whom he was usually remarkably fond, said he was about to dash his brains out against the bed-post, and that God had ordered him to do so; and upon his wife screaming, and his friends coming in, he ran into a cupboard, and declared he would lie there, it should be his bed, and God had said so; and when doing this, having upset some water, he said he had lost a great deal of blood. On the same and the following day he used many incoherent and blasphemous expressions. On the morning of the 15th of May he seemed worse, said that he had seen God in the night, that the coach was waiting, and that he had been to dine with the King. He spoke very highly of the King, the royal family, and particularly of the Duke of York. He then went to his master's workshop, whence he returned to dinner at two, but said that he stood

Mansfield was recognized by Lord Suppl. to Criminal Statutes, by Col-
Lyndhurst in *Offord's* case. See Iyer, p. 680; 5 Carr. & Payne, 168.

in no need of meat, and could live without it. He asked for tea between three and four o'clock, and talked of being made a member of the society of odd fellows; and, after repeating his irreligious expressions, went out and repaired to the theatre. On the part of the Crown, it was proved that he had sat in his place in the theatre nearly three quarters of an hour before the King entered; that at the moment when the audience rose, on his Majesty's entering his box, he got up above the rest, and, presenting a pistol loaded with slugs, fired it at the King's person, and then let it drop; and when he fired, his situation appeared favourable for taking aim, for he was standing upon the second seat from the orchestra in the pit; and he took a deliberate aim, by looking down the barrel, as a man usually does when taking aim. On his apprehension, amongst other expressions, he said, that "he knew perfectly well his life was forfeited; that he was tired of life, and regretted nothing but the fate of a woman who was his wife, and would be his wife a few days longer, he supposed." These words he spoke calmly, and without any apparent derangement; and, with equal calmness, repeated that he was tired of life, and said that his plan was to get rid of it by other means: he did not intend any thing against the life of the King; he knew the attempt only would answer his purpose."

The counsel for the prisoner (*f*), in his very able address to the jury, put the case as one of a species of insanity, in the nature of a *morbid delusion* of the intellect, and admitted that it was necessary for them to be satisfied that the act in question was the immediate unqualified offspring of the disease. And Lord *Kenyon* held, that as the prisoner was deranged immediately before the offence was committed, it was improbable that he had recovered his senses in the interim, and although, were they to run into nicety, proof might be demanded of his insanity at the precise moment when the act was committed; yet, there being no reason for believing him to have been at that period a rational and accountable being, he ought to be acquitted. The jury re-

(*f*) The late Lord *Erskine*, then at the Bar.

turned a verdict of "not guilty;" it appearing to them that the prisoner was under the influence of insanity when the act was committed (g).

Jonathan Martin was indicted at the York Spring Assizes, on the 31st March, 1829, for having set fire to the Cathedral Church of York, and of having reduced that splendid pile to a mass of ruins. It appeared by the evidence of one witness on the part of the prosecution, at whose house the prisoner had lodged at York more than a month, ending the 27th January preceding the trial, that, during that time he was absent all day selling books. The witness thought the prisoner a very religious man, being always engaged with his bible or hymn book. It appeared that he was in the habit of attending the ranters and methodist meetings, and sometimes on a Sunday evening he went to the minster. The witness considered the prisoner altogether under the influence of dreams, to which he seemed to look principally for the guidance of his conduct. The wife of this witness said, she thought the prisoner a sound man, and that he had no appearance of insanity. Other witnesses stated, that the prisoner had related dreams to them respecting the minster and the clergy. The prisoner told another witness that he had destroyed the minster for the glory of God, and the good of the people of England, particularly of the people of York, who, when they found their fine cathedral gone, would disperse to other places, where they would hear the gospel; that he felt no condemnation of spirit; on the contrary, he was quite happy, and praised God for strengthening him to do so good a work.

The prisoner in his defence entered into a long and very incoherent story. It was in substance that he had two dreams, which first inspired him with the thought of setting fire to the minster. He had first written five letters to the clergy, in the hope of obtaining an answer, but no answer had been returned. He had therefore petitioned the Lord what to do, and he had a dream, that a cloud hung over the minster, and then came and settled on his lodgings.

(g) *Hadfield's case*, Howell's St. Tr. Vol. 27, p. 1281.

He then thought that he was destined to destroy all things, but he went down on his knees and prayed to God to direct him. Suddenly he heard a voice, which told him it was his destiny to destroy the cathedral, on account of the misconduct of the clergy. After this he had no rest day or night, until he prepared to accomplish his design. When he had got every thing ready, he told his wife, and she was greatly troubled, and asked what would become of her and her child. When his child was mentioned, he at first repented, and began to waver; but he heard a voice saying, "what thou doest do well; go forward and complete the work." He then left his wife, went to York, and set fire to the minister in the way described by the witnesses against him.

Several medical men who had attended at lunatic asylums were called on the part of the prisoner, the first of whom proved, that the prisoner had been confined in a lunatic asylum for two years and upwards, ending in 1821, and that, from the beginning to the end of his acquaintance with the prisoner, he regarded him as a man of unsound mind; his insanity, when under his care, was chiefly shewn in speaking about his dreams: and the witness said the prisoner certainly laboured under an illusion on points of religion, and respecting the clergy. Whenever he spoke about the clergy his eyes became glassy, and the pupils much dilated, which was a symptom of insanity. If the string upon which his delusion rested were not struck, a person might be deceived as to his insanity. When he laboured under that delusion, the witness thought that he could not distinguish right from wrong. Another surgeon, who was one of the attendants at the Retreat for Lunatics near York, and had seen Martin daily for ten days preceding the trial, considered him a *monomaniac*, that is, one whose insanity is confined to one idea, or one train of ideas, as opposed to delirium or confusion generally. He believed the appearances of insanity in the prisoner were real. The witness thought him insane, there were symptoms connected with his bodily state, which confirmed his opinion as to the state of his mind. That such persons cannot judge between right and wrong on the subject of their delusion, though on other subjects they frequently do,

and seek to avoid danger consequent upon their actions; would frequently run away, and were very cunning in escaping punishment, or in avoiding the effects of their own act. Another physician at York, who had attended lunatic asylums for thirty years, and had seen Martin for ten days preceding the trial, was of opinion, that he was insane, and mentioned some symptoms which he had observed in the prisoner, in confirmation of such opinion.

Mr. Baron *Hullock* told the jury there were two questions for their consideration. The first was, whether the prisoner had committed the act of setting fire to the minster, and upon that there could be no doubt, after the evidence which had been adduced. The second question was, whether, at the time when he committed the act, he was of sane mind, and capable of distinguishing right from wrong. It would be for the jury to take into consideration the evidence which had been given on both sides, and then to say, whether they thought, that, at the time in question, the prisoner was sufficiently sane to make him, in the eye of the law, accountable for his actions. The jury acquitted the prisoner on the ground of insanity (*h*).

If a man in his sound memory commits a capital offence, and before arraignment for it he becomes mad, he ought not to be arraigned for it; because he is not able to plead to it with that advice and caution that he ought. And if, after he has pleaded, the prisoner become mad, he shall not be tried: as he cannot make his defence. If, after he has been tried and found guilty, he lose his senses before judgment, judgment shall not be pronounced; and if, after judgment he become of nonsane memory, execution shall be stayed; for, peradventure, says the humanity of the English law, had the prisoner been of sound memory, he might have alleged something in stay of judgment or exe-

(*h*) *Martin's case*, York Assizes, murder on the ground of monomania, 2 April, 1829. There is an account at Suffolk Summer Assizes, 1831. of this trial in Annual Register, Vol. See 5 Carr. & Payne, 168; Collyer's 71, p. 301. *Offord* was acquitted of Suppl. to Cr. Stat. 680.

cution (*i*). Indeed, in the bloody reign of Henry 8, it was provided by statute (*k*) that if a person, being *compos mentis*, should commit high treason, and after fall into madness, he might have been tried in his absence, and executed as if he had been of perfect memory. But that cruel and inhuman statute was repealed by 1 & 2 Phil. and Mary, c. 10. For, as is observed by Lord Coke (*l*) “the execution of an offender is for example *ut pœna ad paucos metus ad omnes perveniat*, and the execution of a madman would be a miserable spectacle, and could be no example to others.”

By the common law, if it be doubtful whether a criminal, who at his trial is in appearance a lunatic, be such in truth or not, the fact shall be investigated (*m*). And it appears, that it may be tried by the jury, who are charged to try the indictment (*n*) by an inquest of office to be returned by the sheriff of the county wherein the Court sits (*o*); or, being a collateral issue, the fact may be pleaded and replied to *ore tenus*, and a *venire* awarded returnable *instante*, in the nature of an inquest of office (*p*).

In Frith's case, who was arraigned for high treason, the jury was sworn to inquire, whether the prisoner was of sound mind and understanding or not. It was observed by the Court in that case, that the inquiry was not whether the prisoner was in that unfortunate state of mind when the accident happened, nor was it necessary to discuss or inquire at all, what effect his present state of mind might have when ever that question came to be discussed; but the humanity of the law of England falling into that which common humanity, without any written law would suggest, has prescribed, that no man shall be called upon to make his defence, at

- (*i*) 4 Bl. Comm. 25; 1 Hale, P. C. P. C. 35.
 34. (*p*) Fost. 46; Kel. 13; 1 Lev. 61;
 (*k*) 33 Hen. 8, c. 20. 1 Sid. 72. And the proceeding by
 (*l*) 3 Inst. 6. inquest *ex officio*, is recommended
 (*m*) 1 Hawk. P. C. c. 1, s. 4. in cases of importance, doubt, or dif-
 (*n*) 1 Hale, P. C. 33, 35, 36; 1 ficulty. 1 Hale, P. C. 35; Sav. 56;
 c. 1, s. 4, note (5). 1 And. 154. See 1 Hawk. P. C. c.
 k. P. C. c. 1, s. 4; 1 1, s. 4, note (5).
 Sav. 50, 56; 1 Hale,

a time when his mind is in that situation as not to appear capable of so doing; for, however guilty he may be, the inquiring into his guilt must be postponed to that season, when, by collecting together his intellects, and having them entire, he shall be able so to model his defence as to ward off the punishment of the law; it was for the jury, therefore, to inquire, whether the prisoner was then in that state of mind; and the jury returned a verdict, that the prisoner was quite insane (q).

In a case where a prisoner had pleaded not guilty to an indictment, for the murder of his wife and child, and was said to be insane, the jury was sworn to try whether "the prisoner is insane by visitation of God, or whether, of deceit and covin, he counterfeits insanity;" the prisoner having been found by the jury to be insane, was ordered to be detained in custody (r).

If it be found that the party only feigns himself mad, and he refuse to answer or plead, he shall be dealt with as one who stands mute (s). But in case a person in a phrensy happens by some oversight, or by means of the gaoler, to plead to his indictment, and is put upon his trial, and it appears to the Court upon his trial that he is mad, the Judge, in his discretion, may discharge the jury of him, and remit him to gaol to be tried after the recovery of his understanding, especially, in case any doubt appears upon the evidence touching his guilt, and this in *favorem vitæ*; and if there be no colour of evidence to prove him guilty, or if there be pregnant evidence to prove his insanity at the time of the fact committed, then it is fit that the trial proceed, in order to his acquittal (t).

Although persons who have committed crimes under the influence of insanity are excused from punishment, the public safety requires that such persons should be prevented from perpetrating new acts of violence, and endangering the lives of others; and it seems that, by common law, when

(q) How. St. Tr. Vol. 22, p. 307 B. 2, c. 30; Vin. Abr. tit. Lun. (E.).
—318. See 7 & 8 Geo. 4, c. 28, s. 2.

(r) *Turner's case*, Norfolk Lent, Assizes, 30 March, 1832, before Mr. Baron Gurney. (t) 1 Hale, P. C. 36, per Foster J. 18 St. Tr. 411; 1 Russ. on Crimes, p. 13.

(s) 1 Hawk. P. C. B. 1, c. 1, s. 4;

persons of this kind were acquitted, the Courts before which they were tried had power to direct them to be detained in safe custody.

By stat. 39 and 40 Geo. 3, c. 94, s. 1, it is enacted—"That in case any person charged with treason, murder, or felony, proving to be insane at the time of the commission of such offence, be acquitted, the jury are to declare whether he was acquitted by them on account of insanity: and if they so find, the Court shall order him to be kept in custody till his Majesty's pleasure be known."

By the second section of the above statute, it is enacted—"That if, upon the trial of any person indicted for *any offence*, such person shall appear to the jury charged with such indictment to be insane, it shall be lawful for the Court before whom any such person shall be brought to trial as aforesaid, to direct such finding to be recorded, and thereupon to order such person to be kept in strict custody, until his Majesty's pleasure shall be known. And that if any person charged with any offence, shall be brought before any Court to be discharged for want of prosecution, and such person shall appear to be insane, such Court may order a jury to be impanelled to try the sanity of such person; and if the jury so impanelled shall find such person to be insane, such Court may order such person to be kept in strict custody, in such place and in such manner as to such Court shall seem fit, until his Majesty's pleasure shall be known."

Where a person who had been found a lunatic under a commission, was afterwards tried for murder, and acquitted on the ground of lunacy, and ordered by the judge to be detained in custody as a dangerous lunatic, and his committee presented a petition to have certain sums allowed out of his estate for his support and the expense of his defence on the trial, and also, that he might be removed out of gaol to a proper receptacle for lunatics—Lord Chancellor *Eldon* said, there was a difficulty in the way, but ordered such sums to be paid, with liberty for the committee to make any application he thought proper respecting the custody of the lunatic, to the King in Council (v).

(v) *Ex parte Hill, in re Brooke, Coop. C. C. 54.*

The provisions of the 39 & 40 Geo. 3, c. 94, ss. 1 & 2, are extended to Ireland by statute 1 & 2 Geo. 4, c. 33, ss. 16 & 17.

The 2nd sect. of 39 & 40 Geo. 3, c. 94, applies to cases of misdemeanor, and is not confined, like the first, to cases of treason, murder, and felony. In one case, where a prisoner was tried on an indictment for assaulting and beating a woman with a stick, with intent to murder her—the jury found specially that the prisoner was insane at the time of the commission of the offence, and also at the time of the trial, and declared that they acquitted him on account of such insanity—Mr. Baron *Wood* ordered the prisoner to be kept in strict custody in gaol, until his Majesty's pleasure should be known, conceiving he had authority to do so under the last mentioned statute; but he afterwards doubted whether he had authority, under that act, to take such a finding and declaration, and make such an order, the offence being a *misdemeanor* and *not a felony*, and the second section of the act, not having directed any such special finding or declaration as the first section, which applied only to felonies. These points having been submitted to the twelve judges, they were unanimously of opinion, that the second section of the act extended to all offences; and that the order made was right (*w*).

By statute 39 & 40 Geo. 3, c. 94, s. 3, for the better prevention of crimes being committed by persons insane, it is enacted—"That if any person shall be discovered and apprehended under circumstances that denote a derangement of mind, and a purpose of committing some crime, for which, if committed, such person would be liable to be indicted; and any of his Majesty's justices of the peace, before whom such person may be brought, shall think fit to issue a warrant for committing him or her as a dangerous person suspected to be insane, such cause of commitment being plainly expressed in the warrant; the person so committed shall not be bailed, except by two justices of the peace, one whereof shall be the justice who has issued such warrant; or by the Court of General Quarter Sessions; or by one of the Judges

(*w*) *Rex v. Little*, Russ. & Ryan's Cr. Cas. 430.

of the Courts in Westminster Hall; or by the Lord Chancellor, Lord Keeper, or Commissioners of the Great Seal."

It was held that a warrant of commitment by one justice of the peace under that section of the act, stating that "A. had been discovered and apprehended under circumstances that denoted a derangement of mind, and a purpose of committing a crime (that is to say, an assault and breach of the peace) for which, if committed, he would be liable to be indicted, and that it appeared to the justice that he ought to issue a warrant for committing him as a dangerous person suspected to be insane," sufficiently expressed the cause of commitment, within the meaning of the statute (*x*). Lord *Tenterden*, C. J. said, that the object of that clause of the statute was, to prevent the commission of crimes by insane persons, and to afford due protection to the public, by providing for the safe custody of those, who, by their conduct, may be reasonably suspected to be insane, and therefore dangerous persons (*y*).

By statute 9 Geo. 4, c. 40, s. 55, it is enacted—"That if any person while imprisoned in England, under any sentence of imprisonment or transportation, shall become insane, and it shall be duly certified by two physicians or surgeons, that such person is insane, it shall be lawful for one of his Majesty's principal Secretaries of State to direct, by warrant under his hand, that such person shall be removed to such county lunatic asylum, or other proper receptacle for insane persons, as his Majesty's said principal Secretary of State may judge proper and appoint; and every such person so removed, shall remain under confinement in such county lunatic asylum, or other proper receptacle as aforesaid, or in any other county lunatic asylum, or other proper receptacle, to which such person may be removed by any like order, until it shall be duly certified to one of his Majesty's principal Secretaries of State, by two physicians or surgeons, that such person has become of sound mind; whereupon his Majesty's said Secretary of State is authorized, if such person shall still

(*x*) *Ex parte Gourlay*, 1 Mann. 699, where the form of the warrant & Ryl. 619; S. C. 7 B. & C. 669. is stated.

See Burn's Just., by Chitty, Vol. 3 p. (*y*) S. C. 1 Mann. & Ryl. 624.

remain subject to be continued in custody, to issue his warrant to the keeper or other person having the care of any such county lunatic asylum, or other proper receptacle as aforesaid, directing that such person shall be removed back from thence to the prison or other place of confinement, from whence he shall have been taken; or, if the period of imprisonment or custody of such person shall have expired, that he shall be discharged."

A person who loses his memory by sickness, infirmity, or accident, and kills himself, is not considered in law a *felo de se* (x). But if a lunatic in a lucid interval kills himself, he is a *felo de se* (a). So, if a man gives himself a mortal stroke while he is *non compos*, and recovers his understanding, and then dies, he is not *felo de se*; for, though the death completes the homicide, the act must be that which makes the offence. But it is not every melancholy or hypochondriacal distemper that denominates a man *non compos*, for there are few who commit this offence but are under such infirmities; but it must be such an alienation of mind as renders them madmen, or frantic, or destitute of the use of reason (b).

SECTION II.

Of Criminal Offences and Misdemeanors committed against Lunatics; and the Provisions of the Legislature as to the Confinement and Treatment of insane Persons.

A *NON compos* is not only excused in the commission of criminal offences, but is entitled to the protection of the law against injuries from the hands of others, and especially those of a nature to which his mental incapacity peculiarly exposes him. Thus, upon a representation that a lady who was too weak and infirm to be brought into Court, was in the hands of improper persons, who were using artifices to obtain from her the execution of a will, when

(x) 3 Inst. 54.

(a) Hale's P. C. 412.

(b) Ibid. As to the act of sui-

cide being evidence of insanity, see *ante*, 57—59.

her state of mind rendered her incapable of making a legal testament—a rule was made to shew cause why an information should not be exhibited against them for the misdemeanors charged in the affidavits, and certain medical and other persons were directed to have continual access to her. She died, however, the next day (c).

In another case, an information was laid in the King's Bench against a physician, for assaulting and beating an alderman on the ground of his being a lunatic, and for imprisoning him until he procured him to execute a letter of attorney to his wife, under colour of which he disposed of 1000*l.* apparently to his own use. It appeared, moreover, that the physician had debauched the lunatic's wife, handcuffed the husband, given him strong medicine in the night, and carried him out at one or two o'clock in the morning bareheaded, when it rained. The physician was sentenced to stand in the pillory, to be sent to the House of Correction in Southwark, to be whipped naked and to be kept to hard labour there for a year, to pay a fine of 600*l.*, and to find sureties for his good behaviour during life (d).

The state of houses kept for the reception of lunatics attracted the attention of the Legislature many years ago, when a committee was appointed by the House of Commons to inquire into the state of such houses. The attention of the committee appears on that occasion to have been directed to two points:—*First*, the manner of admitting persons into the houses then kept for the reception of lunatics. And *secondly*, the treatment of them during their confinement. The committee, in the course of their inquiries, and on the examination of witnesses, detected many flagrant abuses, and came to the resolution that, at that time, the state of madhouses in this kingdom required the interposition of the Legislature; and leave was given to bring in a bill for the regulation of private madhouses (e).

The statute 14 Geo. 3, c. 49, was passed for regulating madhouses, which contained provisions as to granting licences for keeping them, the visitation of them, the ad-

(c) *Rex v. Wright*, Burr. 1099.

(e) Commons' Journals, 1763,

(d) *Regina v. Dr. Fellows*, Fortes. Vol. 29, pp. 486—489.

mission of patients into them, and other matters. And by the 1st section of that act, any person confining in any house kept for the reception of lunatics more than one lunatic at one time (except such as were committed by the Lord Chancellor) without the licence required by the act, incurred a penalty of 500*l.* By the 3rd section of that act, the *President and Fellows of the College of Physicians in London* were directed to elect annually *five Fellows of the College* to be commissioners for granting licences within the cities of London and Westminster, within seven miles thereof, and within the county of Middlesex, for the year ensuing.

In an action of debt, in the name of the treasurer of the College of Physicians to recover a penalty of 500*l.*, imposed by that act for confining, in a house kept for the reception of lunatics, more than one lunatic at one time, without having a licence for that purpose—it was held, that a party who acted as mistress of a house where several female lunatics were kept, although she had not any interest in the house, but was merely put in to manage it, came within the act, and was liable to the penalty (*f*).

In the years 1815 and 1816 extensive inquiries were made by a committee of the House of Commons appointed to consider of provision being made for the better regulation of madhouses in England, before whom much important evidence and information were given. In the course of their investigations, such atrocities and abuses in the treatment of the unfortunate persons confined in such houses were detected and brought to light as would be disgraceful to the annals of any country, and are a foul blot on the history of a nation whose inhabitants boast of superior claims to the character for humanity and civilization (*g*).

The committee resolved, that some new provision of law was indispensably necessary for insuring better care being taken of insane persons, both in England and Ireland, than they had before experienced, as the inquiries of the committee had convinced them, that there were not in the coun-

(*f*) *Budd v. Foulks*, 3 Campb. in the Edinburgh Review, Vol. 28, N. P. C. 404. p. 432—474.

(*g*) See an article on this subject

try a set of beings more immediately requiring the protection of the Legislature than the persons in this state, a very large proportion of whom were entirely neglected by their relations and friends.

The committee called the attention of the House to the following abuses in the management of the houses kept for the reception of lunatics:—

First, The keepers of such houses received a much greater number of persons for confinement than such houses were calculated to accommodate, which were more adapted for the imprisonment than the cure of patients (*h*).

Secondly, The insufficiency of the number of keepers in proportion to the number of persons intrusted to their care, undoubtedly leading to a proportionably greater degree of restraint than the patients would otherwise be under.

Thirdly, The mixing patients who were *outrageous* with those who were *quiet* and inoffensive; and those who were insensible to the calls of nature, with others who were cleanly (*i*).

Fourthly, The want of medical assistance, as *applied to the malady* for which the persons were confined, although

(*h*) Dr. Latham imputed blame to the relatives of the unfortunate people in shutting them up in madhouses in order that they may be out of the way, and said, in nine cases out of ten, that is the fact, and that little attention is paid on the part of their relatives to such as are confined, who, by proper treatment, might more frequently be relieved." 1 Rep. 1815, p. 112. Dr. Powell said, "The management of insanity requires the practice of separation, according to the state of the disease, which was never done in this country. Insane houses are places which seem rather intended for the confinement and imprisonment of lunatics, but not one of them seems fully calculated for the cure of them." 1 Rep. 1815, p. 76.

(*i*) In support of a position so

obvious to common sense, it may not perhaps be irrelevant to quote the opinion of an eminent philosopher, who observed—"It is a question worthy of more attention than has yet been bestowed upon it by physicians, whether certain kinds of insanity have not a contagious tendency. That the incoherent ravings, and frantic gestures of a madman, have a singularly painful effect in unsettling and deranging the thoughts of others I have more than once experienced in myself; nor have I ever looked upon this most afflicting of all spectacles, without a strong impression of the danger to which I should be exposed, if I were to witness it daily." Vol. 3, Stew. Phil. of the Human Mind, p. 207.

it appeared by the most satisfactory evidence of medical men that, where the mental faculties are only partially affected, which is the case in seven-eighths of the cases, medical assistance is of the highest importance.

Fifthly, The restraint of persons much beyond what was necessary, certainly retarding recovery, even beyond what was occasioned by the crowded state of the houses.

Sixthly, Detentions of persons, the state of whose minds did not require confinement.

Seventhly, The insufficiency of certificates on which patients were received into the madhouses, and the defective visitation of private madhouses, under the provisions of the 14 Geo. 3, c. 49 (*k*).

In the year 1827, a select committee of the House of Commons was appointed, to inquire into the state of the pauper lunatics in the county of Middlesex; to consider the propriety of extending the provisions of the 14 Geo. 3, c. 49, to pauper lunatics; and of the consolidation of all acts relative to lunatics and lunatic asylums, and of making further provisions relative thereto (*l*).

In 1828, two bills were introduced (*m*), the one to regulate the care and treatment of insane persons; and the other to consolidate the laws relating to the erection, maintenance, and regulation of county lunatic asylums, and to the care and maintenance of lunatics, being paupers, or criminals, in England (*n*).

The statute 9 Geo. 4, c. 41 (*o*), has repealed the 14 Geo.

(*k*) See Report from the Committee 672, 1183—5.

of the House of Commons on Madhouses in England, ordered by the House of Commons to be printed, 11 July, 1815; Three Reports of Minutes of Evidence, 25th May, 1815; 2nd June, 1815; 12th June, 1815; First, Second and Third Reports in 1816, ordered to be printed, 18th May, 1819.

(*l*) See Report ordered, by the House of Commons, to be printed, 29th June, 1827.

(*m*) See Debate in the Commons, 1828; *Mirrou* of Parl. p. 265, 269,

(*n*) See Minutes of Evidence taken before the select Committee of the House of Lords, to whom the above bills were referred, ordered to be printed, 1st May, 1828.

(*o*) This statute was made for the term of three years only; and was amended by stat. 10 Geo. 4, c. 18; but, by a bill now before Parliament, the most material provisions contained in them are proposed to be re-enacted, and will be found in the Appendix, if it be passed.

§, c. 49; and, by the second section of the former act, it was enacted, that it should be lawful for the *principal Secretary of State for the Home Department*, for the time being, annually to appoint not less than *fifteen persons to be commissioners*, during the space of one year, for licensing and visiting all houses within the cities of London and Westminster, and within seven miles thereof, and within the county of Middlesex, for the reception of two or more insane persons, of which commissioners, *five* at least should be physicians; and such commissioners were empowered to grant licences, if they should think fit, in the manner directed by the act, for persons to keep houses for the reception of two or more insane persons, within the cities of London and Westminster, and within seven miles of the same, and within the county of Middlesex.

In all other places the *justices of the peace*, assembled in General Quarter Sessions, have authority, within their respective counties, to grant licences, if they think fit, to persons for keeping houses for the reception of insane persons, in the same manner as the aforesaid commissioners within their jurisdiction (*p*).

The act provides that no person, not being a parish patient, shall be received into any house kept for the reception of two or more insane persons without a certificate directed by the act; and knowingly and wilfully to receive any insane person, or person represented or alleged to be insane, to be confined in any such house, without such certificate dated not more than fourteen days previous to such reception, and not making a minute in writing of certain particulars mentioned in the act, is made a *misdemeanor* (*q*).

Every certificate, upon which any order shall be given for the confinement of any person, (not a parish patient), must be signed by two medical practitioners, each of them being a physician, surgeon, or apothecary, who shall have separately visited and personally examined the patient to whom it relates; and such certificate must state, that such insane person is a proper person to be confined, and the

(*p*) 9 Geo. 4, c. 41, s. 10.

(*q*) 9 Geo. 4, c. 41, s. 29.

day on which he was examined; and also the Christian and surname and place of abode of the person by whose direction or authority such patient was examined; and the degree of relationship or other connection between such person and the insane person; and the name, age, place of residence, former occupation, the asylum, if any, in which such patient shall have been confined; and whether such person has been found lunatic under a commission; and any person who shall knowingly, and with an intention to deceive, sign any such certificate untruly, setting forth any such particulars required by the act, shall be deemed guilty of a *misdemeanor* (r).

Power is given to the commissioners to set at liberty any persons improperly confined, except those found lunatic by inquisition, or confined under the authority of the Secretary of State for the Home Department (s).

The signing a certificate of insanity, without having visited and examined the party to whom it relates, alone constitutes an offence within the 30th section of the statute 9 Geo. 4, c. 41; and it is not necessary to show that there was any intention to deceive (t). Thus, in a case where an indictment was preferred by the Metropolitan Commissioners in Lunacy, against a medical practitioner for a misdemeanor—in having “*knowingly, and with an intention to*

(r) 9 Geo. 4, c. 41, s. 30.

A writer on insanity observes—“A practical reflection is obvious, and must have been felt by all those who are somewhat acquainted with insanity; I mean the abolition of a regulation, which invests every member of the medical profession with the power of depriving any individual of his liberty, and of exposing him to all the inconveniences to which insanity is subject. Few medical men pay attention to that branch of the art. Moreover, in any profession, there are individuals without a sufficient degree of skill; I will not

hesitate even to say, without probity and moral principles. Now, as sometimes the most experienced and most able men are at a loss, and find it impossible to decide whether there is insanity or not, it must be obvious, that not every one who knows how to compose some prescriptions, ought to be trusted with the privilege to dispose of the liberty of his fellow-citizens.”—Dr. Spurzheim on Insanity, pp. 76, 77. See Woolrich on Certificates, p. 356, 357, and note.

(s) 9 Geo. 4, c. 41, s. 37.

(t) *Rex v. Jones*, 2 Barn. & Adolp. p. 611.

deceive," signed a certificate, upon which an order had been given for the confinement of a person in a house kept for the reception of insane persons, without having visited and personally examined the individual, contrary to the provisions of the above act—at the trial before Lord *Tenterden*, C. J. previously to Michaelmas term, 1830, it appeared that the defendant had not himself seen the patient for a considerable time before the certificate was signed, but that his partner visited and examined her, and thereupon signed a certificate containing the various statements required by the act, and sent it to the defendant, who added his signature. The jury negatived any intention to deceive, but found the defendant guilty, subject to the opinion of the Court, upon a special case, as to the validity of the indictment—It was held, that the averment of intention was surplusage, and that such unnecessary matter might be rejected, as well in an indictment on a penal statute as at common law (w). The defendant on a subsequent day was sentenced by the Court to pay a fine of 20*l.* to the King, and to be imprisoned until it was paid (x).

By statute 9 Geo. 4, c. 41, s. 40, it is provided, "That no person shall receive into his exclusive care and maintenance, except he be a relative, or a committee appointed by the Lord Chancellor, under pain of being deemed guilty of a misdemeanor, any one insane person without first having an order and certificate signed by two medical practitioners, as is required on the admission of any insane person into a licensed house."

The first prosecution instituted by the Metropolitan Commissioners, under the above act, was an indictment against a person for having received into his care an insane person without first having an order and certificate signed by two medical practitioners of the state of mind of the patient. The defendant had pleaded not guilty; and, on his being brought up for judgment, the Attorney-General said the prosecution was founded on an act which had been passed by the Legislature with the view of protecting those

(w) *Res v. Jones*, 2 Barn. & Adolph. 611.

(x) *S. C.* 11th June, 1831.

who were afflicted with insanity, from the violence or other improper treatment of persons to whose care they were consigned, and also from the interference of malice, and to secure for them, as far as might be practicable, the common rights of mankind. The Commissioners had thought it their duty to bring it into public discussion, in order that it might be generally known, that cases of this description would be prosecuted, and the parties subjected to severe punishment. The Commissioners had investigated the circumstances of the case, and had satisfied themselves that the defendant had not wilfully violated the provisions of the act of Parliament: and they had also reason to believe, that the person who had caused the commitment to be made had not been actuated by any improper motive. The Commissioners, therefore, felt that they were not called on, in the discharge of their duty to the public, to inflict upon the defendant more than a nominal punishment; at the same time, they wished to have it publicly stated that they were determined to execute the provisions of the act of Parliament in the most rigorous manner.—Mr. Justice *Bayley* observed, that the new regulation was a most beneficial one: and if after the public notice that had been taken of this case, any person should be found offending, the Court would feel it its duty to treat the offence as a very serious one. The defendant was discharged on entering into his own recognizance in the sum of 200*l.* to appear to receive judgment when called on (*y*).

In another case an indictment was preferred by the Metropolitan Commissioners in lunacy against a medical man for having received into his exclusive care, a gentleman (who was afflicted with insanity in December preceding) without having obtained the certificate required by the 40th section of the above act. It appeared that the gentleman had been previously visited by a physician, and the defendant having called on his family, they were induced to allow him to go to the defendant's house at Brompton, where he remained for a few days, his wife, mother, and sister hav-

(*y*) *Rex v. Sharples*, Court of King's Bench, 26th Nov. 1829.

ing access to him, and a female servant of his own being in attendance upon him. He was taken away by his sister on the 10th of December, and, while at his mother's house, committed suicide.

The counsel for the defendant contended, that this was not a case contemplated by the act of Parliament, which had been framed with the benevolent intention of protecting persons whose reason had deserted them, from the designs of those who, from interested motives, might desire to get them into their custody. The gentleman had been received into the defendant's house at the request of his family, but he was not in the defendant's *exclusive* care. He was under no duress, no restraint in the defendant's house; on the contrary, his own servant was in attendance upon him, and his family, his wife, mother, and sister visited him, and the latter actually took him away, and it was therefore submitted, that the case did not come within either the letter or the spirit of the act of Parliament.

Lord *Tenterden*, C. J., left it to the jury to say, upon the evidence, whether the party had been received into the defendant's *exclusive* care and maintenance, telling them, that if they thought he had not, they must acquit the defendant. The jury having deliberated, and there appearing to be but little probability of their speedily agreeing, on the suggestion of the Chief Justice, and with the consent of the prosecutor's counsel, a juror was withdrawn (*).

By 9 Geo. 4, c. 41, s. 42, it is provided, that it shall be lawful for the Lord Chancellor, or other persons therein named, if they shall see fit, by any order by either of them, directed to the said commissioners, or to any other person whom they shall think fit to appoint, to require the said commissioners, or other persons so appointed, to visit and examine any person confined as insane, who shall be confined in the care of any relative or friend, or in the exclusive care of any other person, and to make a report to the Lord Chancellor, &c., of such matters as in such case they shall be directed to inquire into.

(z) *Rex v. Lucett*, 24th June, 1831.

In a case where a petition was presented to the Lord Chancellor praying that he would, in pursuance of the powers given by that statute, order a person properly qualified to visit the petitioner, and report whether he was or was not in a sound state of mind; it appeared that the petitioner was a gentleman of property, who had, about two years before, been removed from his house to a lunatic asylum, where he then remained, and that no commission of lunacy had issued. Lord Chancellor *Brougham* said—The act of Parliament on which the application was founded, empowered the Lord Chancellor, the Chief Justices of the King's Bench and Common Pleas, and the Secretary of State, to direct inquiries in such a case as this was represented to be, upon application being made to them. The application might be by private letter, in a conversation, or upon affidavit, if they should think fit to require it; but there was nothing in the act enabling him or any other Judge sitting as a Judge in open Court, to hear such a matter before him upon petition. The circumstance of the Secretary of State being clothed with the same powers as the other persons he had named, was enough to show, that the act had no judicial import, and that the authority it conferred upon him, was merely of a *ministerial* nature. The petition was dismissed with costs, which were ordered to be paid by the party who had been the means of putting the application first in motion. His Lordship said, all he should do upon any other application would be, to require the keepers of the asylum to explain the reasons upon which they acted in detaining the gentleman (a).

Dr. Conolly observes, that "in making regulations for the insane, two things are to be considered, justice and humanity to individuals, and a regard for the public welfare. The first consideration forbids the imposition of any restraint which is not in any case absolutely necessary; the second demands certain regulations, comprehending provisions for the secure guarding of those who are in any sense unfit to govern their own movements, and

(a) *In re Knight*, 31st May, 1831.

an efficient superintendence of all persons whose disordered state of mind may make occasional restraint indispensable. The existing arrangements, whilst they are often inconsistent with the justice and humanity due to individuals, do not always provide for the security of the person and of property; excess of rigour, and indiscriminate plans of restraint being productive, in many cases, of a reluctance to interfere where private or public interest requires that there should be some interference. Other evils arising out of the present manner of providing for lunatics, are, that they are often confided to persons who are unacquainted with bodily and mental disorders, and who neglect such treatment as might conduce to recovery; that it is the interest of such persons to keep patients under their care who ought not to be so confined; that, by associating lunatics with lunatics, the general chances of recovery are much diminished; that the constant efficient superintendence which is necessary to recovery, is not possible in lunatic houses under the present system; and that the want of opportunities of studying mental diseases, contributes to perpetuate most of the existing evils (*b*). Every man is interested in this subject; for no man can confidently reckon on the continuance of his perfect reason. Disease may weaken, accident may disturb, anxiety may impair it; and if every departure from sound mind may subject the person so affected to an indiscriminate treatment, including deprivation of property and personal liberty, no man can be sure that he may not, with a full consciousness of his suffering, and wrongs, be one day treated as if all sense and feeling were in him destroyed and lost; torn from his family, from his home, from his innocent but eccentric pursuits, and condemned, for an indefinite period, to pass his melancholy days among the idiotic and the mad" (*c*).

The object of this work being to point out the existing law, the discussion of the merits or expediency of any particular enactments would be misplaced; but it may be remark-

(*b*) See Inquiry concerning the Indications of Insanity by Dr. Conolly, better protection and care of the insane.

c. 11, containing suggestions for the (c) *Id.* p. 8.

ed, that unless the provisions of the Legislature respecting the treatment of the insane shall in future be more strictly and impartially enforced than formerly, by those to whom their execution is intrusted, that the present enactments or any others will be altogether ineffectual for preventing the abuses which the corrupt passions of some individuals will lead them to commit unless superintended and controlled by the strong hand of the law. The committee of the House of Commons appointed to investigate this subject gave a very proper admonition, (to which it is hoped that proper attention has been, or will be paid), in the following words. "Your committee are persuaded, that, when the extent of the evil pointed out in this report shall be generally known (*d*), the visiting physicians in London and its neighbourhood, will, as far as the professional calls upon them will permit, give additional attention to the duty they have been desirous of discharging, and that the *Justices of the Peace* in the several counties, will feel it to be their duty to watch as narrowly as circumstances will admit, over the conduct of the keepers of these houses, and the treatment of the patients in them. The committee trust also, that every *Magistrate* in the kingdom, who may think the condition of insane persons worthy of his attention, will inform himself, as well as he can, respecting abuses of the nature alluded to, that it may be submitted to his Majesty's Secretary of State for the Home Department, whether it may be fit in such case, that a prosecution should be instituted, at the suit of his Majesty's Attorney-General" (*e*).

It should be observed that, by stat. 9 Geo. 4, c. 41, s. 49, no action, or indictment can be brought or preferred under that act, except by the order of the Metropolitan Commissioners or the Justices of the peace, by which a considerable obstacle is created, in the way of any private obscure individual obtaining any redress, particularly when it is considered how many abuses may exist, without coming to the knowledge, or attracting the attention of the Commissioners

(*d*) See *ante*, p. 475—477.

the State of Madhouses, 11th July,

(*e*) Report from the Committee on 1815, p. 5.

or Justices. A doubt may perhaps be entertained whether the object of the Legislature would not have been better secured by allowing any individuals, if competent, who had been injured by a violation of the provisions of the act, to seek redress in a court of justice without being obliged to obtain the order of the Commissioners or Justices, and by giving to the latter power to institute proceedings in cases requiring their interference.



SECTION III.

Maintenance of Pauper Lunatics.

IDIOTS and lunatics, being paupers, are to be maintained at the expense of the parish, or place in which they have a legal settlement, if their parents are unable to support them (*f*).

It was held, that the provision contained in the statute 17 Geo. 2, c. 5, s. 20, (now repealed) related to vagrant lunatics only, who are strolling up and down the country, and did not extend to persons who are of rank and condition in the world, and whose relations can take care of them properly by applying to the Court of Chancery (*g*).

By the statute 5 Geo. 4, c. 71, s. 3, (now repealed) two Justices were authorized to adjudge the place of settlement of a lunatic confined in an asylum, and to make an order on the overseers of his parish for payment of a weekly sum for maintenance, upon which it was held that an order for the payment to the treasurer of a lunatic asylum of a gross sum for the *past* maintenance, &c., of a pauper lunatic, and of a certain future weekly sum was bad as to the former (*h*).

(*f*) *Hard's case*, 2 Salk. 427; *Dalton's Justices*, 311.

(*h*) *Rex v. Maulden*, 2 Mann. & Ryl. 146; *S. C.* 8 B. & C. 78. See

(*g*) *Anon.* 2 Atk. 52. See 9 Geo. 4, c. 40, s. 42, *post*, 494. 4, c. 40, s. 44.

By statute 9 Geo. 4, c. 40, the former acts for the erection and regulation of county lunatic asylums were repealed, and provisions were made for the care and maintenance, of pauper and criminal lunatics in England (i).

Justices may discharge a parish apprentice, who has become *non compos*. Where a boy, who had been put out as a parish apprentice, after three years service, plainly appeared to be an idiot, incapable of learning his trade, the Court of King's Bench confirmed an order of sessions, discharging his master of him. For it would be hard upon the master to keep one who could do him no service, and the parish, in the meantime, go free (k).

In order to constitute such an occupation of property as to make it rateable to the poor, it is necessary not only that the person should have possession, but that he should have such a control and dominion over the subject, as implies freedom from any paramount occupation, a direct interference by a superior with his domestic arrangements and internal management; such as a farmer enjoys over his farm, and the master of a family over his house. It was therefore held, that servants attending an hospital for the reception of lunatics, much less the poor wretches who are the objects of the charity, are not such occupiers as are contemplated by the statute 43 Eliz. c. 2 (l).

By stat. 9 Geo. 4, c. 40, s. 29, it is provided, That in all future rates, taxes, and levies to be made for any parish in which any land purchased, or to be purchased for any county lunatic asylum, shall be situate, such land, and any buildings thereon, shall not be liable to any higher rates, &c., than the same was at the time of such purchase.

(i) See the Appendix, where this act is inserted. (l) *Rez v. St. Luke's Hospital*, 2 Burr. 1053; 1 Nolan's Poor Laws,

(k) Anon. 1 Skinn. 114. See also 177. *Rez v. Charles*, Burr. S. C. 706.

CHAPTER XIII.

OF THE DISQUALIFICATIONS OF LUNATICS FOR THE
PERFORMANCE OF PUBLIC DUTIES.

THE administration of public affairs, and the performance of duties affecting important rights and interests of the community or of individuals, being the most sacred trusts which can be confided in man, evidently require a larger portion of understanding, judgment, and self-government, than is possessed by the unfortunate persons who are the subject of this work; it would, therefore, at first sight, appear almost superfluous to point out their incapacity for exercising public functions, which imply the possession of greater abilities than are in general necessary for the proper management of private affairs; but as some authorities upon the subject of such disqualifications are to be found in our legal and constitutional writers, it will be proper to notice them.

When a monarch of this country, through mental incapacity, has become incapable of administering the executive power with which he is intrusted, the constitutional method of providing for the temporary interruption of the exercise of the royal authority, is the appointment of a Regent by the two Houses of Parliament (*a*).

On the illness of *George* the Third being reported to Parliament, a select committee, consisting of twenty-one members, was appointed by each House to examine the physicians who attended him during his illness, touching the

(*a*) In the year 1454, a Regent Ages, 2 Vol. 401, 4to. ed.; 3 Vol. was appointed on account of the derangement and mental imbecility of 3 Vol. 474.
Hen. VI. See Hallam's Middle

state of his health, and to report such examination to the House (*b*). After the examination of the King's physicians, committees were in like manner appointed to examine and report precedents of such proceedings, as might have been had in the case of the personal exercise of the royal authority, being prevented or interrupted by infancy, sickness, infirmity, or otherwise, with a view to provide a remedy for the same (*c*). When the insanity of *George* the Third had been established by medical evidence, it was reported by the committees of the two Houses of Parliament, that, for the purpose of providing for the exercise of the royal authority during the continuance of his Majesty's illness, in such manner and to such extent as the circumstances and the urgent concerns of the nation required, it was expedient that His Royal Highness the Prince of Wales, being resident within the realm, should be empowered to exercise and administer the royal authority, according to the laws and constitution of the United Kingdom, in the name and on the behalf of his Majesty, and under the style and title of Regent of the kingdom, and to use, execute, and perform, in the name and on the behalf of his Majesty, all authorities, prerogative acts of government, and administration of the same, which belong to the King of this realm, to use, execute and perform, according to the laws thereof (*d*). A Regent was afterwards appointed during the incapacity of *George* the Third (*e*).

Persons deaf and dumb, or blind, or idiots, or madmen, are disqualified for being chosen members of Parliament (*f*), but lunatics in lucid intervals are eligible, for the lunacy may never return; but if it should, and be duly reported to the

(*b*) Lords' and Commons' Journals, 8th Dec. 1788. sickness, &c. are reported in the Lords' Journals, 17th Dec. 1788;

(*c*) Lords' Journals, 12th Dec. 1788; and Commons' Journals, 10th Dec. 1788. Commons' Journals, 12th Dec. 1788. (*e*) See statutes 51 Geo. 3, c. 1; 52 Geo. 3, c. 6, 7, 8. Parliamentary Debates, 1788 & 1789, March, 1810;

(*d*) Lords' Journals, 4th Jan. 1811; Commons' Journals, 2nd Jan. 1811. Vol. 18, Cobbett's Parl. Debates. The precedents of proceedings in cases where the exercise of the royal authority, has been prevented by See 1 Will. 4, c. 2.

(*f*) 1 Whitlock's notes on the King's writ, 461.

House, there is a precedent for declaring such lunatic's seat vacant (*g*).

When a member of the House of Commons becomes insane, the practice of Parliament is not to discharge a member from his service, on account of his being afflicted with a curable disease, but the House appears uniformly to have inquired into the nature of the alleged malady, and to have granted or refused a new writ, according as there seemed to be a permanent or temporary incapacity in the member previously returned (*h*).

On the petition of three of the registered freeholders of the county of Wexford, on behalf of themselves and other freeholders setting forth the election of two members to represent the county in Parliament, and that they afterwards took their seats, and that one of such members, in some time after such election and return, became afflicted with a mental malady, and that a commission of lunacy had been issued, under which such member had been found a lunatic, and that, in consequence of such event, the petitioners submitted to the House, that the said county of Wexford ceased to be represented in Parliament, because, by the laws and constitution of the United Kingdom, it was established that there should be two knights to represent such county, of which valuable privilege it was in fact deprived by the confirmed insanity of such member, and praying the House would order a new election to be had to fill the seat of such member; and, for that purpose, that a new writ might be issued to the Sheriff, commanding him to return a knight to represent the petitioners and such county in Parliament, in the place of the insane member. It was ordered to be referred to the committee of privileges to examine the subject matter of the petition, and that they should report the same with their observations thereupon to the House (*i*).

The committee reported, that the fact of the member's lunacy having been established by the production of an in-

(*g*) D'Ewes' Journal, 126. See mons, April 2nd, 1811, and Appendix thereto, p. 687.
 Male on Elections, p. 34; 1 Roe on Elections, 113.

(*i*) Journals of the House of Com-

(*h*) See Journals of House of Commons, 2nd April, 1811, p. 226.

quisition of a jury taken upon a commission of lunacy under the Great Seal of Ireland, they had proceeded to inquire into the allegation of the petitioners; that there was not the slightest hope that he would recover; and, having examined the medical attendants, and the keeper of the house in which the member was confined, they were of opinion that the member's malady, though severe and aggravated by its long continuance, could not at present be considered incurable. That the committee had endeavoured in the next place, to ascertain what had been the law and practice of Parliament in similar cases. In the course of such investigation the committee had been unable to discover any sufficient authority for discharging a member from his service in Parliament, on account of his being afflicted with a curable disease. It is true, that the writs issued by Edward the First, in the twenty-eighth year of his reign, direct the Sheriffs to summon those who had been elected for the Parliament holden in the preceding Easter, and in all cases, where the persons so elected should be prevented by death or infirmity from attending, to elect others in their room. It is also stated in Brooke's Abr. (*j*), that similar writs were issued in the 38th year of Henry the 8th, without making any distinction between illness curable and incurable: but it must be recollected, that at those periods the session of Parliament was usually of so limited a duration, that it might reasonably be presumed that any severe illness, however short, would incapacitate a member from attending. In subsequent cases, the House appears uniformly to have inquired into the nature of the alleged malady; and to have granted or refused a new writ, according as there seemed to be a permanent or temporary incapacity in the member previously returned (*k*).

Idiots and lunatics are incapable of voting for members of Parliament, although they possess the other necessary qualifications, but, if during a lucid interval a voter be capable of declaring his vote, and repeating the oaths which

(*j*) Tit. Parl. s. 7.

(*k*) Journals of the House of Commons, 2nd April, 1811, p. 687.

may be required of him, his vote ought not to be rejected (*k*).

If a beneficed clergyman becomes of unsound mind, and incapable of performing his parochial duties, his living is not vacated, but the bishop of the diocese will provide for the service of the church by appointing a curate who will be paid out of the profits of the living, and sequestrators will be chosen for collecting the tithes during the incapacity of the incumbent. Sequestration is usually granted by the bishop to the churchwardens of the parish, who enter into a bond for recovering the tithes and accounting for them (*l*). Sequestrators cannot maintain an action for tithes in their own name in the temporal courts (*m*), but may recover them in the spiritual court, and, in some cases, before justices of the peace (*n*). The living of a lunatic is liable to sequestration by his creditors, as in other cases (*o*).

It seems that, according to the old laws of the church, the bishop of the diocese might, at his discretion, appoint any person, having ecclesiastical cure and revenue, to discharge the duties of the living of a lunatic clergyman, and to receive and account for the tithes; and that the same person was frequently appointed for both purposes. In the reign of Queen Elizabeth, in a case where the Court of Wards had committed the person and revenues of a lunatic incumbent to a layman, who was his near relation, on their power being questioned by the Archbishop, it was resolved by that Court—"That it had not any power or jurisdiction to intermeddle or commit the spiritual or ecclesiastical livings or possessions, of any spiritual person that was *lunatic* or *non compos mentis*; but that the same vested in the ecclesiastical magistrates, to appoint and dispose as for-

(*k*) See Heywood's Law of Elections, 259, 2nd ed.; Orme's Digest of Election Laws, 108. See 2 Will. 4, c. 45, ss. 19, 20, 26, 27.

(*l*) Burn's Eccl. Law, Vol. 3, p. 339, 340; Vol. 4, p. 3; Watson's Cl. L. 309.

(*m*) *Berwick v. Swanton*, 1 Eagle

& Young, 574.

(*n*) Johns, 122; 4 Burn's Eccl. Law, 340, 8th ed.; 53 Geo. 3, c. 127; Ireland, 54 Geo. 3, c. 68.

(*o*) 14 Ves. 182. As to the mode of obtaining a sequestration, see 2 Bythewood's Conv. by Jarman, p. 285, 286, b. n. (*q*).

merly had been accustomed. But for the moveable goods of the said lunatic incumbent, and his *temporal possessions*, the court would further consider thereof, and give such order as should appertain, &c."

In pursuance of that declaration, the Archbishop committed the administration of the spiritual revenues of the party to a clergyman, under the style of *coadjutor*; and afterwards, by a separate instrument, granted the custody of the lunatic to the person who had been appointed by the Court of Wards. The *coadjutor*, it seems, entered into a bond for rendering a faithful account to the ordinary, or other spiritual judge to be appointed by him (*p*). It seems also, that if a bishop become, through age or other means, unfit to discharge his episcopal office, that a *coadjutor* will be appointed to assist him in the performance of the duties (*q*). It appears to have been decided, that the Archbishop, and not the King, was entitled to the custody of a lunatic Dean (*r*).

A *non compos* ought not to sit as a judge; it is nevertheless said, that, should such a case occur, the fines, judgments, and other records taken before him would be good; but it is otherwise of matters in *fuit* which might be avoided by a person of nonsane memory (*s*).

A *non compos* cannot act as an attorney or solicitor; for, being unable to manage his own affairs, he will not be permitted to transact the business of others (*t*).

And as a *non compos* is incapable of distinguishing the rights of parties, or of making a proper award, he cannot be an arbitrator (*v*).

A *non compos* cannot be guardian of another person, for one who cannot govern himself, will be unable to manage another or his concerns (*w*).

In receiving evidence, it is necessary to take into consi-

- (*p*) Gibson's Codex, 901-902; See a. 2.
 Watson's Cl. Law, 370; *Boreman* (*t*) Britt. c. 126.
v. Dickins, 3 Keble, 437. (*v*) Bryd. 58.
 (*q*) Gibson's Codex, 157. (*w*) Co. Litt. 88. (b). *Ex parte*
 (*r*) *Pace's case*, 3 Dyer, 303 a. *Brydges*, H. T. 1791; 2 Fonbl. Eq.
 (*s*) Bryd. 65, 85; *Brooke's Abr.* 249, n.
 258 (*a*); *Mirror of Justices*, chap. 2,

deration the capacity of the witness for knowledge, and his opportunities of acquiring it, as well as his power to understand the nature and obligation of an oath (*x*). It is obvious, that the testimony of those persons who labour under diseases seated in the mind, are liable to great, and often insurmountable suspicion. However acute, in some cases, the perceptions and memory of such persons may be, the mistaken inferences which they draw, and their inability to communicate even their perceptions without this admixture, renders all attempts to extract truth from their declarations utterly unavailing. Insane persons, idiots, and lunatics under the influence of their malady, are utterly incapable of giving evidence (*y*). But lunatics and other persons, though subject to temporary fits of insanity, may be witnesses in their lucid intervals, if they have sufficiently recovered their understandings (*z*). And a person born deaf and dumb, is not on that account incompetent, but, if he has sufficient understanding, may give evidence by signs, with the assistance of an interpreter (*a*). A witness who has attested an instrument, and afterwards become insane, will be considered as dead during his incapacity, and proof of his hand writing to the attestation will be admissible (*b*).

It does not appear to be settled whether or not the examination of a pauper respecting the place of his settlement, taken when he was *sane* by two justices, can be given in evidence after he has become *insane* to prove his place of settlement. Thus, in a case where a pauper, in 1779, was taken before two justices, when his examination as to the place of his settlement was taken upon oath before such justices, and signed by him, by which it appeared that he had gained a settlement by hiring and service, but was not removed until five years afterwards, when he had become insane and continued so to the time of his removal and of hearing of the

(*x*) Grotius de jure Belli ac Pacis, 507.

B. 2, c. 13, s. 2; Swinb. on Wills, P. 4, s. 24, 9.

(*a*) *Ruston's case*, Leach Cr. L. 455. See 1 Phillips on Evidence, p. 18; Peake on Ev. 127.

(*y*) Co. Litt. 6. (b.); Com. Dig. Testmoigne A. (1).

(*b*) *Bennett v. Tayler*, 9 Ves. 381.

(*z*) Com. Dig. Ibid; Bac. Abr. Ed. (A); 2 Hale, P. C. 278; Leach, Cr. L.

See 3 Term Rep. 721, *ante*, 285.

appeal—The justices received the examination as evidence, subject to the opinion of the Court of King's Bench as to its admissibility; and the Judges of that Court were divided in opinion (c).

The depositions taken in a cause of such of the witnesses as are unable to attend from bad health, may be read on the trial of an issue at law; but, in order to save the expense of proving the bill, answer, and other proceedings, it is necessary to obtain the previous order of the Court of Chancery (d). It is a common practice of that Court, in directing the trial of an issue, to make an order that the parties shall be at liberty to read, on the trial, office copies of the depositions taken in the cause, of such of the witnesses examined therein as, upon the trial, should, to the satisfaction of the Judge, be proved to be dead (e).

In one case, where an issue was directed to try the sanity of a party who had executed deeds, it was ordered, that the parties should be at liberty to read the depositions of any or either of the witnesses examined in the cause at the trial of the issues directed, who should be proved, to the satisfaction of the Court, to be dead at the time of such trial, or in such a state of health as not to be capable of attending the trial, or who, having been of sound mind at the time of their examination in the cause, should, at the time of the trial, be in a state of mental imbecility, or be incapable of giving testimony (f). If a witness, produced before commissioners under a commission appointed by the Court of Chancery, is not of competent understanding, the adverse party may except against him, and the commissioners ought not to examine him. But if they who have the carriage of the commission insist upon the examination of him, the other commissioners must certify the matter to the

(c) *Rez v. Eriswell*, 3 Term Rep. n (a). See Seton's forms of Decrees 707; S. C. 2 Bott 649, pl. 727. See in Eq. 347.

Rez v. Ferry-Frystone, 2 East. 54. (e) *Tatham v. Wright*, Reg. Lib.

(d) *Palmer v. Lord Aylesbury*, 15 B. 1828, fol. 2422; *Jones v. Roberts*, Ves. 176; *Gordon v. Gordon*, 1 Reg. Lib. A. 1129, pl. 2849.

(f) *Murley v. Templeman*, Reg. Lib. B. 1825, fol. 1310.

Swanst. 170; S. C. 1 Wils. C. C. 155; *Corbett v. Corbett*, 1 Ves. & Bea. 335; *Bellingham v. Pearson*, Id. 349.

Court, and affidavit of the irregularity must be made (g). The ground of excluding the evidence of insane persons in Courts of justice, requires little or no illustration, for it is obvious that they are altogether unfit to communicate such information as can be relied upon, or will afford a motive to assent in any case. And much caution is required in admitting persons who are sometimes insane to give testimony in a Court of justice, even during their lucid intervals. Where, indeed, the intermission of the disease has been long and the fact concerning which the evidence is required is of recent occurrence, and no access of the disease has followed, evidence of the facts to which such a witness deposes ought to be received, more especially if other witnesses to the same point cannot be obtained. But such evidence is liable to great suspicion, and will not, perhaps, be entitled to receive full credit, except in conjunction with, and as corroborative of, other proof. With regard to those lesser degrees of mental weakness and distemper which may considerably impair the judgment, without amounting to a state of fatuity or madness, it is obvious that no precise rules can be laid down. These circumstances, so far as they are known to a Court or jury, will necessarily affect their opinion of the testimony, and diminish the credit of the witness more or less according to the circumstances of the case; but it may be held generally, that if a witness appears to be so far of a sound mind as to comprehend the nature of the oath administered to him, and gives intelligible answers to the questions which are put, it is fit that his testimony should go to the consideration of the jury, or those who are trying the facts, unless a special proof is immediately offered of his actual insanity. To attempt any thing like an enumeration of the special circumstances which may affect the credit of testimony in this, as in other general cases, is plainly impossible.

(g) Wy. Pr. Reg. 419.

APPENDIX.

PART I.

THE STATUTES OF ENGLAND, IRELAND, AND SCOTLAND, RELATING TO LUNATICS, &c.

◆

De Prerogativâ Regis 17 Edw. 2, st. 1.—A. D. 1324.

CAP. IX.

Rex habet (habebit) custodiam terrarum fatuorum naturalium, capiendo exitus earundem sine vasto et destructione et inveniet eis necessaria sua de cujuscumque feodo terre ille fuerint; et post mortem eorum reddat eas (eam) rectis hæredibus ita quod nullatenus per eosdem fatuos alienentur vel (nec quod) eorum hæredes exheredentur.

THE King shall have the custody of the lands of natural fools, taking the profits of them without waste or destruction, and shall find them their necessaries, of whose fee soever the lands be holden. And after the death of such idiots he shall render them to the right heirs; so that by such idiots no alienation shall be made, nor shall their heirs be disinherited (a).

17 Edw. 2,
st. 1.

CAP. X.

Item habet providere (Rex providebit) quando aliquis qui prius habuit (habuerit) memoriam et intellectum, non fuerit compos mentis suæ, sicut quidam sunt per lucida intervalla,

(a) See ante, p. 10.

17 Edw. 2,
st. 1.

quod terre et tenementa eorundem (ejusdem) salvo custodiantur sine vasto et destructione, et quod ipse et familia sua de exitibus eorundem vivant et sustineantur competenter; et residuum ultra sustentationem eorundem rationabilem custodiatur ad opus ipsorum liberandum eis (eisdem) quando memoriam recuperaverint. Ita quod predictæ terre et tenementa infra prædictum tempus non (nullatenus) alienentur nec Rex de exitibus aliquid percipiat ad opus suum; et si obierit in tali statu tunc illud residuum distribuatur pro animâ ejusdem per consilium ordinariorum (ordinarii).

ALSO, the King shall provide when any (that beforetime hath had his wit and memory) happen to fail of his wit, as there are many having lucid intervals, that their lands and tenements shall be safely kept without waste and destruction, and that they and their household shall live and be maintained competently from the issues of the same; and the residue beyond their reasonable sustentation, shall be kept to their use, to be delivered unto them when they recover their right mind; so that such lands and tenements shall in no wise within the time aforesaid, be aliened; nor shall the King take anything to his own use. And if the party die in such estate, then the residue shall be distributed for his soul by the advice of the ordinary (b).



2 & 3 Edw. 6.—Anno Domini, 1548.

CAP. VIII.—SECT. 6.

2 & 3 Edw. 6,
c. 8, s. 6.

IF any person be, or shall be untruly, founden lunatic, idiot, or dead: Be it enacted by the authority aforesaid, That every person and persons grieved, or to be grieved by any such office or inquisition, shall and may have his or their traverse to the same immediately or after, at his or their pleasure, and proceed to trial therein, and have like remedy and advantage as in other cases of traverse, upon untrue inquisitions or offices founden; any law, usage, or custom to the contrary in anywise notwithstanding.



IRISH STATUTE.—15 Charles 1st.—Anno Domini, 1639.

CAP. IV.—SECT. 3.

15 Car. 1, c. 4,
s. 3.

AND also where one person or more is or shall be found heir to the King's tenant by office or inquisition, where any other person is or shall be heir, or if one person or more be

(b) See *ante*, p. 11—14.

or shall be found by office or inquisition in one county, and another person or persons is or shall be found heir to the same person in another county, or if any person be or shall be untruly found *lunatic, idiot, or dead*: Be it enacted by the authority aforesaid, that every person and persons grieved or to be grieved by any such office or inquisition, shall and may have his or their traverse to the same immediately or after, at his or their pleasure, and proceed to trial therein, and have like remedy and advantage as in other cases of traverse upon untrue inquisitions or offices found; any law, usage, or custom to the contrary in anywise notwithstanding.

18 Car. 1, c. 4.
s. 3.

6th George 4.—Anno Domini, 1825.

CAP. LIII.

An Act for limiting the Time within which Inquisitions of Lunacy, Idiocy, and Non compos mentis may be traversed, and for making other Regulations in the Proceedings pending a Traverse. [22d June, 1825.]

WHEREAS by an Act passed in the second and third years of the reign of King *Edward the Sixth*, it was enacted, That if any person should be untruly founden lunatic, idiot, or dead, every person and persons grieved by any such office or inquisition, should and might have his or their traverse to the same immediately, or after, at his or their pleasure, and proceed to trial therein, and have like remedy and advantage as in other cases of traverse upon untrue inquisitions or offices founden: And whereas great inconvenience hath arisen from there being no time limited within which inquisitions or offices finding persons lunatic, idiot, or of unsound mind, must be traversed; and it is expedient that some time should be limited for that purpose: And whereas the care and commitment of the custody of the persons and estates of persons found lunatic, idiot, or of unsound mind, have been usually intrusted by virtue of the King's sign manual, to the Lord Chancellor, Lord Keeper, or Lords Commissioners for the custody of the Great Seal of the United Kingdom and of *Ireland* respectively: Be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that where any inquisition has, before the passing of this act, been returned into the High Court of Chancery, by which any person hath been found lunatic, idiot, or of unsound mind, it shall be lawful for any person or persons desiring to traverse such inqui-

6 Geo. 4, c. 53.

Petitions to traverse inquisitions to be presented within a limited time.

6 Geo. 4, c. 53.

sition, or for any person or persons desiring to oppose such traverse, to present a petition to the Lord Chancellor, Lord Keeper, or Lords Commissioners of the Great Seal of the United Kingdom and of *Ireland* respectively, or other the person or persons intrusted as aforesaid, by virtue of the King's sign manual, before the end of *Michaelmas* term next after the passing of this act, praying that such traverse may be proceeded in and brought to trial; and where any person or persons shall be desirous of traversing any such inquisition as aforesaid, which shall be returned into the said court of Chancery after the passing of this act, a petition for that purpose shall be presented to the Lord Chancellor, Lord Keeper, or Lords Commissioners, or other the person or persons intrusted as aforesaid, within three calendar months, to be computed from the day of the return of such inquisition; and the said Lord Chancellor, Lord keeper, or Lords Commissioners, or other the person or persons intrusted as aforesaid, is or are hereby directed and required to hear and determine such petition; and the said Lord Chancellor, Lord Keeper, or Lords Commissioners, or other the person or persons intrusted as aforesaid respectively, shall, in every order to be made upon any such petition as aforesaid, limit a time, not exceeding six calendar months from the date of such order, within which the person or persons desiring to traverse as aforesaid, and all other proper parties, are to proceed to trial of the traverse to which such petition shall relate; and it shall also be lawful for the said Lord Chancellor, Lord Keeper, or Lords Commissioners, intrusted as aforesaid, in the case of every such traverse as aforesaid, upon the petition of any such person or persons as aforesaid, to make an order that the person or persons desiring to traverse as aforesaid, not being the party who has upon such inquisition been found lunatic, idiot, or of unsound mind, shall, within three weeks after the date of such order, give sufficient security to one of the Masters in ordinary of the said court of Chancery, and to the satisfaction of the same Master, for all proper parties proceeding to the trial of such traverse as aforesaid, within the time to be for that purpose limited as aforesaid.

Order to be made thereon.

Security for traverse.

Persons not petitioning within limited time, barred;

II. And be it further enacted, That every person having or who shall hereafter have right to traverse any such inquisition as aforesaid, who shall not present his or her petition for that purpose to the Lord Chancellor, Lord Keeper, or Lords Commissioners, or other the person or persons intrusted as aforesaid, within the time herein-before limited, and applicable to his or her case, or who shall refuse or neglect to give such security as aforesaid, or who shall not proceed to the trial of such traverse within such time as shall be in that behalf limited or directed as aforesaid, and the heirs, execu-



tors, and administrators of every such person, and all others claiming or to claim by, through, or under him or her, shall be and are hereby absolutely barred of such right of traverse, unless the Lord Chancellor, Lord Keeper, or Lords Commissioners, or other the person or persons intrusted as aforesaid, shall under the special circumstances of any particular case, think fit, upon a petition being presented to him or them for that purpose, to allow such traverse to be had or tried after the time by this act limited; in all which special cases it shall be lawful for the said Lord Chancellor, Lord Keeper, or Lords Commissioners, or other the person or persons intrusted as aforesaid, to make such orders as to him or them shall seem just.

6 Geo. 4, c. 53.

unless Lord Chancellor see cause to the contrary.

III. Provided always, and be it further enacted, That it shall be lawful for the Lord Chancellor, Lord Keeper, and Lords Commissioners, or other the person or persons intrusted as aforesaid, if he or they shall be dissatisfied with any verdict to be returned upon any such traverse as aforesaid, to order one or more new trial or trials thereon, as to him or them shall seem meet, and as is usual in cases of issues directed by the court of Chancery; any thing herein-before contained to the contrary in anywise notwithstanding (c).

Lord Chancellor may direct new trials.

IV. Provided also, and be it further enacted, That it shall be lawful for the Lord Chancellor, Lord Keeper, or Lords Commissioners, or other the person or persons intrusted as aforesaid, from time to time after the return of any such inquisition as aforesaid, and notwithstanding any petition or order which may be depending relating to a traverse of such inquisition, to make such orders relative to the custody and commitment of the person or persons, and the commitment, management and application of the estates and effects of any person or persons who shall or may have been found lunatic, idiot, or of unsound mind, by any such inquisition or inquisitions as he or they shall think necessary or proper; and all acts, matters, and things which shall have been done by any person or persons appointed committee or committees of the persons or estates of such persons found or to be found lunatic, idiot, or of unsound mind as aforesaid, or by any other person or persons, shall be and are hereby declared to be as valid and effectual; and such committees and other persons respectively, their heirs, executors, and administrators, are hereby indemnified in respect of such acts, matters, and things, from and against all actions, suits, and proceedings, damages, costs, charges, and expences, to be brought, commenced, had or recovered by the person or persons so found lunatic, idiot, or of unsound mind, his, her, or their heirs, executors, or administrators, or any other person or persons whomsoever, as fully

Chancellor may make orders for management of person and estate of lunatics.

(c) See *ante*, pp. 112—127.

6 Geo. 4,
c. 53.

and effectually as if such inquisition had not been traversable, but no further or otherwise (d).

11 Geo. 4 & 1 Wm. 4.—Anno Domini, 1830.

CAP. LXV.

11 Geo. 4 & 1
Wm. 4, c. 65.

An Act for consolidating and amending the Laws relating to Property belonging to Infants, Femes Covert, Idiots, Lunatics, and Persons of unsound Mind. [23d July, 1830.]

- WHEREAS an Act was passed in the Ninth year of the reign of King George the First, intituled *An act to enable lords of manors more easily to recover their fines, and to exempt infants and femes covert from forfeitures of their copyhold estates in particular cases*: And whereas an act was passed in the twenty-ninth year of the reign of King George the Second, intituled *An act to enable infants, lunatics, and femes covert to surrender leases, in order to renew the same*: And whereas an act was passed in the eleventh year of the reign of King George the Third, intituled *An act to enable lunatics entitled to renew leases, their guardians and committees, to accept of surrenders of old leases, and grant new ones*: And whereas an act was passed in the Parliament of Ireland, in the eleventh year of the reign of Queen Anne, intituled *An act to enable guardians and others to renew leases for lives*: And whereas an act was passed in the forty-third year of the reign of King George the Third, intituled *An act to authorize the sale or mortgage of the estates of persons found lunatic by inquisition in England or Ireland respectively, and the granting of leases of the same*: And whereas an act was passed in the forty-seventh year of the reign of King George the Third, intituled *An act concerning common recoveries suffered in copyhold or customary courts by attorney*: And whereas an act was passed in the fifty-ninth year of the reign of King George the Third, intituled *An act concerning common recoveries to be suffered by attorney in courts of ancient demesne, and to explain an act of his present Majesty relative to the sale or mortgaging of estates of lunatics*: And whereas an act was passed in the sixth year of the reign of his late Majesty King George the Fourth, intituled *An act for consolidating and amending the laws relating to conveyances and transfers of estates and funds vested in trustees who are infants, idiots, lunatics, or trustees of unsound mind, or who cannot be compelled or refuse to act; and also the laws relating to stocks and securities belonging to infants, idiots, lunatics, and persons of unsound mind*: And whereas an act was passed in the ninth year of the reign of his said late Majesty, intituled *An act for*

(d) See ante, pp. 128, 129.

extending the acts passed in the forty-third and fifty-ninth years of the reign of his late Majesty King George the Third, for the sale and mortgage of estates of persons found lunatics by inquisition taken in England and Ireland, so as to authorize such sale and mortgage for other purposes; and for rendering inquisitions or commissions of lunacy taken in England available in Ireland, and like inquisitions taken in Ireland available in England: And whereas it is expedient the provisions of the said acts should be consolidated and amended: Be it therefore enacted, by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That the said recited acts of the eleventh year of the reign of Queen Anne, the ninth year of the reign of King George the First, the twenty-ninth year of the reign of King George the Second, the eleventh, forty-third, forty-seventh, and fifty-ninth years of the reign of King George the Third, and the ninth year of the reign of his late Majesty King George the Fourth, and also the said recited act of the sixth year of the reign of his present † Majesty, so far as the said last-mentioned act relates to stocks, funds, annuities, and securities belonging beneficially to persons being infants, idiots, lunatics, or of unsound mind, shall be and the same are hereby repealed, (except as to such proceedings under the same as shall have been commenced before the passing of this act, and which may be proceeded in according to the provisions of the said recited acts respectively, or according to the provisions of this act, as shall be thought expedient): Provided always, that the several acts repealed by the said last-recited act shall not be revived.

II. And inasmuch as, in order to avoid unnecessary repetition, certain words are used in this act as describing subjects, some of which, according to their usual sense, such words would not embrace; for the understanding of the sense attached to them in this act—Be it further enacted, That the provisions of this act shall extend and be understood to extend to and include the several other estates, persons, matters and things hereinafter mentioned; (that is to say), those relating to land, to any manor, messuage, tenement, hereditament, or real property of whatsoever tenure, and to property of every description transferable, otherwise than in books kept by any company or society, or any share thereof or charge thereon, or estate or interest therein; those relating to stock, to any fund, annuity, or security transferable in books kept by any company or society, or to any money payable for the discharge or redemption thereof, or any share or interest therein; those relating to dividends, to interest, or other annual produce; those relating to the Bank of England, to the East India Company, South Sea Company, or any other

11 Geo. 4 & 1
Wm. 4, c. 68.

Recited acts
of 11 Ann., 9
G. 1., 29 G. 2,
11, 43, 47, &
59 G. 3., 9 G.
4, and so
much of 6 G.
4, as relates to
funds belong-
ing to infants,
&c., repealed.

† See.

Rules for the
interpretation
of this act.

11 Geo. 4 & 1
Wm. 4, c. 65.

company or society established or to be established; those relating to a conveyance, to any release, surrender, assignment, or any other assurance, including all acts, deeds, and things necessary for making and perfecting the same; those relating to a transfer, to any assignment, payment, or other disposition; and those relating to a lunatic, to any idiot or person of unsound mind, or incapable of managing his affairs; unless there be something in the subject or context repugnant to such construction; and whenever this act, in describing or referring to any person, or any land, stock, conveyance, lease, recovery, matter, or thing, uses the word importing the singular number or the masculine gender only, the same shall be understood to include and shall be applied to several persons as well as one person, and females as well as males, and bodies corporate as well as individuals, and several lands, stocks, conveyances, leases, recoveries, matters, or things, as well as one land, stock, conveyance, lease, recovery, matter, or thing respectively, unless there be something in the subject or context repugnant to such construction.

Infants, femes covert, and lunatics may be admitted to copyhold estates by their guardian, committee, or attorney.

III. And be it further enacted, That from and after the passing of this act, where any person being under the age of twenty-one years, or being a feme covert or lunatic, is or shall be entitled by descent, or surrender to the use of a last will, or otherwise, to be admitted tenant of any copyhold lands, such person, in his or her own proper person, or being a feme covert by her attorney, or being an infant by his guardian or attorney, as the case may require, or being a lunatic by the committee of his estate, shall come to and appear at one of the three next courts which shall be kept (for the keeping whereof the usual notice shall be given) for the manor whereof such land shall be parcel, and shall there offer himself or herself to the lord or his steward to be admitted tenant to the said land; to make which appearance and to take which admittance in behalf of such infant or lunatic or feme covert, such guardian, committee, or attorney shall be and is hereby respectively authorized and required.

Femes covert, infants, &c. may appoint attorneys for that purpose.

IV. And be it further enacted, That it shall be lawful for any feme covert, and for any infant who shall have no guardian, and she and he is hereby empowered, by writing under her or his hand and seal respectively, to appoint an attorney or attorneys on-her or his behalf, for the purpose of appearing and taking such admittance as aforesaid.

In default of appearance, the lord may appoint an attorney.

V. And be it further enacted, That in default of such appearance of any infant, feme covert, or lunatic, in his or her own person, or by his or her guardian, committee, or attorney in that behalf, and of acceptance of such admittance as aforesaid, it shall be lawful for the lord of every such manor, or his steward, after such three several courts have been duly

holden for such manor, and proclamations in such several courts been regularly made, to appoint, at any subsequent court to be holden for such manor, any fit person to be attorney for every such infant, feme covert, or lunatic, for that purpose only, and by such attorney to admit every such infant, feme covert, or lunatic to the said land, according to such estate as such infant, feme covert, or lunatic shall be legally entitled to therein, and upon every such admittance to impose and set such fine as might have been legally imposed and set if such infant had been of full age, or if such feme covert had been sole and unmarried, and if such lunatic had been of sane mind.

11 Geo. 4 & 1 Wm. 4, c. 68.

VI. And be it further enacted, That upon every such admittance of any infant, feme covert, or lunatic as aforesaid, the fine imposed and set thereupon shall and may be demanded by the bailiff or agent of the lord of such manor, by a note in writing, signed by the lord of such manor or by his steward, to be left with the guardian of such infant, or such infant if he have no guardian, or with such feme covert or her husband, or with the committee of the estate of such lunatic, or with the tenant or occupier of the land to which such infant, feme covert, or lunatic shall have been admitted as aforesaid; and if the fine so imposed and set be not paid or tendered to such lord or his steward within three months after such demand made, then it shall be lawful for the lord of such manor to enter into and upon the copyhold land to which any such infant, feme covert, or lunatic shall be so admitted, and to hold and enjoy the same, and to receive the rents, issues, and profits thereof, but without liberty to fell any timber standing thereon, for so long time only and until by such rents, issues, and profits such lord shall be fully paid and satisfied such fine, together with all reasonable costs and charges which such lord shall have been put unto in levying and raising the same, and in obtaining the possession of such copyhold land, although such infant, feme covert, or lunatic shall happen to die before such fine and fines, and the costs and charges aforesaid, shall be raised and collected; of all which rents, issues, and profits so to be received by such lord of such manor, or his steward, bailiff, or servant, upon the occasion aforesaid, such lord shall yearly and every year, upon demand to be made by the person who shall be entitled to the surplus of the said rents and profits, over and above what will pay and satisfy such fine and costs and charges, or by the person who shall be then entitled to such copyhold land, give and render a just and true account, and shall pay the same surplus, if any, to such person as shall be entitled to the same.

Fines, in what manner demandable.

If not paid, &c., the lord may enter and receive the profits of the copyhold till he is satisfied, &c.

The lord to account yearly;

VII. And be it further enacted, That as soon as such fine, and the costs, charges, and expenses aforesaid, shall be fully

and to deliver up possession on satisfaction.

11 Geo. 4 & 1
Wm. 4, c. 65.
tion of the
fines.

paid and satisfied, or if, after such seizure and entry of and upon such copyhold land for the purposes aforesaid, such fine, and the costs and charges aforesaid, shall be lawfully tendered and offered to be paid and satisfied to the lord of such manor, then and in any of the said cases it shall be lawful for such infant, feme covert, lunatic, or other person entitled thereto, or the guardian of such infant, the husband of such feme covert, or the committee of such lunatic, to enter upon and take possession of and hold the said copyhold land according to the estate or interest such infant, feme covert, or lunatic shall be lawfully entitled to therein, and the lord of such manor shall and is hereby required in any of the said cases to deliver possession thereof accordingly; and if such lord, after such fine, and the costs and charges aforesaid, shall be fully paid and satisfied, or after the same shall have been tendered or offered to be paid as aforesaid, shall refuse to deliver the possession of the said copyhold land as aforesaid, he or they shall be liable to and shall make satisfaction to the person or persons so kept out of possession, for all the damages that he or she shall thereby sustain, and all the costs and charges that he or she shall be put unto for the recovery thereof.

Guardians or
husbands, or
committees
paying fines,
may reim-
burse them-
selves out of
the rents of
the copyhold.

VIII. And be it further enacted, That where any infant, feme covert, or lunatic shall be admitted to any copyhold land, if the guardian of such infant, or husband of such feme covert, or committee of such lunatic, shall pay to the lord of any manor the fine legally imposed and set upon such admittance, and the costs and charges which such lord of such manor shall have been put unto as aforesaid, then it shall be lawful for every guardian of such infant, or husband of such feme covert, or committee of such lunatic, his executors and administrators, to enter into and to hold and enjoy the said land to which such infant, feme covert, or lunatic shall have been so admitted, and receive and take the rents, issues, and profits thereof to his and their own use, until thereby such guardian of such infant, or husband of such feme covert, or committee of such lunatic, his executors and administrators, shall be fully satisfied and paid all and every such sum and sums of money as he shall respectively pay and disburse upon the account aforesaid, notwithstanding the death of such infants, feme covert, or lunatic shall happen before such sum or sums of money^s expended shall or may be so raised and reimbursed.

No forfeiture
to be incurred
by infant, &c.
for not ap-
pearing, or re-
fusing to pay
fines.

IX. Provided always, and be it further enacted, That from and after the passing of this act no infant, feme covert, or lunatic shall forfeit any copyhold land for his or her neglect or refusal to come to any court to be kept for any manor whereof such land is parcel, and to be admitted thereto, nor for the omission, denial, or refusal of any such infant, feme covert, or

lunatic to pay any fine imposed or set upon his or her admittance to any such land.

11 Geo. 4 & 1 Wm. 4, c. 68.

X. Provided nevertheless, and be it further enacted, That if the fine imposed in any of the cases hereinbefore mentioned shall not be warranted by the custom of the manor, or shall be unlawful, then such infant, feme covert, or lunatic shall be at liberty to controvert the legality of such fine, in such manner as he or she might have done if this act had not been made.

Fines not warranted by custom, &c. may be controverted.

XIII. And be it further enacted, That in all cases where any person, being lunatic, shall become entitled to any lease or leases made or granted or to be made or granted for the life or lives of one or more person or persons, or for any term of years, either absolute or determinable upon the death of one or more person or persons, or otherwise, it shall be lawful for the committee of the estate of such person to apply to the Lord Chancellor of *Great Britain*, being intrusted by virtue of the King's sign manual with the care and commitment of the custody of the persons and estates of persons found idiot, lunatic, or of unsound mind, by petition or motion in a summary way; and by the order and direction of the said Lord Chancellor, intrusted as aforesaid, such committee shall and may be enabled from time to time, by deed or deeds, in the place of such lunatic, to surrender such lease or leases, and accept and take, in the name and for the benefit of such lunatic, one or more new lease or leases of the premises comprised in such lease or leases surrendered by virtue of this act, for and during such number of lives, or for such term or terms of years, absolute or determinable as aforesaid, as was or were mentioned or contained in the lease or leases so surrendered at the making thereof respectively, or otherwise, as the said Lord Chancellor, intrusted as aforesaid, shall direct (e).

Committees of lunatics may surrender leases, and renew the same, &c.

XIV. And be it further enacted, That every sum of money and consideration paid by any guardian, trustee, committee, or other person as a fine, premium, or income, or in the nature of a fine, premium, or income, for the renewal of any such lease, and all reasonable charges incident thereto, shall be paid out of the estate or effects of the infant or lunatic for whose benefit the lease shall be renewed, or shall be a charge upon the leasehold premises, together with interest for the same, as the said courts and Lord Chancellor, intrusted as aforesaid, respectively shall direct and determine; and as to leases to be made upon surrenders by femes covert, unless the fine or consideration of such lease and the reasonable charges shall be otherwise paid or secured, the same, together with interest, shall be a charge upon such leasehold premises, for the benefit of the person who shall advance the same.

Charges attending renewal to be charged on the estates as the court shall direct.

(e) See *ante*, pp. 349—352.

11 Geo. 4 & 1
Wm. 4, c. 65.

New leases
shall be to the
same uses.

XV. And be it further enacted, That every lease to be renewed as aforesaid shall operate and be to the same uses, and be liable to the same trusts, charges, incumbrances, dispositions, devises, and conditions, as the lease to be from time to time surrendered as aforesaid was or would have been subject to in case such surrender had not been made.

Committees
of lunatics, by
the direction
of the Lord
Chancellor,
may accept
of surrenders,
and make new
leases.

XIX. And be it further enacted, That where any person, being lunatic, is or shall be entitled or has a right, or in pursuance of any covenant or agreement might, if not under disability, be compelled to renew any lease made or to be made for the life or lives of one or more person or persons, or for any term or number of years absolute or determinable on the death of one or more person or persons, or otherwise, it shall be lawful to and for the committee of the estate of such lunatic, in the name of such lunatic, by the direction of the Lord Chancellor, intrusted as aforesaid, to be signified by an order to be made in a summary way upon the petition of such committee, or of any person entitled to such renewal, from time to time to accept of a surrender of such lease, and to make and execute to any person a new lease of the premises comprised in such lease to be surrendered by virtue of this act, for and during such number of lives, or for such term or terms of years determinable upon such number of lives, or for such term or terms of years absolute, as were mentioned or contained in such lease so surrendered at the making thereof, or otherwise, as the Lord Chancellor, intrusted aforesaid, by such order shall direct; and this provision shall extend as well to cases where the lunatic shall not be compellable to renew; but it shall be for his benefit to do so as to cases where a renewal might be effectually enforced against the lunatic if of sound mind (f).

Fines to be
paid before re-
newals, and
counterparts
are executed.

XX. Provided always, and be it further enacted, That no renewed lease shall be executed by virtue of this act, in pursuance of any covenant or agreement, unless the fine (if any), or such other sum or sums of money (if any), as ought to be paid on such renewal, and such things (if any) as ought to be performed in pursuance of such covenant or agreement by the lessee or tenant, be first paid and performed; and counterparts of every renewed lease to be executed by virtue of this act shall be duly executed by the lessee.

Premiums
how to be
paid.

XXI. And be it further enacted, That all fines, premiums, and sums of money, which shall be had, received, or paid for or on account of the renewal of any lease, after a deduction of all necessary incidental charges and expenses, shall be paid, if such renewal shall be made by or in the name of an infant, to his guardian, and be applied and disposed of for the benefit of such infant, in such manner as the said court shall direct; if

(f) See *ante*, pp. 347, 348.

such renewal shall be made by a feme covert, to such person or in such manner as the court shall direct for her benefit; if such renewal shall be made in the name of any person out of jurisdiction or not amenable as aforesaid to such person or in such manner, or into the court of Chancery to such account, and to be applied and disposed of as the said court shall direct; and if such renewal should be made in the name of a lunatic, to the committee of the estate of such lunatic, and be applied and disposed of for the benefit of such lunatic, in such manner as the Lord Chancellor, intrusted as aforesaid, shall direct; but upon the death of such lunatic, all such sum and sums of money as shall arise by such fines or premiums, or so much thereof as shall remain unapplied for the benefit of such lunatic at his death, shall, as between the representatives of the real and personal estates of such lunatic, be considered as real estate, unless such lunatic shall be tenant for life only, and then the same shall be considered as personal estate.

11 Geo. 4 & 1
Wm. 4. c. 68.

On death of lunatic, money arising by such fines to be considered real estate.

XXII. And whereas by the said act passed in the Parliament of *Ireland* in the eleventh year of the reign of Queen *Anne*, after reciting that several persons had theretofore made and thereafter might make leases for one or more life or lives, of several lands, tenements, and hereditaments in the said then kingdom of *Ireland*, with covenants and agreements in such leases for renewing the same from time to time on the tender and payment of some fine, certain on the death of any life or lives in such lease or leases mentioned, by adding such one or more life or lives, on failure of the life or lives in being within the respective times in such agreements and covenants mentioned, as the several lessee or lessees in such lease or leases should nominate; and also reciting, that through one pretence or other, on the fall or failure of any life or lives in being, the lessee or lessees were greatly delayed before he or they could obtain any renewal according to the covenants and agreements in their leases, to their great discouragement; for remedy whereof it was enacted, that if it should so happen that any person or persons who, in pursuance of such agreements for renewal in such leases contained or to be contained, ought to make such new lease or leases as had been or should be agreed to be made, should be under any disability so to do, by reason of infancy, coverture, or *non compos mentis*, that then and in every such case, (that is to say), in case of disability by reason of infancy or being under age, by the direction of the High Court of Chancery or the court of Exchequer, signified by an order made upon hearing all parties concerned on the petition of such lessee or lessees, it should and might be lawful to and for the guardian or guardians of such infant or persons under age, upon such lessee or lessees tendering the fine or fines agreed on in such lease, and performing all

The Irish act,
11 Ann. c. 3,
continued un-
altered.

11 Geo. 4 & 1
Wm. 4, c. 65.

such matters and things as by the said covenants and agreements ought to be performed on his or their part and behalf previous to such renewal, in such manner as should be by such order be directed, to renew such lease or leases by adding such new life or lives as should be named by the said lessee or lessees according to the said covenants and agreements, and such guardian or guardians were thereby required to renew such lease or leases by putting in such new life or lives as should be so named unto them as aforesaid, while the infant or minor of such guardian or guardians should be under such disability of infancy or under age; and it was further enacted, that in all cases where the person or persons who by covenant or agreement were obliged to make such renewals were or should be disabled to renew by reason of being under coverture, beyond the seas, or *non compos mentis*, it should and might be lawful to and for the Lord Chancellor or Commissioner or Commissioners of the Great Seal of the said then kingdom of *Ireland* for the time being upon petition or complaint made to him or them in the High Court of Chancery, upon payment of the fine and such other sum or sums of money as ought to be paid upon such renewal for the use of the person or persons entitled to the same, and upon the lessee or lessees doing and performing all and every such matters and things as by the said covenants or agreements in the said lease or leases ought to be done or performed by him or them previous to such renewal, to order or appoint such renewal or renewals to be made by one of the Masters of the said court of Chancery, to be nominated and appointed by the said Lord Chancellor or Commissioner or Commissioners of the Great Seal for the time being; and such Master so nominated and appointed, and also such guardian and guardians as aforesaid, should make and execute such deed of renewal in the name of the person or persons who ought to have renewed the same; which deed or deeds of renewal so made and executed by the said guardian or guardians, Master or Masters, counterparts thereof being duly perfected by the lessee or lessees for the use and benefit of the person or persons having the reversion and inheritance of such lands, tenements, or hereditaments comprised in such deed or deeds, should be as good and effectual in law and equity, to all intents and purposes, as if the person or persons under age had been of full age and had executed the same, or as if the other person or persons under such disability had not been so disabled and had executed the same; provided such person or persons under age or under such disability as aforesaid were at the time of the renewal of such lease compellable in law or equity to make such renewal: And whereas it is expedient that the provisions of the said recited act, which have been so long in force in *Ireland*, should remain unaltered—Be it therefore further enacted, That

the clauses and provisions contained in the said act shall be and continue in force in the same manner to all intents and purposes as if the said clauses and provisions, and every part thereof, had been repeated and re-enacted in this act; and none of the other provisions in this act contained for authorizing any surrenders to be accepted, or any new lease to be made or executed, for or on the behalf of any person who, in pursuance of any covenant or agreement for renewal in any lease contained or to be contained, ought to make such new lease or leases, shall extend or be construed to † land in *Ire-* † Sec.
land (g).

XXIII. And be it further enacted, That where any person, being lunatic, is or shall be seised or possessed of any land, either for life or for some other estate, with power of granting leases and taking fines, reserving small rents on such leases, for one, two, or three lives in possession or reversion, or for some number of years determinable upon lives, or for any term of years absolutely, such power of leasing which is or shall be vested in such person, being lunatic and having a limited estate only, shall and may be executed by the committee of the estate of such person, under the direction and order of the Lord Chancellor, intrusted as aforesaid.

The power of leasing lands, &c. of lunatics having a limited estate may be executed by the committee.

XXIV. And be it further enacted, That where any person, being lunatic, is or shall be seised or possessed of or entitled to any land in fee or in tail, or to any leasehold land for an absolute interest, and it shall appear to the Lord Chancellor, intrusted as aforesaid, to be for the benefit of such person that a lease or under-lease should be made of such estates for terms of years, for encouraging the erection of buildings therein, or for repairing buildings actually being thereon, or otherwise improving the same, or for farming or other purposes, it shall be lawful for the Lord Chancellor, intrusted as aforesaid, to order and direct the committee of the estate of such lunatic to make such lease of the land of such persons respectively, or any part thereof, according to his or her interest therein respectively, and to the nature of the tenure of such estates respectively, for such term or terms of years, and subject to such rents and covenants, as the Lord Chancellor, intrusted as aforesaid, shall direct (h).

Where lunatics are seised of estates in fee or in tail, or an absolute interest in leasehold estates, the Chancellor may direct leases to be made.

XXV. And whereas by an act passed in the first year of the reign of King *George* the First, intituled *An act for making more effectual her late Majesty's gracious intentions for augmenting the maintenance of the poor clergy*, it was enacted, That the agreements of guardians for and on behalf of infants or idiots under their guardianship should be as good and effectual to all intents and purposes as if the said infants or idiots had been of full age and of sound mind, and had

So much of 1 G. 1, c. 10, s. 9, as enacts that agreements of guardians shall bind infants, repealed.

(g) See *ante*, pp. 352—354.

(h) See *ante*, pp. 341—346.

11 Geo. 4 & 1
Wm. 4, c. 65.

themselves entered into such agreements: And whereas it is desirable that the said powers should be exercised under proper control, and that the same should be extended to all persons against whom a commission of lunacy shall have issued: Be it therefore further enacted, That so much of the said act of the first year of the reign of King *George* the First, as is hereinbefore recited, shall be and the same is hereby repealed.

Such agreements may be made by guardians, with the approbation of the court, and by committees with the approbation of the Lord Chancellor.

XXVI. And be it further enacted, That the guardian of any infant, with the approbation of the court of Chancery, to be signified by an order to be made on the petition of such guardian in a summary way, may enter into any agreement for or on behalf of such infant which such guardian might have entered into by virtue of the said last-recited act, if the same had not been repealed; and the committee of the estate of any lunatic, with the approbation of the Lord Chancellor, intrusted as aforesaid, to be signified by an order to be made in the petition of such committee in a summary way, may enter into any agreement for or on behalf of such lunatic which the guardian of an infant might have entered into for or on the behalf of such infant by virtue of the said last-recited act, if the same had not been repealed.

Committee of lunatics, by direction of the Lord Chancellor, may convey land in performance of contracts.

XXVII. And be it further enacted, That when any person who shall have contracted to sell, mortgage, let, divide, exchange, or otherwise dispose of any land, shall afterwards become lunatic, and a specific performance of such contract, either wholly or so far as the same shall remain to be performed, shall have been decreed by the court of Chancery, either before or after such lunacy, it shall be lawful for the committee of the estate of such lunatic, in the place of such lunatic, by the direction of the Lord Chancellor, intrusted as aforesaid, to be signified by an order to be made on the petition of the plaintiff or any of the plaintiffs in such suit, to convey such land, in pursuance of such decree, to such person and in such manner as the said Lord Chancellor, intrusted as aforesaid, shall direct; and the purchase money, or so much thereof as remains unpaid, shall be paid to the committee of such lunatic (i).

The Lord Chancellor may order the estates of lunatics to be sold or charged by mortgage for raising money for the payment of debts, &c.

XXVIII. And be it further enacted, That it shall be lawful for the Lord Chancellor, intrusted as aforesaid, to order any land, of or to which any person being lunatic shall be seised or possessed or entitled, to be sold, or charged and incumbered by way of mortgage, or otherwise disposed of, as shall be deemed most expedient for the purpose of raising money for payment of the debts, or engagements of such lunatic, the discharge of any incumbrances on his estates, the costs of applying for and obtaining the commission of lunacy and in op-

(i) See *ante*, pp. 428, 429.

position thereto, and all proceedings under the said commission, and the costs of such sales, mortgages, charges, and incumbrances, and other dispositions, or for any of such purposes as aforesaid, as such Lord Chancellor, intrusted as aforesaid, shall respectively direct; and that the monies arising from any such sale, mortgage, charge, incumbrance, or other disposition, may be paid, laid out, and applied in payment of the debts and engagements of such lunatic, the discharge of any incumbrances on his estates, the costs of applying for and obtaining the commission of lunacy and in opposition thereto, and all proceedings under the same commission, or incurred under the order of such Lord Chancellor, intrusted as aforesaid, and the costs of such sales, mortgages, charges, and incumbrances, and other dispositions, in such manner as the said Lord Chancellor, intrusted as aforesaid, shall direct; and to direct the committee of the estate of such person to execute, in the place of such person respectively, conveyances of the estates so to be sold, mortgaged, incumbered, or disposed of, and to do all such acts as shall be necessary to effectuate the same, in such manner as such Lord Chancellor, intrusted as aforesaid, shall direct (*k*).

11 Geo. 4 & 1
Wm. 4, c. 65.

XXIX. Provided always, and be it further enacted, That on any sale, mortgage, charge, incumbrance, or other disposition, which shall be made in pursuance of this act, the person whose estate shall be sold, mortgaged, charged, incumbered, or otherwise disposed of, and his or her heirs, next of kin, devisees, legatees, executors, administrators, and assigns, shall have such and the like interest in the surplus which shall remain, after answering the purposes aforesaid, of the money raised by such sale, mortgage, charge, incumbrance, or other disposition, as he, she, or they would have had in the estate by the sale, mortgage, charge, incumbrance, or other disposition of which such monies shall be raised, if no such sale, mortgage, charge, incumbrance, or other disposition had been made; and such monies shall be of the same nature and character as the estate so sold, mortgaged, charged, incumbered, or disposed of; and it shall be lawful for the said Lord Chancellor, intrusted as aforesaid, to make such orders, and to direct such acts and deeds to be done and executed, as shall be necessary for carrying the aforesaid objects into effect, and for the due application of such surplus monies (*l*).

Surplus of
monies to be
of the same
nature as the
estate.

XXX. Provided nevertheless, and be it enacted, That nothing in this act contained shall extend to subject any part of the estates of any person, being lunatic, to the debts or demands of his creditors, otherwise than as the same are now subject and liable by due course of law, but only to authorize the Lord Chancellor, intrusted as aforesaid, to make order

Act shall not
subject estates
of lunatics to
debts other-
wise than they
are now sub-
ject.

(*k*) See *ante*, pp. 362—365.

(*l*) See *ante*, pp. 238—241.

11 Geo. 4 & 1
Wm. 4, c. 65.

in such cases as are hereinbefore mentioned, when the same shall be deemed just and reasonable, or for the benefit or advantage of such lunatic.

Surrender and
leases deemed
valid.

XXXI. And be it further enacted, That every surrender and lease, agreement, conveyance, mortgage, or other disposition respectively, granted and accepted, executed and made, by virtue of this act, shall be and be deemed as valid and legal to all intents and purposes as if the person by whom, or in whose place, or on whose behalf the same respectively shall be granted or accepted, executed and made, had been of full age, unmarried, or of sane mind, and had granted, accepted, made, and executed the same; and every such surrender and lease respectively made and accepted by or on the behalf of a feme covert shall be valid, without any fine being levied by her.

Stock belong-
ing to lunatics
may be order-
ed by the Lord
Chancellor to
be transferred.

XXXIII. And be it further enacted, That where any stock shall be standing in the name of or shall be vested in any person being lunatic, who shall be beneficially entitled thereto, or shall be standing in the name of or vested in any person being committee of the estate of a person found lunatic, in trust for or as part of his property, and such committee shall have died intestate, or shall himself become lunatic, or shall be out of the jurisdiction of or not amenable to the process of the court of Chancery, or it shall be uncertain whether such committee be living or dead, or such committee shall neglect or refuse to transfer such stock, and to receive and pay over the dividends thereof to a new committee, or as he shall direct, for the space of fourteen days next after a request in writing for that purpose shall have been made by any new committee, then and in every or any such case it shall be lawful for the Lord Chancellor, intrusted as aforesaid, upon the petition of the committee of the estates of the person being lunatic, or of the person reported by the master to whom the matter is referred as a proper person to be such committee, although such report shall not have been confirmed, to direct such person as such Lord Chancellor shall think proper to appoint for that purpose to transfer such stock to or into the name of any new committee or in the name of the Accountant-General of the said court, or otherwise, and also to receive and pay over the dividends thereof, or such sum or sums of money, in such manner as such Lord Chancellor shall think proper; and such transfers and payments shall be valid and effectual to all intents and purposes whatsoever (m).

Where stock
shall be stand-
ing in the
names of lu-
natics resid-
ing out of En-
gland, the
† Sic.

XXXIV. And be it further enacted, That where any stock shall be standing in the name of or vested in any person residing out of *England*, it shall be lawful for the Lord Chancellor, intrusted as aforesaid, upon petition, and proof being made to his or their† satisfaction that such person has been declared

lunatic, and that his personal estate has been vested in a curator or other person appointed for the management thereof, according to the laws of the place where such person shall reside, to direct any person whom such Lord Chancellor shall think proper to appoint for that purpose to transfer such stock, or any part or parts thereof, into the name of any such curator or other such person as aforesaid, or otherwise, and also to receive and pay over the dividends thereof, as such Lord Chancellor shall think fit; and that such transfers and payments shall be valid and effectual to all intents and purposes whatsoever (n).

31 Geo. 4 & 1 Wm. 4, c. 65. Lord Chancellor may direct the transfer.

XXXV. And be it further enacted, That the court of Chancery or Lord Chancellor, intrusted as aforesaid, may order the costs and expenses of and relating to the petitions, orders, directions, conveyances, and transfers to be made in pursuance of this act, or any of them, to be paid and raised out of or from the lands or stock or the rents or dividends in respect of which the same respectively shall be made, in such manner as the said court or Lord Chancellor shall think proper (o).

Costs may be directed to be paid.

XXXIX. And be it further enacted, That the powers and authorities given by this act to the Lord Chancellor of Great Britain, intrusted as aforesaid, shall extend to all land and stock wheresoever, within any of the dominions, plantations, and colonies belonging to his Majesty (except Scotland and Ireland).

Powers given to the Lord Chancellor of Great Britain:

XL. And be it further enacted, That the powers and authorities given by this act to the Lord Chancellor of Great Britain, intrusted as aforesaid, shall and may be exercised in like manner by, and are hereby given to, the Lord Chancellor of Ireland, intrusted as aforesaid, with respect to all land and stock in Ireland, but not further or otherwise.

which may be exercised by Lord Chancellor of Ireland.

XLI. And whereas it is desirable that in some cases inquisitions taken in England on a commission in the nature of a writ *de lunatico inquirendo*, and writs of *supersedeas* of any such commission should be acted upon in Ireland in the same manner as the same may be acted upon in England, and for that purpose shall be placed on record in Ireland; and that inquisitions on a like commission executed in Ireland, and writs of *supersedeas* of any such commission, shall be acted on in England, and for that purpose shall be placed on record there; be it therefore enacted, That in all cases where any person has been or shall be found lunatic or of unsound mind, and incapable of managing his or her affairs, by any inquisition on a commission in the nature of a writ *de lunatico inquirendo* under the Great Seal of Great Britain, it shall be lawful for the proper officer, by order of the Lord Chancellor of Great Britain, intrusted as aforesaid, to transmit a transcript of the re-

Inquisitions on commissions under the Great Seal of Great Britain to be transmitted and entered of record in Ireland, and acted on there, and vice versa.

(n) See *ante*, pp. 194, 195.

(o) See *ante*, pp. 389—394.

11 Geo. 4 & 1
Wm. 4, c. 65.

† Sic.

† Sic.

† Sic.

† Sic.

Powers given
to the Lord
Chancellor, to
extend to the
Lord Keeper
and Commis-
sioners.

Who shall be
named in the
orders of the
court for mak-
ing transfers.

cord of such inquisition to the Chancery of *Ireland*, and such transcript shall thereupon be entered of record and be as of record there; and in case a writ of *supersedeas* of any such commission shall issue, the issue of such writ shall be certified and transmitted and recorded in like manner, and the copies of the record of any such inquisition or *supersedeas* so transmitted and entered as of record in the Chancery of *Ireland* shall, if the Lord Chancellor of *Ireland*, intrusted as aforesaid, shall see fit, and so long only as he or they† shall so see fit, be acted upon by him or them respectively†, and be of the same force and validity, and have the same effect to all intents and purposes in *Ireland*, as if such inquisition had been taken on a commission under the Great Seal of *Ireland*, and such writ of *supersedeas* had been issued under the Great Seal of *Ireland*; and that in all cases where any person has been or shall be found lunatic or of unsound mind, and incapable of managing his or her affairs, by any inquisition on a commission in the nature of a writ *de lunatico inquirendo* under the Great Seal of *Ireland*, it shall be lawful for the proper officer, by order of the Lord Chancellor of *Ireland*, intrusted as aforesaid, to transmit a transcript thereof in like manner to the Chancery of *England*, and such transcript shall thereupon be entered as of record there; and in case a writ of *supersedeas* of any such commission shall issue, a transcript thereof shall be certified and transmitted to the Chancery of *England*, and recorded in like manner; and such entry of record of any such inquisition or *supersedeas* shall, if the Lord Chancellor of *Great Britain*, intrusted as aforesaid, shall see fit, and so long as he or they† shall so see fit, be acted upon by him or them respectively†, and be of the same force and validity, and have the same force and effect, as if such inquisition had been taken on a commission under the Great Seal of *Great Britain*, and such writ of *supersedeas* had been issued under the Great Seal of *Great Britain* (p).

XLII. And be it further enacted, That the powers and authorities given by this act to the Lord Chancellor of *Great Britain*, intrusted as aforesaid, shall and may be exercised in like manner by, and are hereby given to, the Lord Keeper or Commissioners of the Great Seal of *Great Britain* for the time being, intrusted as aforesaid; and the powers and authorities given by this act to the Lord Chancellor of *Ireland*, intrusted as aforesaid, shall and may be exercised in like manner by, and are hereby given to, the Lord Keeper or Commissioners of the Great Seal of *Ireland* for the time being, intrusted as aforesaid.

XLIII. Provided always, and be it further enacted, That in all cases in which orders shall be made in pursuance of this act for the transfer of stock, the person to be named in such order for making such transfer shall be some officer of such

company or society in whose books such transfer shall be made; and where such transfer shall be directed to be made in books kept by the governor and company of the Bank of England, such officer shall be the Secretary or Deputy Secretary, or Accountant-General or Deputy Accountant-General, for the time being, of the said governor and company.

11 Geo. 4 & 1
Wm. 4, c. 66.

XLIV. And be it further enacted, That this act shall be and is hereby declared to be a full and complete indemnity and discharge to the governor and company of the Bank of England, and all other companies and societies, and their officers and servants, for all acts and things done or permitted to be done pursuant thereto; and that such acts and things shall not be questioned or impeached in any court of law or equity to their prejudice or detriment.

Act to be an
indemnity to
the Bank and
other compa-
nies.

LUNATIC TRUSTEES AND MORTGAGEES.

11 Geo. 4 & 1 Will. 4, c. 60.

An Act for amending the Law, respecting Conveyances and Transfers of Estates and Funds vested in Trustees and Mortgagees; and for enabling Courts of Equity, to give Effect to their Decrees and Orders in certain Cases.

11 Geo. 4 & 1
Will. 4, c. 60.

[23rd July, 1830.]

WHEREAS an act was passed in the sixth year of the reign of his late Majesty King George the Fourth, intituled *An act for consolidating and amending the laws relating to conveyances and transfers of estates and funds vested in trustees who are infants, idiots, lunatics, or trustees of unsound mind, or who cannot be compelled or refuse to act; and also the laws relating to stocks and securities belonging to infants, idiots, lunatics, and persons of unsound mind*: And whereas an act was passed in the Parliament of Ireland, in the second year of the reign of King George the First, intituled *An act to enable infants who are seised or possessed of estates in fee, in trust or by way of mortgage, to make conveyances of such estates*: And whereas an act was passed in the Parliament of Ireland, in the fifth year of the reign of King George the Second, intituled *An act to enable idiots and lunatics, who are seised or possessed of estates in fee or for lives or terms of years, in trust or by way of mortgage, to make conveyances, surrenders, or assignments of estates; and to prevent delay in suits in equity, where trustees are not found*: And whereas an act was passed in the seventh year of the reign of his late Majesty King George the Fourth, intituled *An act to amend the laws in force in Ireland relating to conveyances and transfers of estates and funds vested in trustees*: And whereas it is expedient that the provisions of the said acts should be conso-

6 G. 4, c. 74.

2 G. 1, (L)

5 G. 2, (L)

7 G. 4, c. 43.

11 Geo. 4 & 1
Will. 4, c. 60.

Recited acts
repealed, ex-
cept as herein
mentioned.

Rules for the
interpreta-
tion of this
act.

validated and enlarged; be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That the said recited acts shall be and the same are hereby repealed, except so far as the same relate to stock belonging beneficially to infants or lunatics, and also except as to such proceedings of any description, under the same acts respectively, as shall have been commenced before the passing of this act, and which may be proceeded in according to the provisions of the said recited acts respectively, or according to the provisions of this act, as shall be thought expedient; Provided always, that the several acts repealed by the said first-recited act shall not be revived.

II. And inasmuch as, in order to avoid unnecessary repetition, certain words are used in this act as describing subjects, some of which, according to their usual sense, such words would not embrace; for the understanding of the sense attached to them in this act—Be it further enacted, That the provisions of this act shall extend to and include the several other estates and persons, matters and things hereinafter mentioned; (that is to say), those relating to land, to any manor, messuage, tenement, hereditament, or real property, of whatever tenure, and to property of every description transferable otherwise than in books kept by any company or society, or any share thereof or interest therein; those relating to stock, to any fund, annuity, or security transferable in books kept by any company or society established or to be established, or to any money payable for the discharge or redemption thereof, or any share or interest therein; those relating to dividends, to interest or other annual produce; those relating to a conveyance, to any fine, recovery, release, surrender, assignment, or other assurance, including all acts, deeds, and things necessary for making and perfecting the same; those relating to a transfer, to any assignment, payment, or other disposition; those relating to a lunatic, to any idiot, or person of unsound mind or incapable of managing his affairs; those relating to an heir, to any devisee or other real representative by the common law or by custom or otherwise; and those relating to an executor, to any administrator or other personal representative; unless there be something in the subject or context repugnant to such construction; and whenever this act, in describing or referring to any trustee or other person, or any trust, land, conveyance, matter, or thing, uses the word importing the singular number or the masculine gender only, the same shall be understood to include and shall be applied to several persons as well as one person, and females as well as males, and bodies corporate as well as individuals, and several trust[†] lands, stocks, conveyances, matters, or things respectively, as well as one trust, land, stock, conveyance,

† Sic.

matter, or thing respectively, unless there be something in the subject or context repugnant to such construction.

11 Geo. 4 & 1 Wm. 4, c. 60.

III. And be it further enacted, That where any person seized or possessed of any land upon any trust or by way of mortgage shall be lunatic, it shall be lawful for the committee of the estate of such person, by the direction of the Lord Chancellor of Great Britain, being intrusted by virtue of the King's sign manual with the care and commitment of the custody of the persons and estates of persons found idiot, lunatic, or of unsound mind, to convey such land, in the place of such trustee or mortgagee, to such person and in such manner as the said Lord Chancellor shall think proper; and every such conveyance shall be as effectual as if the trustee or mortgagee, being lunatic, had been of sane mind, memory, and understanding, and had made and executed the same (g).

Where trustees or mortgagees of land are lunatic, the Lord Chancellor may direct the committees of such persons to convey land;

IV. And be it further enacted, That where any stock shall be standing in the name of any person who shall be a lunatic, as a trustee or executor, alone or jointly with any other person, or shall continue to be standing in the name of a deceased person, whose executor shall be lunatic, or shall be otherwise vested in or transferable by any person who shall be lunatic, for the benefit of some other person, it shall be lawful for the Lord Chancellor, intrusted as aforesaid, to direct the committee of the estate of any such lunatic to transfer or join in transferring such stock to or into the name of such person and in such manner as the said Lord Chancellor shall think proper, and also to order such person appointed as aforesaid to receive and pay over or join in receiving and paying over the dividends of such stock in such manner as the said Lord Chancellor shall direct; and every such transfer, receipt, and payment shall be as effectual as if the person being lunatic had been of sane mind, memory, and understanding, and had transferred, received, and paid, or joined in transferring, receiving, and paying, such stock or dividends.

or may direct the committee or other person to transfer stocks or funds standing in the name of a lunatic trustee, and receive the dividends.

V. And be it further enacted, That where any such person as aforesaid being lunatic shall not have been found such by inquisition, it shall be lawful for the Lord Chancellor, intrusted as aforesaid, to direct any person whom the said Lord Chancellor may think proper to appoint for that purpose, in the place of such last-mentioned lunatic, to convey or join in conveying such land, or to transfer or join in transferring such stock, and receive and pay over the dividends thereof, as hereinbefore is mentioned; and every such conveyance, transfer, receipt, or payment, shall be as effectual as if the said person being lunatic had been of sane mind, memory, and understanding, and had made, done, or executed the same; but where any sum of money shall be payable to such lunatic, no such last-mentioned order shall be made if such sum of money shall exceed seven hundred pounds; and where any sum not ex-

Lord Chancellor, before inquisition, may appoint a person to convey or transfer.

11 Geo. 4 & 1
Wm. 4, c. 60.

Directions or
orders of the
court of Chan-
cery, or by the
Lord Chancel-
lor, &c., un-
der the autho-
rity of this act,
to be made
upon petition.

ceeding seven hundred pounds shall be payable to such lunatic, and any such order shall be made, the Lord Chancellor, intrusted as aforesaid, shall direct to whom and in what manner the money so payable shall be paid; and every payment made in pursuance of such direction shall effectually discharge the person paying the same from the money which he shall so pay (r).

XI. And be it further enacted, That every direction or order to be made in pursuance of this act by the Lord Chancellor, intrusted as aforesaid, or by the court of Chancery, or by any other court herein-before mentioned, shall be signified by an order to be made in any cause depending in such court respectively, or upon petition in the lunacy or matter; and such person as herein-after is mentioned shall be the petitioner, whether such person be or be not under any legal disability; (that is to say), if the same shall relate to a conveyance, transfer, receipt, or payment to or in such manner as may be directed by any person beneficially entitled, then upon the petition of the person or some or one of the persons beneficially entitled to the land, stock, or dividends to be conveyed, transferred, received, or paid; and if the same shall relate to a conveyance in order to vest any land or stock in a new trustee duly appointed by virtue of some power or authority in some instrument creating or declaring the trusts of such land or stock, or by the court of Chancery, either alone or together with any continuing trustee, then upon the petition either of the trustee or some or one of the trustees in whom the same shall be proposed to be vested, or of any person having an interest therein; and if the same shall relate to the conveyance of an estate in mortgage, then upon the petition of the person or some or one of the persons entitled to the equity of redemption thereof, or of the person or some or one of the persons entitled to the monies thereby secured, or the guardian or committee or some or one of the guardians or committees of the person entitled to such monies, if an infant or lunatic.

Lord Chan-
cellor or court
may direct a
bill to be filed
to establish
the right.

XII. Provided always nevertheless, and be it further enacted, That where, on account of the length of time which shall have elapsed since the creation or last declaration of a trust, the title of the person claiming a conveyance or transfer may appear to require deliberate investigation in the presence of all parties interested, in order to prevent the vesting of the legal estate in a person who may not really be entitled to the benefit thereof; or if under other circumstances it shall appear to the Lord Chancellor, intrusted as aforesaid, or the court of Chancery, or any other court herein-before mentioned, not proper to make an order upon petition; it shall be lawful for such Lord Chancellor or any such court to direct a bill to be filed to establish the right of the party seeking the conveyance or transfer, and upon the establishment by a decree of such right, by the same decree, or any order in the cause or in the

(r) See *ante*, pp. 373, n., 382—386.

lunacy, or both, to direct a conveyance or transfer to be made according to the intent of this act. 11 Geo. 4 & 1 Wm. 4, c. 68.

XIII. And be it further enacted, That any committee, infant, or other person directed by virtue of this act to make or join in making any conveyance or transfer or receipt or payment, shall and may be compelled, by the order to be obtained as hereinbefore is mentioned, to make and execute the same in like manner as trustees of full age, and of sane mind, memory, and understanding, are compellable to convey, transfer, or receive and pay over the trust estates or funds vested in them respectively. Committees, infants, &c. may be compelled to convey, transfer, &c.

XV. And be it further enacted, That every person, being in other respects within the meaning of this act, shall be and be deemed to be a trustee within the meaning of this act, notwithstanding he may have some beneficial estate or interest in the same subject, or may have some duty as trustee to perform; but in every such case, and in every case of a mortgagee (not being a naked trustee), it shall be in the discretion of the said Lord Chancellor, intrusted as aforesaid, or the said court of Chancery, if under the circumstances it shall seem requisite, to direct a bill to be filed to establish the right of the party seeking the conveyance or transfer, and not to make the order for such conveyance or transfer unless by the decree to be made in such cause, or until after such decree shall have been made. Act to extend to trustees having an interest, or having duty to perform.

XVI. And be it further enacted, That where any land shall have been contracted to be sold, and the vendor or any of the vendors shall have departed this life, either having received the purchase money for the same or some part thereof, or not having received any part thereof, and a specific performance of such contract, either wholly or as far as the same remains to be executed, or as far as the same by reason of the infancy can be executed, shall have been decreed by the court of Chancery in the lifetime of such vendor or after his decease, and where one person shall have purchased an estate in the name of another, but the nominal purchaser shall, on the face of the conveyance, appear to be the real purchaser, and there shall be no declaration of trust from him, and a decree of the said court, either before or after the death of such nominal purchaser, shall have declared such nominal purchaser to be a trustee for the real purchaser, then, and in every such case the heir of such vendor, or such nominal purchaser or his heir, in whom the premises shall be vested, shall be and be deemed to be a trustee for the purchaser within the meaning of this act. Representatives of vendors to be trustees within this act, after a decree for specific performance; and persons in whose names purchases are made to be such trustees.

XVII. And be it further enacted, That where any land shall have been contracted to be sold, and the vendor or any of the vendors shall have departed this life, having devised Tenants for life, &c., of estates devised in settlement, and

11 Geo. 4 & 1
Wm. 4, c. 60.

contracted to
be sold, may
be directed to
convey, after
a decree for
specific per-
formance.

the same in settlement so as to be vested in any person for life or other limited interest, with any remainder, limitation, or gift over, which may not be vested, or may be vested in some person from whom a conveyance of the same cannot be obtained, or by way of executory devise, and a specific performance of such contract, either wholly or so far as the same remained to be executed, shall have been decreed by the court of Chancery, it shall be lawful for the court by whom such decree shall be made, by the same or any other decree, or any decretal order, or upon petition in the cause, to direct any such tenant for life or other person having a limited interest, or the first executory devisee thereof, to convey the fee simple or other the whole estate contracted to be sold to the purchaser, or in such manner as the said court shall think proper; and every such conveyance shall be as effectual as if the person who shall make the same were seised of the fee simple or other the whole estate contracted to be sold.

Act to extend
to other con-
structive and
resulting
trusts, when
declared by
decree.

XVIII. And be it further enacted, That the several provisions hereinbefore contained shall extend to every other case of a constructive trust, or trust arising or resulting by implication of law; but in every such case where the alleged trustee has or claims a beneficial interest adversely to the party seeking a conveyance or transfer, no order shall be made for the execution of a conveyance or transfer by such alleged trustee until after it has been declared by the court of Chancery, in a suit regularly instituted in such court, that such person is a trustee for the person so seeking a conveyance or transfer; but this act shall not extend to cases upon partition, or cases arising out of the doctrine of election in equity, or to a vendor, except in any case hereinbefore expressly provided for.

Husbands of
female trust-
tees to be
deemed trust-
tees within
the act.

XIX. And be it further enacted, That where any feme covert would be a trustee, mortgagee, heir, or executor, within the provisions of this act, if she were an infant or lunatic, or out of the jurisdiction or not amenable to the process of the court of Chancery or Exchequer, or had refused or neglected as aforesaid to execute or make such conveyance, transfer, receipt, or payment as hereinbefore is mentioned, and the concurrence of her husband shall be necessary in any conveyance, transfer, receipt, or payment which ought to be made or executed by her as such trustee, mortgagee, heir, or executor, then and in any such case such husband, whether under any disability or not, shall be and be deemed to be a trustee within the meaning of this act.

Provisions as
to lunacy to
extend to all
persons com-
pellable to
convey.

XX. And be it further enacted, That the provisions hereinbefore contained for obtaining conveyances from any person being lunatic shall extend to and include all persons being lunatic, who, by force of any law for payment of debts out of

real estate would or hereafter may be compellable to convey any land if of sound mind (*s*). 11 Geo. 4 & 1 Will. 4, c. 60.

XXI. And be it further enacted, That the provisions hereinbefore contained shall extend and be construed to extend to all cases of petitions in which the Lord Chancellor, intrusted as aforesaid, or the court of Chancery, or any of the judges thereof, is by law authorized and empowered to grant relief and make summary orders without suit, either in matters of charity, or relative to or for the better security, or for the application, receipt, payment, or transfer of any of the funds thereof, or in matters relative to any benefit or friendly societies, or for the better security, or for the application, receipt, payment, or transfer of any of the funds thereof.

Act to extend to petitions, in cases of charity and friendly societies.

XXII. And whereas cases may occur, upon applications by petition under this act for a conveyance or transfer, where the recent creation or declaration of the trust or other circumstances may render it safe and expedient for the Lord Chancellor, intrusted as aforesaid, or the court of Chancery, (as the case may require), to direct, by an order upon such petition, a conveyance or transfer to be made to a new trustee or trustees, without compelling the parties seeking such appointment to file a bill for that purpose, although there is no power in any deed or instrument creating or declaring the trusts of such land or stock to appoint new trustees; be it therefore further enacted, That in any such case it shall be lawful for the Lord Chancellor, intrusted as aforesaid, or the said court of Chancery, to appoint any person to be a new trustee, by an order to be made on a petition to be presented for a conveyance or transfer under this act, after hearing all such parties as the said court shall think necessary; and thereupon a conveyance or transfer shall and may be made and executed, according to the provisions hereinbefore contained, to or so as to vest such land or stock in such new trustee, either alone or jointly with any surviving or continuing trustee, as effectually and in the same manner as if such new trustee had been appointed under a power in any instrument creating or declaring the trusts of such land or stock, or in a suit regularly instituted (*t*).

In certain cases, the Lord Chancellor or court of Chancery may appoint new trustees, upon petition.

XXIV. And be it further enacted, That where in any suit commenced or to be commenced in the court of Chancery it shall be made to appear to the court by affidavit that diligent search and inquiry has† been made after any person made a defendant who is only a trustee, to serve him with the process of the court, and that he cannot be found, it shall be lawful for the said court to hear and determine such cause, and to make such absolute decree therein against every person who shall appear to them to be only a trustee, and not otherwise concerned in interest in the matter in question, in such and

Manner of proceeding where trustees, defendants in equity, cannot be found.
† Sic.

(*s*) See 11 Geo. 4 & 1 Will. 4. c. 47.

(*t*) See *ante*, pp. 386—389.

11 Geo. 4 & 1
Wm. 4, c. 60.

the same manner as if such trustee had been duly served with the process of the court, and had appeared and filed his answer thereto, and had also appeared by his counsel and clerk at the hearing of such cause: Provided always, that no such decree shall bind, affect, or in anywise prejudice any person against whom the same shall be made, without service of process upon him as aforesaid, his heirs, executors, or administrators, for or in respect of any estate, right, or interest which such person shall have at the time of making such decree, for his own use or benefit, or otherwise than as a trustee as aforesaid.

Costs may be
directed to be
paid.

XXV. And be it further enacted, That the Lord Chancellor, intrusted as aforesaid, and the court of Chancery, may order the costs and expenses of and relating to the petitions, orders, directions, conveyances, and transfers to be made in pursuance of this act, or any of them, to be paid and raised out of or from the land or stock or the rents or dividends in respect of which the same respectively shall be made, or in such other manner as the said Lord Chancellor or court shall think proper (u).

Powers given
to the Lord
Chancellor of
Great Britain;

XXVI. And be it further enacted, That the powers and authorities given by this act to the Lord Chancellor of *Great Britain*, intrusted as aforesaid, shall extend to all land and stock within any of the dominions, plantations, and colonies belonging to his Majesty (except *Scotland* and *Ireland*).

which may be
exercised by
the Lord Chan-
cellor of Ire-
land.

XXVII. And be it further enacted, That the powers and authorities given by this act to the Lord Chancellor of *Great Britain*, intrusted as aforesaid, shall and may be exercised in like manner by, and are hereby given to the Lord Chancellor of *Ireland*, intrusted as aforesaid, with respect to all land and stock in *Ireland*.

Powers given
to the Lord
Chancellor to
extend to the
Lord Keeper
and Commis-
sioners.

XXVIII. And be it further enacted, That the powers and authorities given by this act to the Lord Chancellor of *Great Britain*, intrusted as aforesaid, shall and may be exercised in like manner by and are hereby given to the Lord Keeper or Commissioners of the Great Seal of *Great Britain* for the time being, intrusted as aforesaid; and the powers and authorities given by this act to the Lord Chancellor of *Ireland*, intrusted as aforesaid, shall and may be exercised in like manner by, and are hereby given to the Lord Keeper or Commissioners of the Great Seal of *Ireland* for the time being, intrusted as aforesaid.

Who shall be
named in the
orders of the
court for
making
transfers.

XXXII. Provided always, and be it further enacted, That in all cases in which orders shall be made, in pursuance of this act, for the transfer of stock, the person to be named in such order for making such transfer shall either be the committee of the estate of the person being lunatic, in whose place such transfer shall be made, or a co-trustee or co-executor

(u) See *ante*, pp. 389—394,

of the person in whose place such person shall be directed to transfer, or some officer of the company or society in whose books the same respectively shall be directed to be made; and where such transfer shall be directed to be made in books kept by the governor and company of the Bank of *England*, such officer shall be the Secretary or Deputy Secretary or Accountant-General for the time being of the said governor and company, or his deputy.

11 Geo. 4 & 1
Wm. 4, c. 60.

XXXIII. And be it further enacted, That this act shall be and is hereby declared to be a full and complete indemnity and discharge to the governor and company of the Bank of *England*, and all other companies and societies, and their officers and servants, for all acts and things done or permitted to be done pursuant thereto, and that such acts and things shall not be questioned or impeached in any court of law or equity to their prejudice or detriment.

Act to be an
indemnity to
the Bank and
other com-
panies.

INSOLVENT LUNATIC DEBTORS.

7 Geo. 4, c. 57, s. 13.

(Continued by 2 & 3 Will. 4, c. 40.)

[26th May, 1826.]

AND be it further enacted, That if any person who shall at any time be a prisoner in any such prison as aforesaid, upon any such process as aforesaid, shall be or become of unsound mind (x), and therefore incapable of taking the benefit of this act, in such manner as he or she might have done if of sound mind, the gaoler or keeper of such prison shall forthwith require one or more justice or justices of the peace for the county, riding, division, or place wherein such prisoners shall be, to attend at the said prison, and inquire into the state of mind of such prisoner; and thereupon, and also in case any such justice or justices shall receive information by other means, that any such prisoner is of unsound mind as aforesaid, such justice or justices shall go to the said prison, and by his or their own view, and by examination on oath of such person or persons as he or they shall think fit to examine, shall inquire into the state of mind of such prisoner; and if it shall appear to such justice or justices upon such inquiry that such prisoner is of unsound mind, and therefore incapable of taking the benefit of this act, in such manner as a person of sound mind might do, such justice or justices shall forthwith make a record of the fact, and certify the same to the said court, and thereupon it shall be lawful for the said court, at the instance of any person or persons on behalf of such prisoner to order notice to be inserted in the London Gazette,

7 Geo. 4, c. 57,
s. 73.

Mode of pro-
ceeding with
insolvent
debtors of un-
sound mind
in prison.

(x) See *ante*, pp. 84, 409.

7 Geo. 4, c. 57,
s. 73.

Application
on notice may
be made on
behalf of such
prisoner.

Court may
discharge such
prisoner;

effects of such
discharge;

may appoint
assignees;

may order
judgment to
be entered up.

and in two or more public newspapers usually circulated in the neighbourhood of such prison, and in the neighbourhood of the usual residence of such prisoner before he or she was committed to such prison, as the said court shall see fit, that application will be made to the said court for the discharge of such prisoner on a day to be specified in such order and notice, being twenty-one days at least from the day of publication of such one of the said Gazette and newspapers containing such notice as shall be last published, which notice, together with the service of the like notice on the creditor or creditors at whose suit such prisoner shall be detained in custody, or his, her, or their attorney or attorneys in such suit, shall be deemed sufficient to authorize the said court to proceed to the discharge of such prisoner if otherwise entitled to such discharge, according to the true intent and meaning of this act; and the said court shall proceed accordingly, and shall discharge such prisoner from custody, and do all other acts under this act, in case it shall appear that such prisoner might have obtained his or her discharge under this act if he or she had been of sound mind; and thereupon all and every estate, right, title, interest in law and equity, real and personal, power, benefit, and emolument whatsoever, which, if such prisoner was of sound mind, could or ought to be conveyed and assigned by such prisoner, pursuant to the provisions of this act, shall, by force and virtue of the order of the said court for the discharge of such prisoner, be vested in the provisional assignee of the said court, or in the other assignee or assignees appointed by the said court, and named in the said order, or in any other order of the said court in that behalf, as fully and effectually, and in the same manner, and with all and every the same consequences and effects, both in fact and law, to all intents and purposes whatsoever, as if such prisoner had been of sound mind, and had duly conveyed and assigned the same to such provisional assignee, at the time and in the manner in this act provided; and that it shall be lawful for the said court to order judgment to be entered up against such prisoner, in the same manner as if he or she had been of sound mind, and had executed a warrant of attorney to authorize the entering up of such judgment in the manner hereinbefore directed, and such order shall be a sufficient authority to the proper officer for entering up the same; and any dividend to be made by such assignee or assignees shall be made in such manner, and such proceedings shall be thereupon had, as are hereinbefore provided in the case of a dividend of the estate and effects of any prisoner made before adjudication; and the discharge of every such prisoner of unsound mind so made as aforesaid, shall extend to all debts and sums of money to which the same might have extended if such prisoner had been of sound mind, and had duly filed his or her schedule, according to the pro-

visions of this act; Provided always, that every such order of discharge, and of the appointment of an assignee or assignees in such case, shall be entered of record in the said court, and proof thereof shall be received by such copy thereof as is hereinbefore (y) directed to be received as proof of conveyances and assignments made in pursuance of this act.

7 Geo. 4, c. 37,
s. 73.

Order of discharge and appointment recorded.

Copy thereof evidence.

MARRIAGE OF LUNATICS.

15 Geo. 2, (1742), c. 30.

An Act to prevent the Marriage of Lunatics.

15 G. 2, c. 30.

WHEREAS persons who have the misfortune to become lunatics may, by reason of such their disorder, be liable to be surprised into unsuitable marriages; which may be of pernicious consequence, and a great misfortune to their families: Wherefore, for preventing the same, and the ill consequence thereof—Be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That, from and after the twenty-fourth day of *June*, in the year of our Lord one thousand seven hundred and forty-two, in case any person who now is, or at any time hereafter shall be found a lunatic, by any inquisition taken or to be taken by virtue of a commission under the Great Seal of *Great Britain*; or any lunatic or person under a phrenzy, whose person and estate by virtue of any act of Parliament now are, or hereafter shall be committed to the care and custody of particular trustees, shall marry before he or she shall be declared of sane mind by the Lord High Chancellor of *Great Britain*, the Lord Keeper, or Lords Commissioners of the Great Seal of *Great Britain* for the time being, or such trustees as aforesaid, or the major part of them respectively, every such marriage shall be, and is hereby declared to be null and void to all intents and purposes whatsoever (z).

Preamble-

Lunatic not to marry till declared of sane mind by the Lord Chancellor, &c

51 Geo. 3, c. 37.

An Act further to prevent the Marriage of Lunatics.

51 G. 3, c. 37.

[31st May, 1811.]

WHEREAS an act was made in the Parliament of *Great Britain*, in the fifteenth year of the reign of his late Majesty King

(y) Section 19.

(z) See *ante*, pp. 446, 447.

51 G. 3, c. 37.

Persons found lunatic marrying before declared sane, marriage to be void.

George the Second, to prevent the marriage of lunatics: And whereas it is expedient that the provisions of the said act should be extended to *Ireland*: Be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That, from and after the expiration of ten days after the passing of this act, in case any person who has been, or at any time hereafter shall be found a lunatic by any inquisition taken or to be taken by virtue of a commission under the Great Seal of *Great Britain*, or the Great Seal of *Ireland* respectively, or any lunatic or person under a phrenzy, whose person and estate by virtue of any act of Parliament now or hereafter shall be committed to the care and custody of particular trustees, shall marry before he or she shall be declared of sane mind by the Lord High Chancellor of *Great Britain* or *Ireland*, or the Lord Keeper or Lords Commissioners of the Great Seal of *Great Britain* or *Ireland* for the time being, or such trustees as aforesaid, or the major part of them respectively, as the nature of the case shall require, every such marriage shall be and is hereby declared to be null and void to all intents and purposes whatsoever.



4 Geo. 4, c. 76, s. 17.—A. D. 1823.

4 Geo. 4, c. 76, s. 17.

In case the father, mother, or guardian of a minor desirous of marrying be non compos mentis, application may be made to Lord Chancellor, &c.;

who may make declaration, having the same effect as consent.

AND be it further enacted, That in case the father or fathers of the parties to be married, or one of them, so under age as aforesaid, shall be *non compos mentis*, or the guardian or guardians, mother or mothers, or any of them whose consent is made necessary as aforesaid to the marriage of such party or parties, shall be *non compos mentis*, or in parts beyond the seas, or shall unreasonably or from undue motives refuse or withhold his, her, or their consent to a proper marriage, then it shall and may be lawful for any person desirous of marrying in any of the before-mentioned cases to apply by petition to the Lord Chancellor, Lord Keeper, or the Lords Commissioners of the Great Seal of *Great Britain* for the time being, Master of the Rolls, or Vice-Chancellor of *England*, who is and are respectively hereby empowered to proceed upon such petition in a summary way; and in case the marriage proposed shall, upon examination, appear to be proper, the said Lord Chancellor, Lord Keeper, or Lords Commissioners of the Great Seal for the time being, Master of the Rolls, or Vice-Chancellor, shall judicially declare the same to be so; and such judicial declaration shall be deemed and taken to be as good and effectual, to all intents and purposes, as if the father, guardian or guardians, or mother of the person so petitioning had consented to such marriage.

LUNATICS CHARGED WITH OFFENCES.

39 & 40 Geo. 3, c. 94.

An Act for the safe Custody of Insane Persons charged with Offences. 39 & 40 G. 3, c. 94.
[28th July, 1800.]

WHEREAS persons charged with high treason, murder, or felony, may have been or may be of unsound mind at the time of committing the offence wherewith they may have been or shall be charged, and by reason of such insanity may have been or may be found not guilty of such offence, and it may be dangerous to permit persons so acquitted to go at large: be it therefore enacted, by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That in all cases where it shall be given in evidence upon the trial of any person charged with treason, murder, or felony, that such person was insane at the time of the commission of such offence, and such person shall be acquitted, the Jury shall be required to find specially whether such person was insane at the time of the commission of such offence, and to declare whether such person was acquitted by them on account of such insanity; and if they shall find that such person was insane at the time of the committing such offence, the court before whom such trial shall be had, shall order such person to be kept in strict custody, in such place and in such manner as to the court shall seem fit, until his Majesty's pleasure shall be known; and it shall thereupon be lawful for his Majesty to give such order for the safe custody of such person, during his pleasure, in such place and in such manner as to his Majesty shall seem fit; and in all cases where any person, before the passing of this act, has been acquitted of any such offences on the ground of insanity at the time of the commission thereof, and has been detained in custody as a dangerous person by order of the court before whom such person has been tried, and still remains in custody, it shall be lawful for his Majesty to give the like order for the safe custody of such person, during his pleasure, as his Majesty is hereby enabled to give in the cases of persons who shall hereafter be acquitted on the ground of insanity.

Preamble.

The jury, in case of any person charged with treason, &c., proving to be insane, to declare whether he was acquitted by them on account of insanity, and the court shall order him to be kept in custody till his Majesty's pleasure be known, &c.

II. And be it further enacted, That if any person indicted for any offence shall be insane, and shall upon arraignment be found so to be by a jury lawfully impaneled for that purpose, so that such person cannot be tried upon such indictment, or if upon the trial of any person so indicted such per-

Persons indicted for any offence, and upon arraignment found to be insane, or if upon trial they shall be

39 & 40 G. 3,
c. 94.

so found, &c.,
the court shall
order them to
be kept in
custody till
his Majesty's
pleasure be
known.

son shall appear to the jury charged with such indictment to be insane, it shall be lawful for the court before whom any such person shall be brought to be arraigned or tried as aforesaid, to direct such finding to be recorded, and thereupon to order such person to be kept in strict custody until his Majesty's pleasure shall be known; and if any person charged with any offence shall be brought before any court to be discharged for want of prosecution, and such person shall appear to be insane, it shall be lawful for such court to order a jury to be impaneled to try the sanity of such person; and if the jury so impaneled shall find such person to be insane, it shall be lawful for such court to order such person to be kept in strict custody, in such place and in such manner as to such court shall seem fit, until his Majesty's pleasure shall be known; and in all cases of insanity so found, it shall be lawful for his Majesty to give such order for the safe custody of such person so found to be insane, during his pleasure, in such place and in such manner as to his Majesty shall seem fit (a).

Persons com-
mitted by any
justice on ac-
count of being
dangerous and
insane shall
not be bailed
except by two
justices, &c.

III. And, for the better prevention of crimes being committed by persons insane, be it further enacted, That if any person shall be discovered and apprehended under circumstances that denote a derangement of mind, and a purpose of committing some crime, for which, if committed, such person would be liable to be indicted, and any of his Majesty's justices of the peace before whom such person may be brought shall think fit to issue a warrant for committing him or her as a dangerous person suspected to be insane, such cause of commitment being plainly expressed in the warrant, the person so committed shall not be bailed except by two justices of the peace, one whereof shall be the justice who has issued such warrant, or by the court of general quarter sessions, or by one of the justices of his Majesty's courts in *Westminster Hall*, or by the Lord Chancellor, Lord Keeper, or Commissioners of the Great Seal (b).

The Privy
Council or
one of the Se-
cretaries of
State may
cause persons
appearing to
be insane and
endeavouring
to gain admittance
to his
Majesty to be
kept in custo-
dy till the insa-
nity of such
person be in-
quired into in
the manner
herein direct-
ed, &c.

IV. And whereas insane persons have, at different times, endeavoured to gain admittance to his Majesty's presence, by intrusion on his Majesty's palaces and places of residence and otherwise, and his Majesty's person may be endangered by reason of the insanity of such persons: be it therefore enacted, That if any person who shall appear to be insane shall endeavour to gain admittance to his Majesty's presence, by intrusion on any of his Majesty's palaces or places of residence, or otherwise, so that there may be reason to apprehend that his Majesty's person may be endangered, it shall be lawful for his Majesty's Privy Council, or one of his Majesty's principal Secretaries of State, to cause such person to be brought before them or him; and if upon examination it shall appear

(a) See *ante*, pp. 470, 471.

(b) See *ante*, pp. 471, 472.

that there is reason to apprehend such person to be insane, and that the person of his Majesty may be endangered by reason of the insanity of such person, it shall be lawful for his Majesty's Privy Council, or one of his Majesty's principal Secretaries of State, to order such person to be kept in safe custody in such place, and in such manner, as according to circumstances shall be ascertained; and for such purpose, it shall be lawful for the Lord Chancellor, Lord Keeper, or Lords Commissioners for the custody of the Great Seal of Great Britain, to award a commission under the said Great Seal, directed to certain commissioners to be therein named, to inquire into the sanity of such person, and whether the person of his Majesty may be endangered by reason of the insanity of such person, and for such purpose to direct the sheriff of the county where such person shall be, to summon a jury to try the sanity of such person, and whether his Majesty's person may be endangered by reason of the insanity of such person, in the same manner as juries are summoned to try the sanity of persons on a commission in the nature of a writ *de lunatico inquirendo*; and if upon the inquisition so taken it shall be found that such person is so far insane that the person of his Majesty may be endangered by reason of the insanity of such person, it shall be lawful for the Lord Chancellor, Lord Keeper, or Lords Commissioners for the custody of the Great Seal for the time being, to take order for the safe custody of such person so long as there shall be reason to apprehend that the person of his Majesty may be endangered by reason of the insanity of such person; and if it shall afterwards appear that such person shall have recovered the use of his or her reason, so that there shall be no longer any reason to apprehend any danger to his Majesty's person from the insanity of such person, it shall be lawful for the Lord Chancellor, Lord Keeper, or Lords Commissioners for the custody of the Great Seal for the time being, to inquire into the fact by such means as to him or them shall seem proper; and if it shall appear to his or their satisfaction, that such person has so far recovered the use of his or her reason, that there is no ground for apprehending any danger to his Majesty's person from the insanity of such person, it shall be lawful for the said Lord Chancellor, Lord Keeper, and Lords Commissioners respectively, to direct such person to be discharged from custody, either absolutely or conditionally, or under restrictions, as to him or them shall seem meet.

39 & 40 G. 3.
c. 54.

COUNTY LUNATIC ASYLUMS IN ENGLAND.

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9 Geo. 4, c. 40.

9 Geo. 4, c. 40. *An Act to amend the Laws for the Erection and Regulation of County Lunatic Asylums, and more effectually to provide for the Care and Maintenance of Pauper and Criminal Lunatics, in England.* [15th July, 1828.]

WHEREAS it is expedient that the several statutes now in force in that part of the United Kingdom called *England*, relating to the care and maintenance of lunatics, being paupers or criminals, should be amended and consolidated into one act, and that such other provision should be made as will facilitate the erection of county lunatic asylums, and improve the treatment of pauper and criminal lunatics; be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That the several acts hereinafter mentioned, *viz.* an act passed in the seventeenth year of the reign of his Majesty King *George* the Second, intituled *An act to amend and make more effectual the laws relating to rogues, vagabonds, and other idle and disorderly persons, and to Houses of Correction*, so far as relates to lunatics to be confined by warrant of justices; and also an act passed in the forty-eighth year of the reign of his late Majesty King *George* the Third, intituled *An act for the better care and maintenance of lunatics, being paupers or criminals, in England*; and also an act passed in the fifty-first year of the reign of his said late Majesty, intituled *An act to amend an act of the forty-eighth year of his present Majesty, for the better care and maintenance of lunatics, being paupers or criminals, in England*; and also an act passed in the fifty-fifth year of the reign of his said late Majesty, intituled *An act to amend an act passed in the forty-eighth year of his present Majesty, intituled 'An act for the better care and maintenance of lunatics, being paupers or criminals, in England'*; and also an act passed in the fifty-sixth year of the reign of his said late Majesty, intituled *An act to amend an act passed in the thirty-ninth and fortieth years of the reign of his present Majesty, for the safe custody of insane persons charged with offences*; and also an act passed in the fifty-ninth year of the reign of his said late Majesty, intituled *An act for making provision for the better care of pauper lunatics in England*; and also an act passed in the fifth year of the reign of his present Majesty, intituled *An act to amend several acts passed for the better care and maintenance of lunatics, being paupers or criminals, in England*, shall be and the same are here-

Repeal of 17
G 2, c. 5, ss.
20 & 21.

48 G 3, c. 96.

51 G. 3, c. 79.

55 G. 3, c. 46.

56 G. 3, c. 117.

59 G. 3, c. 127.

5 G. 4, c. 71.

by repealed, except as to any matters committed or done before the passing of this act, which shall be dealt with as if this act had not passed; and that all asylums erected or established under the said recited acts shall in future be regulated under the directions of this act (c). 9 Geo. 4, c. 40.

II. And be it further enacted, That it shall and may be lawful for the major part of the justices of the peace in and for every county in England, present at any general quarter sessions for the said county, to direct public notice to be given in some newspaper or newspapers circulated in such county, of their intention of taking into consideration at their next quarter-sessions the expediency of providing a county lunatic asylum or asylums, or house or houses for the reception of insane persons, or of appointing a committee of justices to treat with the justices of any one or more of the adjacent counties, or with the subscribers to any lunatic asylum heretofore built and established, or intended to be built and established, by voluntary contributions, to unite with them for such purpose. Justices at quarter sessions may give notice respecting the providing lunatic asylums.

III. And be it further enacted, That the said justices of the peace, after such notice so given as aforesaid, shall at their next general quarter sessions proceed to take the same into consideration; and if it shall appear to the major part of the said justices then and there assembled, (such major part not being less in number than seven), that it is expedient that a county lunatic asylum, or house for the reception of insane persons, should be erected in and for the said county sole, the said justices shall nominate and appoint such number of visiting justices as they shall think fit to superintend the erection and management of such county lunatic asylum, who from time to time shall report their proceedings to the court of general quarter sessions. Justices may appoint committee to superintend the erection of a lunatic asylum.

IV. And be it further enacted, That in all cases where it shall appear expedient to the said justices, so assembled as aforesaid, to unite for the purposes of this act with any one or more adjacent counties, or with any lunatic asylum heretofore built and established by voluntary contributions, or so intended to be built and established, it shall and may be lawful for the said justices, so assembled as aforesaid, to appoint any number of justices not exceeding five, to be a committee for treating with any committee of justices of any such said county or counties, appointed according to the provisions of this act, or with any committee of any such lunatic asylum, to be appointed as hereinafter directed for such purposes. Justices may appoint committee to treat with adjacent counties, or with the committee of subscribers to asylums maintained by voluntary contributions.

V. And be it further enacted, That it shall and may be lawful for the major part of the subscribers to any such lunatic asylum, present at any meeting of subscribers to the same, to be called together by public advertisement for the express Subscribers to any lunatic asylum may appoint a committee to enter into

9 Geo. 4, c. 40.
 agreement
 with commit-
 tee of justices.

purpose of making such appointment, to appoint any number of subscribers not exceeding five, to be a committee to treat with and enter into any agreement with the committee of justices of any county for the purposes of this act; and that every such agreement shall specify the place at or near which such county lunatic asylum shall be situate, the regulations under which the expenses to be incurred shall be defrayed, and the number or proportion of the visitors to be appointed by the said county and subscribers respectively, and, when signed by the major part of the committee of justices aforesaid and the major part of the committee of subscribers so appointed as aforesaid, shall be binding upon the said county and subscribers, if subsequently approved of as herein-after directed.

Agreement to
 be entered
 into where
 counties shall
 be united.

VI. And be it further enacted, That where the committees of justices so appointed by any two or more counties shall think fit to unite the said counties for the purposes of this act, and shall signify their inclination and desire so to do at a meeting holden for that purpose, an agreement shall at such meeting, or as soon as conveniently may be afterwards, be entered into by the said justices so appointed as aforesaid, or the major part of them, in the form or to the effect set forth in the schedule hereunto annexed (No. 1), which agreement, when subscribed by the major part of the justices so nominated and appointed for each county, shall be binding upon the said county; and every such agreement shall specify the place at or near which such county lunatic asylum shall be situate, and the proportions in which the expenses necessary for the carrying into execution the purposes of this act shall be charged and assessed upon the several counties so uniting, which proportions shall be calculated by the said justices so appointed upon the numbers of the respective population of the said several counties and places as shall have been stated in the last returns of the said population which shall have been made under the authority of parliament previous to the union of such counties.

Agreement to
 be reported to
 quarter ses-
 sions, and not
 to be valid
 unless approv-
 ed of.

VII. And be it further enacted, That whensoever any agreement shall have been so entered into and signed as aforesaid, the justices so appointed to be a committee for each county so uniting shall respectively report the same to the justices at their next general quarter sessions to be holden for each of the said counties, and shall then and there deliver into court a duplicate of the said agreement, to be by the clerks of the peace of the said counties entered among the records: Provided always, that no agreement made by any committee of justices shall be valid until the same shall have been submitted to and approved by the majority of the justices of the peace of the county, assembled at the next ensuing general quarter sessions which shall be holden after such agreement shall have been entered into.

VIII. And be it further enacted, That whenever a county lunatic asylum has been provided under the provisions of any former act of Parliament, and in every case in which it shall be determined that a county lunatic asylum shall be provided under the provisions of this act, it shall be lawful for the major part of the justices of the peace acting in and for the county or united counties, at whose expense, wholly or in part, such county lunatic asylum shall have been or is to be provided, present at the general quarter sessions next after the passing of this act, if a county lunatic asylum shall have been already provided, or present at the general quarter sessions where such determination shall be made, or such agreement as aforesaid shall be approved of, as the case may be, if the county lunatic asylum is hereafter to be provided, and thereafter at the *Michaelmas* general quarter sessions of the peace to be holden for such county or counties respectively in each year, and for the major part of the subscribers to any lunatic asylum erected or to be erected by voluntary contributions, who may have united or who may hereafter unite with any county or counties under the provisions of this or any former act, present at a general meeting to be holden in the months of *September* or *October* in every year, of which due notice shall be given by public advertisement in some newspaper circulated within the county in which such lunatic asylum shall be situated, to elect respectively the members of the committee of visiting justices, or committee of subscribers, to act together, for the providing, building, erection, and management of such county lunatic asylum; and that it shall be lawful for the major part of the justices of the peace acting in and for such county or counties, such major part not being less than seven, present at any general quarter sessions of the peace to be holden for such county or counties respectively, or any adjournment thereof, and for the major part of the subscribers to any such asylum erected or to be erected by voluntary contributions as aforesaid, present at any general meeting to be called for that purpose, of which due notice shall be given as aforesaid, to fill up any vacancy in the number of such committee as may have occurred by death or resignation of any member of such committee of justices or subscribers respectively: Provided always, that the number of such justices so appointed to be the committee of visitors as aforesaid shall be in proportion to the share of expenses to be charged and assessed upon the county for which they shall act, but so that a number less than seven shall in no case be appointed for any county so united, and the number of the committee of subscribers to any lunatic asylum uniting with any county as aforesaid, shall be in such proportion as shall have been specified in the agreement entered into between such county or counties and the subscribers to such lunatic asylum.

9 Geo. 4, c. 40.

Appointment of committees of justices and subscribers to form united committee of visitors for providing and managing a lunatic asylum.

Mode of filling up vacancies in the same.

Proviso as to the proportion of the numbers of such committees.

9 Geo. 4, c. 40.

If appointment not made, the visitors continuing to act shall be deemed the committee.

IX. And be it further enacted, That if the justices or subscribers as aforesaid shall in any year neglect or omit to make such election, or to fill up any vacancy which may have occurred as aforesaid, then the committee of visitors before appointed, or such of them as shall continue to act, shall be deemed and taken to be the legal committee of visitors for the providing, building, erection, and management of such county lunatic asylum, until such election as aforesaid shall have been made, or such vacancy shall have been filled up.

Empowering visitors to act;

X. And be it further enacted, That the said visitors so nominated and appointed are hereby authorized and required, within three calendar months after such nomination and appointment as aforesaid, to meet and assemble at such place as shall appear most convenient for that purpose, (due notice thereof being previously given to such visitors by the clerk or clerks of the peace of such county or counties respectively); and that the said visitors may adjourn the said meeting from time to time, or from place to place, and meet as often as they shall think necessary; and the said visitors, or the major part of them, are hereby authorized at their said meetings to appoint a clerk and a surveyor for duly exercising the powers of this act, and from time to time to receive plans and estimates, and, subject as herein-after mentioned, to contract for the purchase of lands and buildings, and for building, erecting, altering, furnishing, and completing such county lunatic asylum, and the yards, courts, and outlets thereto belonging; and every such contractor shall give sufficient security for the due performance of his contract to the clerk to such visitors; and all contracts, when made, and all orders relating thereto, shall be entered in a book to be kept by the clerk to such visitors; and when such county lunatic asylum shall be declared to be completed, then such book shall be deposited and kept among the records of such county sole, or of such of the counties so united for the purposes of this act as shall have paid the largest quota or proportion of the expenses of providing such county lunatic asylum, to be inspected at all reasonable times by any persons contributing to the county rates of such county or counties respectively, or by any such voluntary subscribers as aforesaid; and all buildings or land so to be contracted for and purchased shall be conveyed to such person or persons as the visitors shall think fit, in trust for the uses and purposes of this act; and the said visitors shall from time to time make their report to the general quarter sessions of the peace of such county or counties respectively, of the several plans, estimates, and contracts which shall have been made and entered into in manner aforesaid, and also a report of the sum or sums of money necessary to be raised and levied on such county sole as the expense, or on each of such united counties as the quota or pro-

to appoint clerk and surveyor;

to contract for the purchase of lands.

Contracts to be entered in a book.

portion of the expense, to be incurred in the several accounts 9 Geo. 4, c. 40. as aforesaid.

XI. Provided always, and be it further enacted, That no visitor who shall, under the authority of this act, do any matter or thing in the execution hereof, shall be capable of having any beneficial interest or concern whatsoever, either in his own name or in the name of any other person in trust for him, in any contract or agreement to be made under the authority of this act, or shall, for any design or plan he may deliver or produce, receive any benefit or emolument whatever.

Visitors not to be concerned in contracts.

XII. And be it further enacted, in order to defray the necessary expenses for the execution of this act, That the justices of the peace at their general or quarter sessions may and shall assess and tax a special county rate or rates on all places liable to contribute to the county rate, which said special county rate shall be collected, levied, and recovered in like manner, and by such ways and means, and under such penalties, as any ordinary county rate may by law be collected, levied, and recovered.

Justices to make rates to defray the necessary expenses.

XIII. And whereas the expenses of carrying this act into execution may in some cases become very burthensome on the occupiers of land, and others the contributors to the county rates, in case the said expenses shall be raised in the manner herein mentioned; be it further enacted, That when it shall appear in the report of such visitors that the charge and costs of carrying this act into execution will exceed one half of the amount of the ordinary annual assessment for the county rate for any county (such ordinary assessment to be taken on a mean proportion of the said rate of the last five years preceding that), then and in that case it shall and may be lawful for the justices of the peace within the respective limits of their commission, so assembled in their quarter sessions as aforesaid, from time to time to borrow and take upon mortgage of the rates herein mentioned, by instruments in the form contained in the schedule hereunto annexed (No. 2), or to that or the like effect, any sum not less than fifty pounds each, at legal or lower interest, as to them or the major part of them (such major part not being less than five) shall seem necessary and expedient for the purposes aforesaid, and to secure all and every such sum and sums of money so borrowed upon the credit of the rates to be raised upon such county respectively; and the said justices so assembled as aforesaid are hereby authorized to treat and agree with any person or persons for the loan of any such sum or sums of money, and by their order to confirm and establish every such agreement as aforesaid; and every such agreement so established by such order, and signed by the chairman and two or more justices present at the time of making

Justices may borrow money upon mortgage of the rates herein directed to be raised.

9 Geo. 4, c. 40. such order, shall be and the same is hereby declared to be effectual for securing to the person or persons so advancing any sum or sums of money, his or their executors, administrators, and assigns, all and every such sum or sums of money, with interest for the same, on such terms as in and by such agreement respectively shall be for that purpose stipulated; and the said securities shall be numbered in order of succession in which they shall be granted, and copies or extracts of all such agreements or securities shall be kept with the clerk of the peace, or other proper officer having the custody of the records of the quarter sessions of such county respectively; and all and every person and persons to whom any such security or securities shall be made, or who shall be entitled to the money thereby secured, is and are hereby empowered (by indorsing his, her, or their name or names on the back of such security or securities) to transfer and assign the same, and his, her, or their right to the principal money and interest thereby secured, unto any person or persons, and every such assignee may in like manner transfer the same again, and so *toties quoties*; and the person or persons to whom such security or securities, or any such assignment thereof, shall be made, and his or their respective executors, administrators, and assigns, shall be creditors upon the said rates in an equal degree one with another, and shall not have any preference with respect to the priority of any monies so advanced.

Rates so raised to be charged with the interest, and with a further sum to be applied in discharge of interest and principal.

XIV. And be it further enacted, That the said justices are hereby authorized and required, not only to charge the rates to be raised upon such county with the interest of the money so borrowed on such securities, but also with the payment of a further sum, equal at least with the sum so charged for the interest of such securities, which said sum shall be paid and applied, under the direction of the said justices, in discharge of the interest, and of so many of the principal sums on the said securities as such money will extend to discharge in each year, until the whole of the money for which such securities shall be made, and the interest thereof, shall be fully paid and discharged; and the said justices are required to fix one or more days in each year on which such payment shall be made, and shall make orders for assessments in due time, so as to provide for the regular payment thereof; and they are hereby required to appoint a proper person to keep an exact and regular account of all the receipts and payments under the authority of this act, in a book or books separate and apart from all other accounts, and the same to adjust and settle in such manner that it may easily be seen what interest is growing, and what principal money has been discharged, and what remains due; and the said book or books, so adjusted and settled, to deliver into court at every general an-

A person to be appointed to keep the accounts and deliver the same to the justices at the Michaelmas quarter sessions, who are to inspect them.

nual *Michaelmas* quarter sessions to be held for any such county, or at such other period of the year in any county in which general annual sessions shall be held; and the said justices are hereby required, at every such sessions, carefully to inspect all such accounts, and to make orders for carrying the several purposes of this act into execution, in such manner as to them shall seem meet; and if at any time it shall appear to the said justices that the person so appointed has neglected the said order, and has not duly applied the money in his hands to the purposes hereby directed, such person shall forfeit double the amount of the money which shall not have been applied for the purposes of this act, to be recovered by distress and sale of the offender's goods and chattels, by warrant under the hands and seals of such justices; and the said penalty, after the charges of recovering the same, shall be paid to the treasurer of such county lunatic asylum, to be applied to the use of the same; and the said justices, on a day and hour to be fixed at some general quarter sessions of the peace to be holden for such county, (of which fourteen days' public notice shall be given as aforesaid), shall, in open court, cause all the said several securities to be drawn by lot, and numbered for payment according to the event of such drawing, and the securities so drawn and numbered shall be regularly discharged in succession, according to the priority of such drawn number.

Penalty on such person for neglect.

For discharging securities.

XV. Provided always, and be it further enacted, That it shall be lawful for the said justices of the peace at their said general or quarter sessions, if they shall unanimously agree so to do, to direct that every tenant at rack rent paying such rent aforesaid may deduct and detain, out of the rent payable to his or her landlord or landlords for the premises in respect of which such rent is payable, one half part of the full amount of such rate; and every tenant at rack rent, having paid such rate in manner as aforesaid, shall be and is hereby acquitted and discharged of and from the payment of so much money as such half part shall amount to, as fully and effectually as if the same had been actually paid to any such landlord or landlords in part of the rent due from such tenant.

Justices at sessions may direct tenants at rack rent to deduct one half of the rates from their rent.

XVI. Provided always, and be it further enacted, That the justices of the peace in their respective quarter sessions shall and they are hereby required to make provisions, by means of the rates (which they are hereby authorized to make), and by their orders and directions (which they are hereby authorized to give), in such manner that the whole money to be borrowed under the authority of this act shall be fully paid and discharged within a time to be limited, not exceeding fourteen years from the time of borrowing the same.

Justices to make provision for paying money borrowed within a limited time.

XVII. And be it further enacted, That it shall and may be lawful for the King's most excellent Majesty, his heirs and

Bodies politic, guardians,

9 Geo. 4, c. 40.
&c., may convey lands.

successors, and for all bodies politic and corporate, and also for guardians, committees, husbands, trustees, and attorneys of any person or persons, being infants, lunatics, idiots, under coverture or any other disability, and also for all other persons who are or shall be seised, possessed of, or interested in any houses, buildings, lands, tenements, hereditaments, easements, and privileges which shall be deemed necessary for the purposes of this act, to contract and agree for, and to sell, convey, and assure such houses, buildings, lands, tenements, hereditaments, easements, and privileges, unto such person or persons as shall be named by the visitors, in trust and for the purpose of erecting or providing such county lunatic asylum, and the yards, courts, and outlets thereunto belonging; and all such contracts, agreements, sales, conveyances, and assurances shall be valid and effectual in law to all intents and purposes whatsoever; any law, statute, usage, or custom to the contrary notwithstanding.

Application of money to be paid for the purchase of land, &c.

XVIII. And be it further enacted, That all sums of money which shall be agreed to be paid to any corporation, guardian, committee, husband, trustee, or attorney, for or on behalf of any infants, lunatics, idiots, femmes covert, or cestui que trusts, or to any other person or persons whose houses, buildings, lands, tenements, hereditaments, easements, and privileges shall be limited in settlement, for the purchase of any such lands, tenements, and hereditaments, shall, in case such sums of money shall exceed the sum of one hundred pounds, be laid out by such corporations, guardians, committees, husbands, trustees, attorneys, or any person or persons seised or possessed of such houses, buildings, lands, tenements, hereditaments, easements, or privileges so limited in settlement, as soon as conveniently may be, in the purchase of lands, tenements, and hereditaments in fee simple, to be conveyed to or to the use of such corporations, guardians, committees, husbands, trustees, or attorneys, and to and for such person or persons, and for such estate or estates, and to, for, and upon and subject to such uses, limitations, remainders, and contingencies as the houses, buildings, lands, tenements, hereditaments, easements, or privileges, for or in respect whereof such purchase money shall be paid as aforesaid, shall be limited, settled, and assured at the time such purchase or contract shall be made in manner aforesaid, or such as shall then be capable of taking effect, the charges of such conveyances and settlements to be paid in the same manner as the other expenses relating to the county lunatic asylum; and in the meantime, and until such purchase or purchases shall be made, such money, whether the same shall or shall not exceed the sum of one hundred pounds, shall be laid out by such corporations, or other persons for the time being interested therein, in some Government securities, in the names of two persons, one to be nominated by the party

or parties for the time being interested therein, and the other 9 Geo. 4, c. 40. by the visitors aforesaid; and the interest arising from such securities shall be paid to such person or persons respectively as would have been entitled to the rents and profits of such lands, tenements, hereditaments, easements, and privileges, in case the same had not been sold, or would for the time being be entitled to the rents and profits of such lands, tenements, and hereditaments so to be purchased, in case the same were purchased and settled as aforesaid.

XIX. And be it further enacted, That in case the body or person to whom any sum of money shall be contracted to be paid for the purchase of any lands, tenements, or hereditaments, for the purposes of this act, shall not be able to make a good title to the premises, to the satisfaction of the said visitors, or shall refuse to execute a conveyance or assignment thereof, or in case the person to whom any sum or sums of money shall be so contracted to be paid as aforesaid cannot be found, or be not known or discovered, then it shall be lawful for the said visitors to pay the said sum of money into the Bank of England, in the name and with the privity of the Accountant-General of the court of Exchequer, to be placed to his account to the credit of the party, if known, who shall be interested in the said lands, tenements, or hereditaments, (describing such tenements or hereditaments), but if not known, then to the credit of the said visitors, subject to the order, controul, or disposition of the said court of Exchequer; which said court, on the application of any body or person making claim to any such sum of money, or any part thereof, by motion or petition, shall be and the same is hereby empowered, in a summary way of proceeding or otherwise, as to the same court shall seem meet, to order the same to be laid out and invested in the public funds, or to order distribution thereof, on payment of the dividends thereof, according to the respective estate or estates, title, or interest of the body or person making claim thereunto, and to make such other order in the premises as to the said court shall seem just and reasonable; and the cashier or cashiers of the Bank of England who shall receive such sum of money is and are hereby required to give a receipt for such sum of money, specifying for what the same is received, to such person as shall pay any such sum of money into the Bank as aforesaid.

In case of not making out title, or if persons cannot be found, purchase money to be paid into the Bank.

XX. And be it further enacted, That if any body or person seized or possessed of or interested in any lands, tenements, or hereditaments, or share or shares, estate or estates, interest or interests therein, or charge or charges thereon, as aforesaid, cannot be found, or shall not be known, or shall not be able to make a good title to the premises to the satisfaction of the said visitors, or shall refuse to execute a conveyance or conveyances thereof, then and in any of such cases, upon pay-

If person entitled to lands, &c., cannot be found, or refuse to execute a conveyance thereof, upon payment of the money into the Bank, such lands, &c., to vest in the clerk of

9 Geo. 4, c. 40.
the peace of
the county,
freed of all
claims.

ment of such sum of money as shall have been contracted and agreed to be paid for the purchase of the same premises into the Bank of England, as herein-before directed (in case the same shall be requisite), for the use of such person so interested or entitled as aforesaid, such tenements or hereditaments, or parts, shares, estates, interest, or charges, and the fee simple and inheritance thereof, together with the yearly profits thereof, and all the estate, right, title, interest, use, trust, property, claim, and demand, in law and equity, of the body or person, or unknown person, to whose credit such money shall be paid, in, to, and out of the tenements, hereditaments, and premises to be purchased as aforesaid, shall from thenceforth vest in the clerk of the peace for the time being, and his successors in office, of the county in which such lands, tenements, and hereditaments shall be situated, who shall be deemed in law to be in the actual seisin and possession thereof, to all intents and purposes, freed and discharged from all former and other estates, rights, titles, and interests, claims and demands, as fully and effectually as if every body or person having any estate in the premises had actually conveyed the same by lease and release, bargain and sale enrolled, feoffment with livery of seisin, fine, common recovery, or any other conveyance or assurance whatsoever; and such payment shall not only bar all right, title, interest, claim, and demand of the body or person, or unknown person, of, in, or to the same premises, to whose credit such payment or tender shall have been made, but also shall extend to bar the dower and dowers of the wife of such person, and all estates tail and other estates in possession, reversion, remainder, expectancy, or contingency, and the issue and issues of such person, and every other person whomsoever; and the same premises shall and may be thereupon made use of and employed for the purposes of this act, according to the directions of the said visitors, and under the regulations of this act.

Persons in
possession
deemed entit-
led, unless
the contrary
be shewn.

XXI. Provided always, and be it further enacted, Where any question shall arise touching the title of any body or person to any money to be paid into the Bank of England in pursuance of this act, for the purchase of any houses, buildings, lands, tenements, or hereditaments, or part thereof, or of any estate, right, title, charge, or interest in, to, or upon any tenements or hereditaments to be purchased or taken in pursuance of this act, or to any Bank Annuities to be purchased with any such money, or to the dividends or interest thereof, the body or person who shall have been in the possession of such houses, buildings, lands, tenements, or hereditaments, parts, shares, estates, interests, or charges, at the time of such purchase, and all bodies or persons claiming under such body or person, or under the possession of such body or person, shall be deemed and taken to have been lawfully

entitled to such houses, buildings, lands, tenements, and hereditaments, parts, shares, estates, interests, or charges, according to such possession, until the contrary shall be shewn to the satisfaction of the said court of Exchequer; and the dividends or interest of, and the capital of the Bank Annuities to be purchased with such money, shall be paid, applied, and disposed of accordingly, unless it shall be made appear to the said court that such possession was a wrongful possession, and that some other body or person was lawfully entitled to such houses, buildings, lands, tenements, or hereditaments, part or parts thereof, or some estate or interest therein, or charge thereon.

XXII. Provided also, and be it further enacted, That where by reason of any disability or incapability of the body or corporation or other person entitled to any houses, buildings, lands, tenements, or hereditaments, or part thereof, or share, estate, or interest therein, or charge thereon, to be purchased or taken under the authority of this act, the purchase money for the same shall be required to be paid into the Bank of England, in the name and with the privity of the Accountant-General of the court of Exchequer, and to be applied in the purchase of other lands, tenements, or hereditaments, to be settled to the like uses in pursuance of this act, it shall be lawful for the said court to order the expenses of all purchases to be made in pursuance of this act, or so much thereof as the said court shall deem reasonable, to be paid by the Treasurer of the county, who shall pay such sums of money for such purposes as the said court shall direct, and charge the same to the county rate.

The Court may order reasonable expenses of purchase to be paid by the treasurer of the county, and charged to the county rate.

XXIII. Provided always, and be it further enacted, That all sums of money to be paid pursuant to any such agreement as aforesaid, shall be paid or tendered to the party entitled to the same, or into the Bank of England as herein mentioned, before the said visitors, or any person authorized by them, shall proceed to take possession of any lands, tenements, or hereditaments comprised in or affected by such agreement, or to use the same for any of the purposes of this act.

Money to be paid before any use made of the premises.

XXIV. And be it further enacted, That it shall and may be lawful for the Commissioners of his Majesty's woods, forests, and land revenues, by and with the consent of the Lord High Treasurer of the United Kingdom of Great Britain and Ireland, or the Commissioners of his Majesty's Treasury of the United Kingdom of Great Britain and Ireland, or any three or more of them, in writing, or for his Majesty, by any grant signed by the Chancellor of the Duchy of Lancaster for the time being, or for the Duke of Cornwall, by any grant signed by the Chancellor of the Duchy of Cornwall for the time being, to grant any lands, tenements, and hereditaments, as and

Commissioners of woods and forests, with consent of Treasury, &c., may grant sites for building.

9 Geo. 4, c. 40. for a site of a county lunatic asylum, and to be used therewith; and the said visitors, and the persons to be appointed by them, and their successors, shall be and are hereby empowered and made capable of receiving and enjoying the benefit of any such grant for the use and purposes of this act.

Justices may purchase lands, notwithstanding the statute of mortmain.

XXV. And be it further enacted, That for the purposes of this act the said visitors shall have full power, capacity, and ability to accept and take from any person willing to give the same, or otherwise to purchase; take, hold, and enjoy, any lands, tenements, hereditaments, and any interest therein, and any money issuing out of or charged upon or to arise from the sale of lands, tenements, and hereditaments of and to any value and amount whatever; the statutes of mortmain, or any other statute or law to the contrary thereof in anywise notwithstanding.

Justices to fix sums to be expended on purchase of land and houses, &c., or in erecting buildings.

XXVI. And be it further enacted, That in every case in which a county lunatic asylum shall be provided under the provisions of this act, it shall be lawful for the major part of the justices of the peace of any county or counties united under this act (such major part not being less than five) present at any quarter sessions of the peace, or any adjournment thereof, to be held for such county or counties, from time to time to fix and limit the sums which may be expended on the purchase of lands or houses, or in the erection of new buildings, or in the extension or alteration of existing buildings, for the purpose of such county lunatic asylum, or the yards, outlets, or courts thereunto belonging, as well on the first establishment of such county lunatic asylum as at any time during its continuance; and it shall not be lawful for the committee of visitors appointed for the building, erection, and management of such county lunatic asylum, to enter into any contract or contracts for the purchase of lands or houses, for the erection of new buildings, or for the extension or alteration of existing buildings, for the purpose of such county lunatic asylum, or the yards, outlets, and courts thereunto belonging, at a sum or sums which may in the whole exceed the sum so from time to time limited and appointed by the justices assembled in sessions as aforesaid; and no contract so entered into by such visitors shall be held to be valid or legal.

Visiting justices may rent premises for erecting a lunatic asylum.

XXVII. And be it further enacted, That it shall and may be lawful for, and the said visitors, with the previous consent of the major part of the said justices assembled in sessions, shall have full power and authority to take a demise or grant of any houses, buildings, lands, tenements, or hereditaments, on the site or sites of which it shall be proposed to erect or maintain any such county lunatic asylum, at a rent in the nature of fee farm rent; but such grant or demise shall contain a power for such justices to purchase the fee simple, free from incumbrances, on

payment of any agreed sum, not to exceed thirty years purchase of the rent reserved. 9 Geo. 4. c. 40.

XXVIII. And be it further enacted, That when any county lunatic asylum so provided or so to be provided for any county or counties, or any part thereof, or any addition to any county lunatic asylum already provided, shall be situate within the limits of any other county, then and in every such case the justices of the peace for the county or counties to which such county lunatic asylum shall be long shall have full power and authority to act therein, so far as concerns the regulation of the same in the like manner as if such county lunatic asylum, or the additions thereto, were situate within the bounds of their respective counties. If asylum be situate in any other county, justices of the county or counties to which it belongs may act therein.

XXIX. And be it further enacted, That in all future rates, taxes, and levies to be made for any parish or place in which any land or ground already purchased or to be purchased under the provisions of this or any former act, for the purposes of any county lunatic asylum, shall be situate, such land or ground with any buildings to be erected thereon, shall not be assessed to any such rates, taxes, or levies, at a higher value and more improved rent than the same land or ground was at the time of such purchase; nor shall any building or buildings, which under this or any former act has been or shall be erected on such land, be assessed to any house or window tax; any act or acts to the contrary notwithstanding. Assessment to rates not to be increased by reason of purchases of land under this act.

XXX. And be it further enacted, That in all cases where any such county lunatic asylum shall have been established under the authority of this act, or any former act or acts, the major part of the visitors appointed as aforesaid to superintend the same, present at a meeting duly summoned, such major part not being fewer than three, shall from time to time make such regulations as to them shall seem expedient for the management and conduct thereof, in which regulations shall be set forth the number and description of officers and servants to be kept, the duties to be required, and what salaries respectively shall be paid to them, and may appoint a treasurer, and such other officers and servants, together with such number of assistants as they shall from time to time find necessary, in proportion to the number of persons confined in such county lunatic asylum, and may dismiss any such officer, servant, or assistant, if they see occasion; and shall from time to time fix a certain weekly rate to be paid for each person confined in such county lunatic asylum, which may be sufficient to defray the whole expense of the maintenance and care, medicine and clothing requisite for such person, and the salaries of the officers and attendants: Provided always, that such rate shall in no case exceed fourteen shillings per week; and that the said visitors shall annually audit the accounts of the treasurer, and report the same to the next general quarter sessions Visitors to make regulations and appoint officers; and to fix a weekly rate for maintenance of insane persons; rate not to exceed 14s. per week.

9 Geo. 4, c. 40. of the peace to be holden for the counties at the expense of which such county lunatic asylum shall have been erected.

If rate be found insufficient, justices in quarter sessions may increase it.

XXXI. And be it further enacted, That if the aforesaid rate of fourteen shillings shall be found insufficient, it shall be lawful for the major part of the justices of the peace acting in and for the county or counties at whose expense such county lunatic asylum shall have been established, present at any quarter sessions of the peace to be holden for such county or counties, or any adjournment thereof, (such major part not being less than seven), to make such addition to such rate as to them shall seem fit and necessary, and to make an order accordingly; which order shall be signed by the clerks of the peace, or their deputies, on behalf of the court for their respective counties, and forthwith published in some newspaper circulated within the county or counties; and such additional rate shall be paid by the overseers of the poor of the parishes, townships, or places to which the insane persons in such county lunatic asylum respectively belong, in the same manner as is provided by this act with regard to the weekly rate from time to time to be fixed on by the visitors for the maintenance, medicine, clothing, and care of such insane persons.

A chaplain to be appointed for every county lunatic asylum.

XXXII. Provided always, and be it further enacted, That in every case where a county lunatic asylum shall be provided, a chaplain shall be appointed for the same, which chaplain shall be in full orders, and shall be licensed by the bishop of the diocese; and the said licence shall be revocable by the bishop whenever he shall think fit to withdraw it; and such chaplain shall perform on each *Sunday*, and on the great festivals, the divine service of our church, according to the forms by law established.

Visitors to direct repairs and make order upon the treasurers for payment of expenses.

XXXIII. And be it further enacted, That such visitors may from time to time order all such repairs or other expenses as may be necessary for such county lunatic asylum, and shall direct the same to be paid by an order upon the county treasurer where such county lunatic asylum shall be established by one county only, or shall apportion the same as afore-mentioned upon each county or lunatic asylum, when two or more county or counties and lunatic asylum are united, and shall make an order upon the treasurer of each of the said united counties, and treasurer of such asylum, for the payment of the proportion to be paid by such county or lunatic asylum, and that such treasurer shall immediately discharge the same out of any money which may then be in his hands, under the penalty of double such sum as he shall be directed to pay, to be recovered from him for the benefit of such county lunatic asylum, by action in any of his Majesty's courts at *Westminster*, by the treasurer of the said county lunatic asylum; provided that no order or determination to be made at any meeting of the visitors which shall be held

No order to be made by

under this act shall be made, nor unless due notice of such meeting shall have been previously given, according to the provisions of this act, or according to the rules and regulations made by the visitors; and that all acts, orders, and proceedings which by this act are directed to be had, made or done by or before the said visitors, and all the powers and authorities by this act vested in them generally, shall and may be made and done by the major part of such visitors present at the respective meetings to be held by virtue of this act, such major part not being fewer than three.

9 Geo. 4, c. 49.
visitors unless
the major
part concur.

XXXIV. And be it further enacted, That if any committee of visitors of any county lunatic asylum shall neglect to adjourn any meeting held for the purposes of this act, or where any circumstance shall occur rendering the meeting of such committee necessary within the period to which their meeting may have been adjourned, it shall be lawful for the clerk to such committee to convene a new meeting by a circular letter to each member of such committee, informing him of the time and place of such meeting, ten days at least before the same shall be held.

Clerk may
convene new
meetings of
visitors in
certain cases.

XXXV. And be it further enacted, That the said visitors may sue and be sued in the name of their clerk; and that no action that may be brought or commenced by or against the said visitors, or any of them, by virtue of this act, in the name of the clerk, shall abate or be discontinued by the death or removal of such clerk, or by the act of such clerk without the consent of the said visitors, or any five or more of them, but the clerk to the visitors for the time being shall always be deemed plaintiff or defendant in such action, as the case shall be.

Visitors may
sue in the
name of their
clerk, whose
death or re-
moval shall
not abate
actions.

XXXVI. And be it further enacted, That the justices of the peace acting in and for any county within *England*, at their several petty sessions which shall be held next after the fifteenth day of *August* in each year, shall, and they are hereby required to issue their warrants to the overseers of the poor of the parishes within their respective subdivisions, in the form in the schedule hereunto annexed, (No. 3.), to return lists of all insane persons chargeable to their respective parishes, specifying the name, sex, and age of each insane person, and whether such insane person be dangerous or otherwise, and for what length of time they have been disordered in their senses, and where confined, or how otherwise disposed of; and the overseers of the poor as aforesaid shall, on the receipt of such warrants, forthwith prepare such lists accordingly, in the form in the schedule hereunto annexed, (No. 4.), and such lists shall be verified on oath before any one justice of the peace, and accompanied with a certificate as to the state and condition of every insane person from a physi-

Justices at
petty sessions
to require
overseers to
make returns
of insane per-
sons yearly.

9 Geo. 4, c. 40.

Penalty on overseers neglecting to make such returns.

cian, surgeon, or apothecary, shall within fifteen days be transmitted by such overseer to the clerk of the peace acting in and for such county, or his deputy, to be by him laid before the justices acting for such county at their next general quarter sessions; and any overseer of the poor to whom any such warrant shall have been directed and delivered, who shall not return such list so verified on oath, and so accompanied with such certificate as aforesaid, shall for every such offence be subject to a fine not exceeding ten pounds, to be levied by warrant of distress, under the hands and seals of two justices of the peace; and it shall be lawful for such overseers of the poor, and they are hereby required to defray the necessary expenses of the examination of such insane persons by a physician, surgeon, or apothecary, out of the poor-rates of the parish, township, or place to which such insane persons respectively belong, or where the legal settlement of such insane person shall not have been ascertained, then out of the poor-rates of the parish, township, or place in which such insane person shall reside.

Penalty on overseer neglecting to give notice to justice of the peace of the state of insane persons.

XXXVII. And be it further enacted, That if any overseer of the poor of any parish or place to which any insane person shall be chargeable, shall for the space of seven days wilfully neglect to give information of the state of such person to some justice of the peace acting within the division of the county within which the said parish or place is situate, he shall for every such offence forfeit and pay a sum of money not exceeding ten pounds nor less than forty shillings, (half to the informer and half to the treasurer of the county, to be by him placed to the credit of the county), to be recovered by distress and sale of the offender's goods and chattels, by warrant under the hands and seals of any two justices of the peace for the county in which such parish or place is situate.

When any poor person is deemed to be insane, one justice may require the overseers to bring such person before two justices, who, upon due examination, may cause him or her to be sent to the lunatic asylum or licensed house.

XXXVIII. And be it further enacted, That upon its being made known to any justice of the peace of any county, that a poor person chargeable to any parish or place within such county is deemed to be insane, either by notice from the overseer of such parish or otherwise, it shall be lawful for the said justice, by an order under his hand and seal, if he shall so think fit, to require the overseer of the poor of the said parish or place to bring the said insane person before any two justices of the peace of the said county, at such time and place as shall be appointed by the said order; and the said justices are hereby required to call to their assistance a physician, surgeon, or apothecary, at the charge of the said parish or place; and if upon view and examination of the said poor person, or from other proof, the said justices shall be satisfied that such poor person is insane, the said justices shall make inquiry into the place of last legal settlement of such insane person; and it shall be lawful for them, if they shall so think fit, by an order

under their hands and seals, directed to the said overseer of the poor, according to the form in the schedule (5.) annexed to this act, to cause the said poor person to be conveyed to and placed in the county lunatic asylum established under the directions of this or any former act, for the county, or district of united counties, for which or any of which they shall act, and if no such county lunatic asylum shall have been established, then to some public hospital or some house duly licensed for the reception of insane persons; and it shall be lawful for the said or any other two justices of the peace of the said county, from time to time, as occasion may require, to make order on the overseer of the parish or place wherein such last legal settlement shall be adjudged to be for the payment of all reasonable charges of conveying such poor person to such county lunatic asylum, public hospital, or licensed house; and if such poor person shall be conveyed to such county lunatic asylum or public hospital, for the payment of such weekly sum to the treasurer of such county lunatic asylum, or proper officer of such public hospital respectively, as shall be from time to time fixed upon by the visitors of such county lunatic asylum, or as may be required by the regulations of such public hospital; or if such poor person shall be conveyed to such licensed house, for the payment of such weekly or monthly sum to the keeper of such licensed house, for the maintenance, medicine, clothing, and care of such poor person, as such keeper shall be willing to accept, and as shall appear to the said justices to be a reasonable charge in that behalf; and the said last-mentioned overseer shall not remove such poor person from the said house, without an order for that purpose made by two justices of the peace for the county in which such house shall be situated, after due inquiry into the circumstances of the case, unless such person shall have been discharged as cured: Provided always, that the overseer or other person so conveying such insane person to such county lunatic asylum, public hospital, or licensed house as aforesaid, shall and is hereby required to deliver a certificate from the physician, surgeon, or apothecary so called to the assistance of the justices as aforesaid, which certificate such physician, surgeon, or apothecary is hereby required to give, according to the form in schedule (6.) annexed to this act, to the superintendent of such county lunatic asylum or public hospital, or keeper of such licensed house, as the case may be.

Justices to make order for the payment of the charges of conveying and maintaining such person.

Insane persons not to be removed without justices' order, unless cured.

Overseer to deliver to the keeper a certificate of examination.

XXXIX. And be it further enacted, That in every case where application shall be made to the visitors of any county lunatic asylum, by any relative or friend of a pauper lunatic patient confined therein, requiring that he may be delivered over to his custody and care, it shall and may be lawful for the visitors aforesaid, if they shall think fit, upon the under-

Visitors may deliver any pauper to his relatives or friends upon their undertaking that he shall be no longer chargeable.

9 Geo. 4, c. 41.

taking of such relative or friend as aforesaid, to the satisfaction of the overseers of the parish to which such pauper lunatic belongs, that he shall be no longer chargeable to such parish, to discharge such pauper lunatic.

Medical practitioners appointed by parishes may visit eight times in the year pauper patients confined in any public hospital, &c.

XL. Provided always, and be it further enacted, That a medical practitioner to be duly authorized and appointed at the charge of any parish, shall, with the consent of the overseers or guardians and directors of the poor of such parish, have liberty, eight times in every year, between the hours of eight in the morning and six in the evening, to visit and examine such pauper patient belonging to the said parish as shall be confined in the public hospital, county lunatic asylum, if any such county asylum shall have been established, or in the house duly licensed for the reception of insane persons, within which any pauper patient belonging to such parish shall be confined, and to report to such overseers, guardians, or directors of the poor the result of such inspection and examination.

Where the legal settlement of lunatics cannot be discovered, justices shall send them to the asylum, or other place of confinement for the county where found.

XLI. And whereas it sometimes happens that the place of legal settlement of such insane persons cannot be ascertained; be it enacted, That in every such case it shall be lawful for the said justices, by their said warrant, to direct such person to be confined in the county lunatic asylum for the county, or district of counties, within which such person shall have been found, if any such county lunatic asylum shall have been established, and if no such county lunatic asylum shall have been established, in some public hospital or house duly licensed for the reception of insane persons as aforesaid, and to direct that the reasonable charges for the removal, maintenance, medicine, clothing, and care of such person shall be satisfied and paid by the treasurer of the county within which such person shall be found, out of the county rates, by order of two justices to him directed for that purpose.

If settlement has not been ascertained, two justices may inquire respecting the same, and if satisfied may make order for payment of the expenses.

XLII. Provided always, and be it further enacted, That where the legal settlement of any insane person, confined under any order of any two justices at any county lunatic asylum, public hospital, or any licensed house, has not been ascertained, it shall and may be lawful for any two justices acting in and for the county in which such county lunatic asylum, public hospital, or licensed house is situate, at any time to inquire into the last legal settlement of such insane person; and if satisfactory evidence can be obtained as to such settlement, it shall and may be lawful for such justices to make an order upon the overseers of the parish or township where such last legal settlement of such insane person shall be adjudged to be, for the repayment of the reasonable charges of the removing, maintenance, medicine, clothing, and care of such insane person, incurred within twelve calendar months previous to the date of such order, such charges hav-

ing been first proved to the satisfaction of such justices, and the amount thereof being set forth in such order; and it shall and may be lawful for the said or any other two justices of the peace of the said county, to provide for the future expenses necessary for the maintenance, medicine, clothing, and care of such insane person, in the manner as has been herein-before directed for the two justices before whom such person was originally examined (d).

9 Geo. 4, c. 40.

XLIII. And be it further enacted, That in all cases where two justices are empowered to make an order on the overseer or overseers of any parish, for the payment of reasonable charges of conveyance of pauper lunatics, or for the payment of weekly or monthly sums for the maintenance, clothing, and care of such poor persons, it shall be lawful for two justices of the county in which such county lunatic asylum shall be situate to make such order on the overseer or overseers of any other county which shall jointly maintain such asylum.

Justices of the county in which an asylum is situate may make orders upon overseers of any other county jointly maintaining.

XLIV. And be it further enacted, That upon its being made known to any justice of the peace that any person wandering about and at large within his jurisdiction is deemed to be insane, it shall be lawful for such justice, by an order under his hand and seal, if he shall so think fit, to require the constable or churchwardens and overseers of the poor of the parish or place where such person is found, or some of them, to bring the said person before any two justices of the peace of the said county, at such time and place as shall be appointed by the said order; and the said justices are hereby required to call to their assistance a physician, surgeon, or apothecary, at the charge of the said parish or place; and if upon examination of such person deemed to be insane, or from other proof, the said justices shall be satisfied that such person is so far disordered in his senses that it is dangerous for such person to be permitted to go abroad, the said justices shall make inquiry into the circumstances and place of last legal settlement of such insane person, and it shall be lawful for such justices to proceed in such case in the same manner as has herein-before been directed in the case of a person chargeable to any parish within the jurisdiction of the said justices: Provided always, if it shall appear to the said or any other two justices, upon inquiry, that such person hath an estate more than sufficient to maintain his or her family, they shall, by order under their hands and seals, direct the overseers or churchwardens of any parish or place where any goods, chattels, lands, or tenements of such person shall be, to seize and sell so much of the goods and chattels, or receive so much of the annual rent of the lands and tenements of such persons, as is necessary to pay the charges of removal,

If persons are wandering about and deemed to be insane, although not chargeable, justices may proceed as in case of persons chargeable, and make order for maintenance.

If the estate of the insane person shall be sufficient, overseers may levy for their expenses.

9 Geo. 4, c. 40. maintenance, clothing, medicine, and care of such insane person, accounting for the same at the next quarter sessions, such charges having been first proved to the satisfaction of such justices, and the amount thereof being set forth in such order: Provided always, that nothing herein contained shall be construed to extend to restrain or prevent any relation or friend from taking such insane person under their own care and protection (e).

Justice refusing to make order shall give his reasons in writing.

XLV. Provided always, and be it enacted, That if any justice of the peace shall refuse to make an order for the conveyance of any insane person to any county lunatic asylum, or licensed house for the reception of insane persons, on the application of any overseer of the poor for such purpose, he shall deliver to the said overseer his reasons in writing for such refusal.

Persons aggrieved may appeal to the quarter sessions.

XLVI. Provided also, and be it enacted, That if any person shall feel aggrieved by any order, or by any refusal of an order, of any justice or justices as aforesaid, such person may appeal to the justices of the peace at the next quarter sessions of the peace to be holden in and for the county where the matter of appeal shall have arisen, the persons so appealing having given to the justice or justices against whom such appeal shall be made ten days' notice of his or her intention to make such appeal; and the said justices at such sessions are hereby authorized and required to hear and determine the matter of such appeal in a summary way, and to make such determination as they shall think proper; and every such determination shall be final and conclusive to all intents and purposes whatsoever.

Justices to make return to the quarter sessions of the cases brought before them.

XLVII. Provided always, and be it enacted, That every justice who shall have issued an order for the conveyance of any insane person to such county lunatic asylum, public hospital, or licensed house, or who shall have refused to issue such order, on the application of the overseer of the poor of any parish, shall make a regular return to the next general quarter sessions of the peace to be holden in and for the county in which such parish shall be situate, of all such cases brought before him, stating in all cases of refusal the reasons thereof; and such returns shall be regularly filed, and kept among the records of such court of general quarter sessions.

Sums directed to be paid by overseers to be levied by distress if overseers shall neglect to pay.

XLVIII. And be it further enacted, That if the overseer for the time being of any parish, upon whom any order of justices for the payment of money under the provisions of this act shall have been made, shall, for the space of twenty days next after due notice of such order, refuse or neglect to pay the sums so ordered to be paid, the said sums, together

with the expenses of recovering the same, shall be recovered by distress and sale of the goods of the overseer so refusing or neglecting, or any of them, by warrant under the hands and seals of any two justices of any of their respective counties. 9 Geo. 4, c. 40.

XLIX. And be it further enacted, That no bastard child which shall be born of any insane person in any such county lunatic asylum shall hereby gain a settlement in the parish in which such county lunatic asylum shall be situated, but that the place of the legal settlement of any such child so born as aforesaid shall be in the parish where the mother of such child was last legally settled. Bastards of lunatics to have the legal settlement of the mother.

L. Provided always, and be it further enacted, That nothing in this act contained shall extend or be construed to extend to render any county lunatic asylum which may be provided under the authority of this act, for the use of any county or united counties, liable to the reception of insane persons who may be chargeable to or apprehended in any city, town, precinct, parish, township, or place situate within the limits of such county or united counties, but claiming exemption and being exempt from contributing to the county rate, unless such city, town, precinct, parish, township, or place shall have agreed to unite, and shall thereby have contributed to the expense of the same. Lunatic asylums not to be liable to the reception of lunatics chargeable to any place which does not contribute to the expense.

LI. Provided always, and be it further enacted, That whenever it shall appear to the visitors of any county lunatic asylum, that the space within such county lunatic asylum is more than sufficient for the accommodation of insane persons, being paupers, within the districts for which such county lunatic asylum shall have been built, it shall and may be lawful for such visitors to make order for the admission of so many insane patients as to them shall seem expedient not being pauper or criminal, or being paupers, but belonging to any other county, or to any parish, township, or place within the county or counties by which such county lunatic asylum shall have been provided, exempt from contributing to the county rate of such county or counties, and which shall not have united with such county or counties, or contributed to the expense of such erection, under the conditions and regulations following; (that is to say), that no insane patient shall be admitted into such county lunatic asylum without an order signed by one visitor, directed to the governor or superintendent of such county lunatic asylum, nor without the certificate, in writing, of a physician, surgeon, or apothecary, certifying the insanity of such patient, nor without an undertaking, signed by two substantial householders, or the minister and one of the churchwardens, or the minister and one of the overseers of the poor of the parish or place to which such insane person shall belong, for the due payment of the weekly When any asylum can accommodate more lunatics, visitors may order an addition, whether paupers or not, under certain regulations.

9 Geo. 4, c. 40. allowance and other expenses contingent upon the maintenance and care of such insane person during his or her continuance in such county lunatic asylum, as well as for the removal of such insane person from such county lunatic asylum within three days after due notice given, in writing, by the governor or superintendent of such county lunatic asylum, under the penalty of fifty pounds, to be recovered and applied as other penalties are directed to be recovered and applied by virtue of this act: Provided always, that the weekly provision for the maintenance of such patients, not being paupers, shall be fixed by the visitors at such rate as shall in their judgment be sufficient to cover every expense liable to be incurred on account of each patient.

Provision for maintenance of patients not being paupers.

Penalties on persons having lunatics in their care suffering them to go at large without an order from the justices.

LII. And be it further enacted, That all insane persons committed to such county lunatic asylum shall be safely kept, and that no such person shall be suffered to quit the said county lunatic asylum, or to be at large, until the major part of the visitors of such county lunatic asylum, present at a meeting duly convened under the authority of this act, not being less than three, shall order the discharge of such person, and shall signify the same in writing under their hands and seals, or until any two visitors shall, by and with the advice and consent of the physician, surgeon, or apothecary usually attending in such county lunatic asylum, discharge from such county lunatic asylum any lunatic confined therein, whose perfect recovery may be certified by the said physician, surgeon, or apothecary, by the like order under their hands and seals; and that if any officer, servant, or assistant in such county lunatic asylum shall, notwithstanding, through neglect or connivance, permit such person in any case to escape and be at large, without such order as aforesaid, he or she shall for every such offence forfeit and pay a sum not exceeding forty pounds nor less than forty shillings, to be recovered by distress and sale of the offender's goods and chattels, by warrant under the hands and seals of any two justices of the peace acting for the county in which such county lunatic asylum shall be situated, which warrant such justices are hereby required to grant upon the confession of the party, or upon the information of any witness or witnesses upon oath, which oath such justices are hereby empowered to administer; and the said penalty, after the charges of recovering the same shall be deducted, shall be paid, one moiety to the informer, and the other moiety to the treasurer of the said county lunatic asylum, to be applied to the use of the same.

Expense of removal of paupers from asylums.

LIII. And be it further enacted, That on the regular discharge of any pauper from any such county lunatic asylum, public hospital, or licensed house, the necessary expenses attending the removal of such pauper shall be borne by the parish in which such pauper shall be legally settled; and such ex-

penses, being proved to the satisfaction of and allowed by two justices of the peace acting in and for the county in which such parish, county lunatic asylum, public hospital, or licensed house shall be situated, shall be paid by the overseers of the poor of such parish out of the money raised therein for the relief of the poor.

LIV. And be it further enacted, That in all cases where any person shall be kept in custody as an insane person by order of any court, or by his Majesty's order subsequent thereunto, it shall and may be lawful for any two justices of the peace of the county where such person shall be so kept in custody, to inquire into and ascertain, by the best legal evidence that can be procured under the circumstances of personal legal disability of such insane person, the place of the last legal settlement, and the circumstances of such person; and if it shall not appear that he or she is possessed of sufficient property which can be applied to his or her maintenance, it shall and may be lawful for such two justices to make order, under their hands and seals, upon such parish where they adjudge him or her to be legally settled, to pay such weekly sum for his or her maintenance in such place of custody as one of his Majesty's principal Secretaries of State shall, by writing under his hand, from time to time direct; and where such place of settlement cannot be ascertained, such order shall be made upon the treasurer of the county where such person shall have been apprehended; but if it shall appear that such person is possessed of such sufficient property as aforesaid, then such justices shall order and direct the same to be applied to pay and satisfy the expense of the maintenance of such person, in the manner herein-before directed: Provided always, that the churchwardens and overseers of the parish in which the justices, or the major part of them, shall adjudge any insane person to be settled, may appeal against such order to the general quarter sessions of the peace to be holden for the county where such order shall be made, in like manner and under like restrictions and regulations as against any order of removal, giving reasonable notice thereof to the clerk of the peace of such county, who shall be respondent in such appeal; which appeal the justices of the peace assembled at the said general quarter sessions are hereby authorized and empowered to hear and determine, in the same manner as appeals against orders of removal are now heard and determined.

LIV. And be it further enacted, That if any person while imprisoned in any prison or other place of confinement in England, under any sentence of imprisonment or transportation, shall become insane, and it shall be duly certified by two physicians or surgeons that such person is insane, it shall be lawful for one of his Majesty's principal Secretaries of

9 Geo. 4, c. 40.

Where persons charged with offences are insane, justices to inquire into their settlement, and to make order for their maintenance.

Appeal.

Persons convicted of offences becoming insane during imprisonment, may be removed to a county asylum by or-

9 Gen. 4, c. 40.
der of the Secretary of State.

State to direct, by warrant under his hand, that such person shall be removed to such county lunatic asylum, or other proper receptacle for insane persons, as his Majesty's said principal Secretary of State may judge proper and appoint; and every such person so removed shall remain under confinement in such county lunatic asylum, or other proper receptacle as aforesaid, or in any other county lunatic asylum, or other proper receptacle, to which such person may be removed by any like order, until it shall be duly certified to one of his Majesty's principal Secretaries of State, by two physicians or surgeons, that such person has become of sound mind; whereupon his Majesty's said Secretary of State is hereby authorized, if such person shall still remain subject to be continued in custody, to issue his warrant to the keeper or other person having the care of any such county lunatic asylum, or other proper receptacle as aforesaid, directing that such person shall be removed back from thence to the prison or other place of confinement from whence he shall have been taken; or if the period of imprisonment or custody of such person shall have expired, that he shall be discharged (f).

Visitors of county asylums to prepare a report yearly of the patients confined therein, a copy of which to be sent to the Secretary of State and to the clerk of the Commissioners under 9 G. 4. c. 41.

LVI. And be it further enacted, That the visitors of each county lunatic asylum shall, within one month previous to the first day of June in every year, prepare a report of the patients confined therein, or who shall have been confined therein within the twelve months preceding, according to the form in schedule (No. 7), hereunto annexed; of which report a transcript shall be transmitted by the clerk of the visitors to his Majesty's principal Secretary of State for the Home Department; and the clerk of such visitors shall transmit a copy of such report to the clerk of the Commissioners appointed under an act of the present session of Parliament, intituled *An Act to regulate the care and treatment of insane persons in England*, who shall enter the same in a register to be kept by him for that purpose, and the names of all such patients mentioned in such report shall be by him entered in one general alphabetical list, together with a reference to the county lunatic asylum from whence such reports shall have been respectively transmitted.

Secretary of State may employ any person to inspect any county asylum.

LVII. And be it further enacted, That it shall be lawful for his Majesty's principal Secretary of State for the Home Department, if he shall see fit, to employ any medical or other person to inspect and inquire into the state of any county lunatic

(f) In a recent report of a committee of the House of Commons, the attention of the House is directed to the neglect of the provisions of this statute, by suffering criminal lunatics to remain many years in the common gaols, materially affecting their ar-

rangement. Report of committee appointed to inquire into the best mode of giving efficiency to secondary punishments, ordered by the House of Commons to be printed 22nd June, 1832, pp. 9, 116.

asylum, and to report to him the result of such inspection and inquiry; every such medical or other person so employed shall be paid such sum of money for his attendance and trouble as to his Majesty's said principal Secretary of State for the Home Department shall seem an adequate and reasonable allowance; and such expense shall be defrayed in the same manner and from the same funds as the other expenses attending the county lunatic asylum so visited. 9 Geo. 4, c. 46.

LVIII. Provided always, and be it further enacted, That nothing in this act shall be construed to extend to the royal hospital of Bethlehem. Not to extend to Bethlehem hospital.

LIX. And be it it further enacted, That all complaints and informations of and for offences against this act, or any order to be made in pursuance thereof, except in cases where the manner of hearing and determining thereof is herein-before otherwise directed, shall and may be made before one or more justice or justices of the peace for the county or place wherein the offence shall be committed, and such justice or justices is and are hereby authorized and empowered to take cognizance thereof, and to summon the person or persons complained of to appear before him or them, or upon complaint upon oath to issue his or their warrant or warrants for the apprehension of any such person or persons, and upon appearing or not appearing of such person or persons pursuant to such summons, or upon such person or persons being apprehended with such warrant, to hear the matter of every such complaint and information, by examination of any witness or witnesses upon oath, and to make such determination thereon as such justice or justices shall think proper; and upon conviction of any person such justice or justices shall and may issue a warrant, under his or their hand and seal or hands and seals, for levying the fine, penalty, or forfeiture, by virtue of this act imposed for such offence, by distress and sale of the goods and chattels of the person so convicted; and it shall and may be lawful for any such justice or justices to order any person so convicted to be detained and kept in the custody of any constable or other peace officer until return can be conveniently made to such warrant of distress, unless the said offender shall give sufficient security, to the satisfaction of such justice or justices, for his appearance before the said justice or justices on such day as shall be appointed for the return of such warrant of distress, such day not being more than seven days from the time of taking any such security, and which security the said justice or justices is and are hereby empowered to take by way of recognizance or otherwise; but if upon the return of such warrant of distress it shall appear that no sufficient distress can be had thereupon to levy the said penalty or forfeiture, and such costs and charges as aforesaid, and the same For recovery of penalties.

§ Geo. 4, c. 40. shall not be forthwith paid, or in case it shall appear to the satisfaction of such justice, either by the confession of the offender or offenders or otherwise, that the offender or offenders hath or have not sufficient goods and chattels whereon such penalties, forfeitures, fines, costs, and charges may be levied, were a warrant of distress issued, such justice shall not be required to issue such warrant of distress, and thereupon it shall be lawful for such justice or justices, and he or they is and are hereby authorized and required, by warrant under his or their hand and seal or hands and seals, to commit such offender to the common gaol or house of correction for any term not exceeding three calendar months, unless such penalty or forfeiture, and all reasonable charges attending the recovery thereof, shall be sooner paid and satisfied; and all such fines, penalties, and forfeitures, when recovered, shall, where the application is not otherwise directed by this act, be paid into the hands of the overseers of the poor of the parish where the offence shall be committed; and the overplus, if any, arising from such distress and sale, after payment of the penalty, and the costs and charges attending the same, shall be returned, upon demand, to the owner of the goods and chattels so distrained.

Application of penalties.

Appeal to quarter sessions.

LX. Provided always, and be it further enacted, That any person or persons thinking himself, herself, or themselves aggrieved by any order or judgment made or given, or by the order or determination of any justice or justices of the peace, in pursuance of this act, may, within four calendar months after such order shall be made or given, complain to the justices of the peace at the general or quarter sessions of the peace to be held in and for the county wherein the offence shall be committed, the person or persons appealing having first given at least fourteen days' clear notice in writing of such appeal, and the nature and matter thereof, to the person or persons appealed against, and forthwith after such notice entering into a recognizance before some justice of the said county, with two sufficient sureties, conditioned to try such appeal, and to abide the order and award of the said court thereupon; and the said justices, upon due proof of such notice and recognizance having been given and entered into, shall, in a summary way, hear and determine such complaint at such general or quarter sessions of the peace to be held for the said county, or, if they think proper, adjourn the hearing thereof until the next general or quarter sessions of the peace to be held for the said county, and if they see cause may mitigate any forfeiture or fines, and may order any money to be returned which shall have been levied in pursuance of such order or determination, and shall and may also award such further satisfaction to be made to the party injured, or such costs

to either of the parties, as they shall judge reasonable and proper; and all such determinations of the said justices shall be final, binding, and conclusive upon all parties, to all intents and purposes whatsoever. 9 Geo. 4, c. 90.

LXI. And, in order to remove doubts as to the meaning of certain words in this act, be it enacted, That the word "justice" shall be deemed to mean justice of the peace; and that the words "treasurer of the county" shall be deemed to include any officer in any county, riding, division of the county of *Lincoln*, liberty, county of a city, county of a town, cinque port, or town corporate, who has the custody of any funds assessed upon or raised in or belonging to any county, riding, division of the county of *Lincoln*, liberty, county of a city, county of a town, cinque port, or town corporate, in the nature of county rates, and applicable to the purposes to which county rates are applicable; that the word "visitor" shall be deemed to include any justice of the peace, or subscriber to any lunatic asylum supported by voluntary contributions, duly appointed according to the provisions of this act to superintend the providing, building, or management of any county lunatic asylum; that the words "insane person" shall be deemed to include any lunatic or idiot; and that the said words "justice," "treasurer of the county," "visitor," "insane person," and the words "clerk of the peace," and the words "overseer of the poor," and the word "churchwardens," shall each be deemed to include any person acting as such, and any number of justices, treasurers, visitors, insane persons, clerks of the peace, overseers of the poor, and churchwardens; and the word "person" shall be deemed to include any number of persons; and the meaning of the said words shall not be restricted, although the same may be referred to in the singular number and masculine gender only; and that the word "apothecary" shall be deemed to mean a person authorized to practise as such under an act passed in the fifty-fifth year of King *George* the Third, intitled *An act for better regulating the practice of apothecaries in England and Wales*, and also an act passed in the sixth year of King *George* the Fourth, to amend and explain the aforesaid act of the fifty-fifth year of his late Majesty (g); Rule for Interpretation of this act.
55 G. 3, c. 194.

(g) On the construction of the 55 Geo. 3, c. 194, see *Apothecaries' Company v. Bentley*, 1 Carr. & Payne, 538; *S. C.* 1 Ry. & Mood. 159; *Apothecaries' Company v. Warburton*, 3 Barn. & Ald. 40; *Apothecaries' Company v. Roby*, 5 Barn. & Ald. 949; *S. C.* 1 Dowl. & Ry. 564; *Apothecaries' Company v. Greenwood*, 2 Barn. & Adolph. 703; *Walmisley v. Abbot*, 1 Carr. & Payne, 309; *S. C.* 3 Barn. & Cres. 218; 5 Dowl. & Ry. 62; *Sherwin v. Smith*, 1 Bing. 204; *S. C.* 8 J. B. Moore, 30; *Allison v. Haydon*, 4 Bing. 619; *Steed v. Henley*, 1 Carr. & Payne, 574; *Thompson v. Lewis*, 1 Mood. & Malk. 255; *S. C.* 3 Carr. & Payne, 483; *Wogan v. Somerville*, 1 J. B. Moore, 102; Wilcock on the Laws of the Medical Profession.

9 Geo. 4, c. 40. and that the word "county" shall be deemed to include any county, riding, division of the county of *Lincoln*, liberty, county of a city, county of a town, cinque port, or town corporate; and the words "parish or place" shall be deemed to include any township, hamlet, tithing, vill, extra-parochial place, or any place maintaining its own poor; and that the words "general quarter sessions" shall be deemed to include any general annual sessions of the peace, or any adjournment thereof; and the words "county rate" shall be deemed to include any funds assessed upon or raised in or belonging to any county, riding, division of the county of *Lincoln*, liberty, county of a city, county of a town, cinque port, or town corporate, in the nature of county rates, and applicable to the purposes to which county rates are applicable; and that the meaning of the said several words shall not be restricted, although the same may be subsequently referred to in the singular number only, unless it be otherwise specially provided, or there be something in the subject or context repugnant to such construction.

Commence-
ment of act.

LXII. And be it further enacted, That this act, and the several matters and things herein contained, shall commence and take effect from and after the first day of *August* One thousand eight hundred and twenty-eight, and not sooner.

SCHEDULES REFERRED TO IN THIS ACT.

No. 1.

FORM of AGREEMENT for uniting counties, or lunatic asylums maintained by voluntary contributions, [*as the case may be*], of and , for the purpose of providing a lunatic asylum, or house for the reception of insane persons, pursuant to the statute of the year of King *George* the .

IT is agreed, this day of , by and between the committees or justices of the peace severally appointed for the county [*or committee of subscribers, as the case may be*] of to treat for the uniting of the said counties, or lunatic asylum, [*as the case may be*], for the purposes of an act passed in the ninth year of his Majesty King *George* the Fourth, intituled *An act* [*here insert the title of this act*], that the said counties, &c., [*as the case may be*] shall from henceforth be united for the purposes of the said act, and adopt in all respects the provisions, rules, orders, and regulations, and comply with all the requisites

prescribed by the said act for counties [*as the case may be*] ^{9 Geo. 4, c. 40} uniting for those purposes, and that a county lunatic asylum, or house for the reception of lunatics and other insane persons, with all necessary buildings, courts, yards, and outlets, shall be immediately provided at or near and properly fitted up and accommodated for the purposes mentioned in the said act; and that the necessary expenses attending upon the providing, building, fitting up, repairs, and maintenance of the said county lunatic asylum, shall be defrayed by the said county or counties and lunatic asylum, so united, in the following proportions; (that is to say),

The county of _____ four ninths of the said expenses.

The county of _____ three ninths of the same.

The lunatic asylum of _____ two ninths of the same, [*or as the case may be*].

And we do further agree, that the committee of visitors to superintend the building, erection, and management of the said county lunatic asylum, shall be formed in the following proportion: The justices of the peace for the said county of _____ shall appoint _____, the justices of the peace for the county of _____ shall appoint _____, and the subscribers to the lunatic asylum of _____ shall appoint _____.

And hereunto we, the undersigned justices of the peace, being the major part of each of the committees of justices for the said several counties, and we, the undersigned, being the major part of the committee of subscribers to the lunatic asylum, do, on the part and behalf of the said counties and lunatic asylum, set our hands and seals, this _____ day of _____, in the year _____.

No. 2.

FORM of MORTGAGE and CHARGE upon the COUNTY RATES, for securing the money borrowed.

We, _____ of his Majesty's justices of the peace, and chairman of the court of quarter sessions of the peace of the county, &c., of _____, [*as the case shall be*], holden at _____, the day of _____, and _____, two other of his Majesty's justices of the peace acting for the said county, &c., and assembled in the said court, in pursuance of the powers to us given by an act passed in the ninth year of the reign of his Majesty King George the Fourth, intituled *An act* [*here insert the title of this act*], do hereby in open court mortgage and charge all the rates to be raised within the said county, &c. [*as the case may be*], under the description of county

9 Geo. 4, c. 40. rates, with the payment of the sum of _____, which
of _____ hath pro-
posed and agreed to lend, and hath now actually advanced
and paid towards defraying the expenses of purchasing lands
for building, repairing, &c. [*as the case shall be*] the county
lunatic asylum for the said county, &c., or the united counties
of &c. [*as the case may be*], and we do hereby confirm and
establish the same unto the said _____,
his executors, administrators, and assigns, for securing the
repayment of the said sum of _____ and
interest for the same after the rate of _____ *per*
centum per annum, and do order the treasurer for such county,
&c., or other person [*as the case shall be*], to pay the interest
of the said sum of _____ half-yearly, as the
same shall become due, until the principal shall be discharg-
ed, pursuant to the directions of the said act.

No. 3.

FORM of WARRANT. S. 30.

*To the overseers of the poor of the parish of _____, in the
county of _____, to wit.*

We, _____ and _____, two of
his Majesty's justices of the peace in and for the county
of _____, hereby require you, in pursuance of
an act of Parliament passed in the ninth year of the reign of
his present Majesty King George the Fourth, intituled *An act*
[*here insert the title of this act*], to make out a true list of all
insane persons, being paupers, within the parish aforesaid,
specifying the name, sex, and age of each insane person, and
whether such insane person be dangerous or otherwise, and
for what length of time such lunatics shall have been dis-
ordered in their senses, and where confined, or how other-
wise disposed of; and you shall on the receipt of this warrant
prepare such list according to the form hereunto annexed,
and verify the same on oath before any one justice of the
peace, and return the same, accompanied with a certificate
from a physician, surgeon, or licensed apothecary, as to the
state and condition of each insane person, to the clerk of the
peace or his deputy; and on neglect to prepare such list, or to
return the same within fifteen days to the clerk of the peace
or his deputy, with such certificate as aforesaid, or to verify
such list on oath, you will for every such offence be subject
to a fine not exceeding ten pounds. And you are hereby re-
quired to take notice, that it shall be lawful for you to defray
the necessary expenses of examination of such insane persons

by a physician, surgeon, or apothecary, out of the poor rates 9 Geo. 4, c. 40.
of the parish.

Given under our hands and seals, this day of ,
in the year of our Lord .

A. B. (L. S.)
C. D. (L. S.)

No. 4.

FORM of RETURN.

Geo. 4, c. .

A true list of all lunatics and dangerous idiots within the
parish or precinct of , in the county
of , specifying the name, sex, and age of
each lunatic and idiot, and whether such lunatics be dan-
gerous or otherwise, and for what length of time such
lunatics have been disordered in their senses, and where
confined, or how otherwise disposed of.

Name.	Age.	Sex.	Whether lunatic or idiot.	Whether dangerous or otherwise.	For what length of time disordered in his or her senses.	Where confined, and since what time.	At what expense.

Sworn by , overseers of the
poor of the said parish of , before me,
one of his Majesty's justices of the peace acting
in and for the county of , at ,
this day of , in the year
of our Lord one thousand eight hundred and .

A. B.

No. 5.

FORM OF WARRANT.

Whereas it appears to us, _____ of his Majesty's justices of the peace for the county of _____, having called to our assistance _____ a physician, or surgeon, or apothecary, [as the case may be], that _____, chargeable to the parish of _____, in the said county, is lunatic, insane, or a dangerous idiot [as the case may be], you are hereby directed to cause the said _____ to be conveyed to the county lunatic asylum established at _____, or to the house of _____, situate at _____, in the county of _____, the said house being a house duly licensed for the reception of insane persons.

Given under our hands and seals, this _____ day of _____.

To the overseers of the poor of the parish }
of _____ }

No. 6.

FORM OF CERTIFICATE.

I do hereby certify, That, by the directions of _____, justices of the peace for the county of _____, I have personally examined _____, and that the said _____ appears to be of insane mind.

Dated this _____ day of _____.

LUNATIC ASYLUMS IN IRELAND.

1 & 2 Geo 4, c. 33.—28th May, 1821.

1 & 2 Geo. 4, c. 33. *An Act to make more effectual Provision for the Establishment of Asylums for the Lunatic Poor, and for the Custody of Insane Persons charged with Offences in Ireland.*

WHEREAS an act was made in the fifty-seventh year of the reign of his late Majesty King George the Third intituled
 57 G. 3, c. 106. *An act to provide for the establishment of asylums for the lunatic poor in Ireland*; and which act was amended by an act made in the last session of Parliament; and it is expedient that the provisions of the said acts should be consolidated, and that the same should be amended; and it is also expedient that the custody of insane persons, charged with offences, in Ireland, should be regulated in like manner as in England: Be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That, from and after the expiration of ten days after the passing of this act, the said recited acts of the fifty-seventh year of his late Majesty's reign, and of the last session of Parliament, shall be and the same are hereby repealed: Provided always, that all matters and things, at any time heretofore done under the said recited acts, or either of them, or for the carrying the said acts, or either of them, into execution, shall be and remain as good, valid, and effectual, to all intents and purposes, as if this act had not been made; and that all asylums erected or established under the said recited acts shall in future be regulated under the directions of this act.

repealed.

Matters done under those acts to remain valid.

Lord Lieutenant empowered to direct any number of asylums for the lunatic poor to be erected and established in several districts, consisting either of two or more counties or of one county or town only.

Capacity of asylums.

II. And be it further enacted, That at any time after the passing of this act, it shall and may be lawful for the Lord Lieutenant or other Chief Governor or Governors of Ireland, by and with the advice and consent of his Majesty's Privy Council in Ireland, to direct and order that any number of asylums for the lunatic poor in Ireland shall be erected and established in and for such districts in Ireland as to the said Lord Lieutenant or other Chief Governor or Governors and Privy Council shall seem expedient; and that every such district shall and may consist either of the whole of two or more counties, or of one or more county or counties, and one or more county or counties of cities or towns, or of one county, or county of a city, or county of a town only, and no more; but

shall not in any case include part only of any county, county of a city or town; and that all lunatic poor within every such district respectively shall be maintained and taken care of in the asylum belonging to such district; and that every such asylum established or to be established for any district, consisting of more than one county, or one county of a city or county of a town, shall be sufficient to contain such number of lunatic poor, not being less than one hundred nor more than one hundred and fifty in any one asylum, as shall seem expedient to such Lord Lieutenant or other Chief Governor or Governors and Privy Council; and that, where any such district shall consist of only one county, or county of a city or county of a town, and no more, every such asylum shall be sufficient to contain such number of lunatic poor, not being less than fifty, as shall seem expedient to such Lord Lieutenant or other Chief Governor or Governors and Privy Council; and every order of Council to be made for any such purpose shall be published in the Dublin Gazette.

1 & 2 Geo. 4,
c. 33.

III. And be it further enacted, That, at any time after any such order of council shall be made and published in the Dublin Gazette, it shall and may be lawful for the grand jury of any and every county, county of a city, and county of a town, within any such district, or of which such district shall consist, at any assizes, to present such sum or sums of money to be raised off such county, county of a city, or county of a town respectively, as shall be requisites for defraying the expenses of erecting and establishing such asylum, and for maintaining the same, to such amount and in such proportions as shall be directed by any order to be made by the Lord Lieutenant or other Chief Governor or Governors of Ireland, by and with the advice of his Majesty's Privy Council in Ireland.

Grand jury, at assizes, to present such sum as shall be requisite for such asylums.

IV. And be it further enacted, That it shall and may be lawful for the Lord Lieutenant or other Chief Governor or Governors of Ireland, by and with the advice of his Majesty's Privy Council in Ireland, to order and direct that any sum or sums of money shall be advanced and issued and paid out of the growing produce of the consolidated fund of the United Kingdom arising in Ireland, to such person or persons as shall be named in any such order of council, or into the Bank of Ireland, in the names of any such person or persons, to be paid and applied for the purpose of erecting and establishing any such asylum for the lunatic poor in any such district in Ireland, in such sums and at such times, and in such manner and proportions, and under such rules, regulations, terms, and conditions, and to annex such penalties for breach of such rules, regulations, terms, and conditions, as to such Lord Lieutenant or other Chief Governor or Governors and Privy Council shall seem best suited for promoting the beneficial purposes of this

Lord Lieutenant may direct money to be advanced out of the consolidated fund, for establishing such asylums;

1 & 2 Geo. 4,
c. 33.

act; and after any such asylum shall be fit for the reception of such lunatic poor, the grand jury of every county, county of a city, or county of a town, within the district in and for which such asylum shall be erected and established, or of which such district shall consist, shall present such sum or sums of money at the several ensuing assizes, for the repayment of the money so advanced, and at such times and in such proportions as shall be directed by the Lord Lieutenant or other Chief Governor or Governors of Ireland.

and may ap-
point direc-
tors and com-
missioners for
superintend-
ing the
asylums.

V. And be it further enacted, That it shall and may be lawful for the Lord Lieutenant or other Chief Governor or Governors of Ireland, by and with the advice of his Majesty's Privy Council in Ireland, to nominate and appoint such persons as he and they shall think fit and proper, to be governors or directors of every or any such asylum, in any such district; and also to nominate and appoint any persons not exceeding eight in number, to be commissioners for general controul and correspondence, and for the superintending and directing the erection, establishment, and regulation of all such asylums; and also that it shall and may be lawful for the Lord Lieutenant, or other Chief Governor or Governors of Ireland, and Privy Council, to make, frame, and establish, or, upon the suggestion and recommendation of such commissioners for general controul and correspondence, to adopt and authorize any rules and regulations for the good conduct and management of such asylums in general, or of any such asylum in particular; Provided always, that every person who shall be appointed to be a governor or director of any such asylum, or to be one of the commissioners for such general controul and correspondence, shall act without any salary, fee, reward, or emolument whatsoever.

No salary to
director, &c.,
allowed.

Commission-
ers may rent
and purchase
premises for
erecting luna-
tic asylums.

VI. And be it further enacted, That, in each and every case, where an order of council for the erection of a district lunatic asylum shall have been made and published in the Dublin Gazette as in this act is provided, the said commissioners for general controul and correspondence shall have full power and authority to rent or purchase any houses, buildings, lands, tenements, or hereditaments, on the scite or scites of which it shall be proposed to erect or maintain any such district lunatic asylum; and any houses, lands, tenements, buildings, or hereditaments, so rented or purchased, shall and may be conveyed to the said commissioners, or any three of them, and to their heirs and successors, in trust to and for the uses and purposes of the said district lunatic asylum.

Grand juries
at assizes,
shall present
for expenses

VII. And be it further enacted, That it shall be lawful for the grand jury of every county, county of a city, or county of a town, in Ireland, in or for which, wholly or in part, any such

asylum hath been or shall be established, or hath been or shall be ordered or directed so to be under the provisions of the said recited acts or this act, and such grand jury are hereby required, at the assizes next ensuing the day or time when such purchase shall be made, or such rent shall become due, or any expenditure shall have been made for supplying or maintaining any such asylum, or the officers or attendants thereof, or the patients therein, or as soon after as shall be requisite, and so from time to time whenever the case shall happen, to present to be raised off any such county, county of a city, or county of a town, such sum or sums of money as shall be necessary for completing such purchase, or paying such rent or rents, or any such disbursements and expenditures, or any of them, or any part or proportion thereof, to be ascertained by an order to be made by the Lord Lieutenant, or other Chief Governor or Governors, in council as aforesaid; and if the said grand jury shall refuse to make any such presentment, the court shall order the sum or sums which ought to be so presented, to be raised as if the same had been so presented, and the same shall be raised and paid accordingly.

1 & 2 Geo. 4,
c. 33.
&c., of asylums.

VIII. And be it further enacted, That it shall and may be lawful to and for all bodies politic and corporate, trustees, guardians of infants, committees of lunatics, femes covert with their husbands, and all other persons whatsoever, who are or shall be seised or possessed of, or interested in, or entitled unto any estate or interest whatsoever in the lands, houses, grounds, tenements, buildings, or hereditaments which by the said commissioners shall be thought necessary to be rented or purchased for any of the purposes of this act, by deeds indented and enrolled, to demise, sell, and convey all and any such grounds, houses, tenements, or hereditaments, or any part thereof, and all the respective estates and interests therein, to the said commissioners, or any three of them, and their heirs and successors; and that all contracts, agreements, bargains, sales, and conveyances that shall be so made, shall be good and valid in law to all intents and purposes whatsoever; and that such commissioners, and their heirs and successors, shall be trustees of all such houses, lands, tenements, and hereditaments as shall be conveyed to or vested in them under and by virtue of this act, for the purposes herein provided, and for no other purpose whatsoever.

Bodies corporate, &c., may sell and convey premises for such purposes.

IX. And for the better ascertaining the rent or value of any such lands, tenements, or hereditaments as may be rented or purchased for the purposes of this act: Be it further enacted, That it shall and may be lawful to and for the said commissioners, or any three of them, to issue a warrant or warrants, or precept or precepts, to the sheriff of the county,

Sheriffs to proceed in making valuations of premises, as they are empowered to do in cases of valuation of scites of

1 & 2 Geo. 4,
c. 33.

gaols under
50 G. 3, c. 103.

or county of a city, or county of the town wherein the lands, tenements, and hereditaments proposed to be purchased are lying and being; and such sheriff or sheriffs respectively shall thereupon proceed to take such steps for the valuation of such lands, tenements, or hereditaments, as are prescribed for the valuation of lands, tenements, or hereditaments taken for the scites of gaols, by virtue of an act passed in the fiftieth year of the reign of his late Majesty King George the Third, intituled *An act for repealing the several laws relating to prisons in Ireland, and for re-enacting such of the provisions thereof as have been found useful, with amendments, or of any act or acts for amending the same.*

Powers vested
in commis-
sioners for
building gaols,
to extend to
commissioners
for building
lunatic asy-
lums.

X. And be it further enacted, That all the powers vested in the commissioners for building gaols in the said recited act of the fiftieth year of his late Majesty's reign, or of any act for amending the same, shall be and are hereby vested in the commissioners of general controul and correspondence for the district lunatic asylums of Ireland, or any three of them, so far as the same relate to the holding a court, and proceeding to the valuation of the lands, tenements, and hereditaments, on the scite of which any district lunatic asylum shall or may have been, or may be erected, under and by virtue of this act, or the said recited acts.

Provisions of
recited act,
50 G. 3, c. 103,
affecting pur-
chase and va-
luation of
scites, to ex-
tend to this
act.

XI. And be it further enacted, That all and every of the provisions of the said recited act of the fiftieth year of his said late Majesty's reign, or any act for amending the same, which affect or relate to the purchase and valuation of lands, tenements, or hereditaments, for the scites of gaols or prisons, or to any notices, proceedings, summonses, verdicts, and judgments, or to any conveyances or enrolments, or to the lodgments of consideration money, or to petitions to the High Court of Chancery in Ireland, or to any payments of purchase money, or to any rights and titles of parties interested, shall be held to apply to the valuation of lands, tenements, or hereditaments rented or taken for the scites of lunatic asylums under this act, or the said hereinbefore recited acts; and such verdicts, judgments, and conveyances shall be binding and conclusive to all intents and purposes whatsoever.

Persons to be
appointed by
commissioners,
with consent
of the Lord
Lieutenant,
to preside in
court, to receive
verdicts of
juries in cases
where ques-
tions of valua-
tion are so
referred.

XII. Provided always, and be it further enacted, That, in every case, when a jury shall be impanneled and sworn for the valuation of any lands, tenements, or hereditaments rented or taken for the scite of any lunatic asylum as aforesaid, it shall and may be lawful to and for the said commissioners, or any three of them, to appoint, by an instrument in writing under their hands and seals, by and with the approbation of the Lord Lieutenant, or other Chief Governor or Governors, in Council, not less than six persons, nor more than twelve, three of whom shall be competent to act on behalf of the said

commissioners, in presiding at such court, and receiving the verdicts of such jury as shall be held and impaneled for such valuation, such persons so appointed and approved of being magistrates for one or more of the counties, counties of cities, or counties of towns, comprehended within the district for which such asylums respectively have been or shall be erected, or of the county, county of a city, or county of a town, of which such district shall consist; and the acts of such magistrates, or any three of them, shall be of equal force and validity with those of the commissioners themselves, so far as relates to holding a court for such valuation, and performing the duties necessary for such valuation, as prescribed by the said recited act of the fiftieth year of his late Majesty's reign, or any act or acts for amending the same.

1 & 2 Geo. 4.
c. 33.

XIII. And be it further enacted, That the rent or purchase money, so fixed and ascertained as aforesaid, shall be provided for out of the general funds for the erection of and maintenance of lunatic asylums by virtue of this act.

Rent or purchase money to be paid out of the general funds.

XIV. And be it further enacted, That, before the twenty-fifth day of March one thousand eight hundred and twenty-two, and so in every succeeding year before the twenty-fifth day of March in each year, the governors or directors of the several lunatic asylums in Ireland, which have been or shall be established under the said recited acts hereby repealed, or under this act, or the treasurer or other proper officer of such lunatic asylum respectively, shall yearly and every year make out and deliver and transmit to the commissioners for auditing the public accounts of Ireland, a return containing a statement and accounts of all the funds intrusted to the governors or directors of every such lunatic asylum respectively, for the benefit of every such asylum, and of the application of such funds, for the year ending on the twenty-fifth day of December preceding such twenty-fifth day of March, with the balances of the debts and credits, and of the whole funds of every such asylum respectively, on such twenty-fifth day of December; and also the number of patients or persons received into and sent out of every such asylum respectively during such preceding year, and the number of patients remaining therein at the time of such return, and the number and names of the physicians, surgeons, officers, servants, and other persons employed in or about the management of every such asylum respectively, and all such other matters and things relating to the management, revenue, and expenditure of every such asylum respectively, as shall from time to time be required by the said commissioners of accounts, for the full disclosure of the state of every such asylum respectively; and all the said returns, statements, and accounts, shall be signed by the secretary, treasurer, or chief officer for the time being of every such asylum respectively, and shall be confirmed as

A yearly account of the funds and expenditure of every such asylum, shall be laid before commissioners of accounts.

1 & 2 Geo. 4, just and true statements by the signature of three governors
c. 33. or directors of every such asylum respectively.

Commissioners for auditing accounts under this act shall exercise all the powers of 52 G. 3, c. 52.

XV. And be it further enacted, That the said commissioners of accounts shall have and they are hereby authorized and empowered to use and exercise all such powers, for the obtaining of the accounts, statements, and returns by this act required to be made relating to the said lunatic asylums, and in the exercising and stating of the accounts of the receipt and expenditure, and of the debts and credits of every such asylum respectively, as are given to or vested in the said commissioners of accounts under and by virtue of an act made in the fifty-second year of the reign of his late Majesty King George the Third, intituled *An act to provide for the speedy and regular examination and audit of the public accounts of Ireland*, with respect to the matters and things required to be done by the said commissioners of accounts under the said recited act; and all and every persons and person shall be subject and liable to such pains and penalties for any disobedience to any orders of the said commissioners of accounts in the execution of this act, as are inflicted or imposed by the said recited act on persons disobeying the orders of the said commissioners under the said recited act.

Persons indicted and acquitted on the ground of insanity at the time of commission of the crime, may be detained in custody.

XVI. And whereas persons charged with offences in Ireland may have been or may be of unsound mind at the time of committing the offence wherewith they may have been or shall be charged, and by reason of such insanity may have been or may be found not guilty of such offences; and it may be dangerous to permit persons in such cases to go at large: Be it therefore enacted, That, in all cases where it shall be given in evidence on the trial of any person in Ireland, charged with treason, murder, or any other offence, that such person was insane at the time of the commission of such offence, and such person shall be acquitted, the jury shall be required to find specially whether such person was insane at the time of the commission of such offence, and to declare whether such person was acquitted by them on account of such insanity; and if they shall find that such person was insane at the time of the committing such offence, the court before whom the trial shall be had, shall, if it shall be thought necessary or proper, order such person to be kept in strict custody, in such place and in such manner as to the court shall seem fit, until the pleasure of the Lord Lieutenant or other Chief Governor or Governors of Ireland for the time being, shall be known, and it shall thereupon be lawful for the Lord Lieutenant or other Chief Governor or Governors of Ireland for the time being, to give such order for the safe custody and care of such person, during the pleasure of the Lord Lieutenant or other Chief Governor or Governors of Ireland for the time being, in such place and in such manner as shall seem fit; and in all

cases where any person before the passing of this act has been acquitted of any such offences, on the ground of insanity at the time of the commission thereof, and has been detained in custody as a dangerous person by order of the court before whom such person has been tried, or otherwise, and shall remain in custody at the time of the passing of this act, it shall be lawful for the Lord Lieutenant or other Chief Governor or Governors of Ireland for the time being, to give the like order for the safe custody and care of such person, as the Lord Lieutenant or other Chief Governor or Governors of Ireland is or are by this act enabled to give in the cases of persons who shall hereafter be acquitted on the ground of insanity.

1 & 2 Geo. 4.
c. 33.

XVII. And be it further enacted, That, if any person indicted in Ireland for any offence shall be found to be insane, by a jury lawfully impaneled for that purpose, so that such person cannot be tried upon such indictment; or if, upon the trial of any person so indicted, such person shall appear to the jury charged with such indictment to be insane, it shall be lawful for the court before whom such person shall be brought to be tried as aforesaid, to direct such finding to be recorded, and thereupon to order such person to be kept in strict custody, and to be taken care of, until the pleasure of the Lord Lieutenant, or other Chief Governor or Governors of Ireland for the time being, shall be known; and if any person charged with any offence shall be brought before any court to be discharged for want of prosecution, and such person shall appear to be insane, it shall be lawful for such court to order a jury to be impaneled, to try the sanity of such person; and if the jury so impaneled shall find such person to be insane, it shall be lawful for such court to order such person to be kept in strict custody, in such place and in such manner as to such court shall seem fit, until the pleasure of the Lord Lieutenant or other Chief Governor or Governors of Ireland for the time being, shall be known; and in all cases of insanity so found, it shall be lawful for the Lord Lieutenant or other Chief Governor or Governors of Ireland for the time being, to give the like order for the safe custody and care of such person so found to be insane, as the Lord Lieutenant or other Chief Governor or Governors of Ireland is or are by this act enabled to give in the cases of persons acquitted on the ground of insanity.

Criminals found insane at the time of their indictment, may be detained under order of courts, and direction of Lord Lieutenant.

XVIII. Provided always, and be it enacted, That, whenever and as soon as there shall be a lunatic asylum built or maintained, either wholly or in part, in any county, county of a city, or county of a town, wherein such prisoner, in any of the cases aforesaid, shall be tried or found insane as aforesaid, then and from thenceforth such insane person shall without delay be removed to such asylum, and shall be kept therein so long as such prisoner shall be detained in custody.

Such insane criminals shall be detained in lunatic asylums, when they are provided.

6 Geo. 4, c. 54.—22nd June, 1825.

6 Geo. 4, c. 54. *An Act to amend an Act of the First and Second Years of his present Majesty, for the Establishment of Asylums for the Lunatic Poor in Ireland.*

WHEREAS an act was made in the session of Parliament held in the first and second years of the reign of his present Majesty, intituled *An act to make more effectual provision for the establishment of asylums for the lunatic poor, and for the custody of insane persons charged with offences in Ireland*; and it is expedient that further provision should be made for the opening, carrying on, maintaining, and supporting of such asylums: Be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That from and after the passing of this act, it shall and may be lawful for the Lord Lieutenant or other Chief Governor or Governors of Ireland, by and with the advice of his Majesty's Privy Council in Ireland, from time to time and at any time or times after any asylum erected or to be erected in pursuance of the said recited act shall be fit for the reception of lunatic poor, to order and direct that any sum or sums of money, not exceeding the sum of ten thousand pounds in any one quarter of a year, shall be advanced and issued and paid out of the growing produce of the consolidated fund of the United Kingdom arising in Ireland, to such person or persons as shall be named in any such order of council, or into the bank of Ireland, in the name or names of any such person or persons, to be from time to time paid and applied for the purpose of opening and carrying on and of maintaining and supporting any such asylum from time to time in any district in Ireland, to such amount and at such times, and in such manner and proportions, and upon such estimates, and under such rules, regulations, terms, and conditions, and with such penalties for breach of such rules, regulations, terms, and conditions, as to such Lord Lieutenant or other Chief Governor or Governors, and Privy Council, shall seem best suited for promoting the beneficial purposes of any such asylum, according to the said recited act and this act.

1 & 2 G. 4,
c. 33.

After any asylum shall be fit for the reception of the lunatic poor, the lord lieutenant may direct any sum not exceeding 10,000*l.* per quarter to be issued out of the consolidated fund for the support of such establishment.

Grand jury of the county to make presentment for the repayment of the money so advanced.

II. And be it further enacted, That it shall be lawful for the grand jury of any and every county, county of a city, or county of a town in Ireland, in or for which, either wholly or in part, any such asylum hath been or shall be erected, and such grand jury are hereby required, at the assizes next after the date of any such order for the advance of money for the opening, carrying on, or maintaining any such asylum, or as

soon after as they shall be thereto required, and from time to time, whenever the case shall happen, to make a presentment for the raising off any such county, county of a city, or county of a town, such sum or sums of money as shall be necessary for the repayment of any such sum or sums so advanced, or any part thereof, at such times and in such proportions as shall be directed and ascertained by any order or orders to be made by the Lord Lieutenant or other Chief Governor or Governors of Ireland in council as aforesaid; and if any such grand jury shall neglect or refuse to make any such presentment, the court shall order the sum or sums which ought to be so presented to be raised, as if the same had been so presented, and the same shall be raised and paid accordingly.

7 Geo. 4, c. 14.—11th April, 1826.

An Act for the further Amendment of an Act of the First and Second Years of his present Majesty, for the Establishment of Asylums for the Lunatic Poor in Ireland. 7 Geo. 4, c. 14.

WHEREAS, by an act made in the session of Parliament holden in the first and second years of the reign of his present Majesty, intituled *An act to make more effectual provision for the establishment of asylums for the lunatic poor, and for the custody of insane persons charged with offences in Ireland*, it is among other things enacted, That, at any time after the passing of the said act it shall be lawful for the Lord Lieutenant, or other Chief Governor or Governors of Ireland, by and with the advice and consent of his Majesty's Privy Council in Ireland, to direct and order that any number of asylums for the lunatic poor in Ireland shall be erected and established in and for such districts in Ireland as to the said Lord Lieutenant, or other Chief Governor or Governors, and Privy Council, shall seem expedient: And whereas several such asylums have been erected and established, and it may be expedient in certain cases to change or alter such districts, and to erect and establish new or additional asylums in lieu of or in addition to any asylum or asylums erected under the said act: Be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That, from and after the passing of this act, it shall and may be lawful for the Lord Lieutenant, or other Chief Governor or Governors of Ireland, by and with the advice and consent of his Majesty's Privy Council in Ireland (from time to time

1 & 2 G. 4,
c. 33.

Lord Lieutenant and Council may establish new or additional asylums; and change the

7 Geo. 4, c. 14.

district in which any asylum shall have been erected.

Districts shall be constituted as directed by the recited act, and asylums shall be under the regulations of that act and 6 G. 4, c. 54.

and at all times whenever and so often as shall seem expedient to him or them so to do), to direct and order that any asylum or asylums for the lunatic poor in Ireland shall be erected and established in any place, or in and for any district in Ireland, in lieu of or in addition to any asylum or asylums erected under the authority of the said recited act; and from time to time to alter or change the district or places in or for which any such asylum or asylums shall have been or shall be erected under the authority of the said recited act or this act: Provided always, that every district in which any such asylum or asylums shall be erected and established under the said recited act or this act, shall be constituted and composed in such manner as is directed by the said recited act; and that every such asylum shall be sufficient to contain such numbers as are required and directed by the said recited act; and that the expense of erecting, establishing, and maintaining every such asylum shall be raised in such manner as is required and directed; and that every such asylum shall be subject to all such rules and regulations as are contained in the said recited act, and in an act made in the last session of Parliament for amending the said recited act; and that the said acts and this act shall be construed together as one act.

Manner of proceeding where any county, &c., shall be taken out of any district, and removed to any new district.

II. And be it further enacted, That, if it shall at any time happen that any money shall have been raised off any county, county of a city, or county of a town, or any part thereof, towards defraying the expenses of erecting, establishing, maintaining, or supporting of any lunatic asylum, and that by reason of any change of the district or place in or for which such asylum shall have been established, such county, county of a city, or county of a town, or any part thereof, shall be taken out of the district liable to be assessed for such expenses, then and in such case any sum or sums of money which shall have been raised off such county, county of a city, or county of a town, or such part thereof as aforesaid, shall be raised off any and every county, county of a city, or county of a town, or any part or parts thereof, which shall remain within such district, and all and every sum and sums which shall be so raised shall be repaid to the treasurer of the county, county of a city, or county of a town which shall have been removed from such district; and that, whenever any county, county of a city, or county of a town, or any part or parts thereof, which shall have been comprised in any former district, shall, by reason of any such change as aforesaid, be comprised in or shall form part of any new district, such county, county of a city, or county of a town, or such part thereof, shall be and is hereby declared to be subject and liable towards the defraying the expenses of any asylum in or for such new district, in like manner as is directed by

the said recited acts, or either of them, and as if such county, 7 Geo. 4, & 14. county of a city, or county of a town, or such part thereof, had been originally comprised in or formed part of such new district.

III. And be it further enacted, That from and after the passing of this act it shall and may be lawful to and for every Archbishop, Bishop, Dean, Dean and Chapter, Archdeacon, Dignitary, or Prebendary, to grant, by his or their deed or deeds respectively, any piece or parcel of land, not exceeding six acres plantation measure, as and for the site of a lunatic asylum, in such and the like manner as such Archbishop, Bishop, Dean, Dean and Chapter, Archdeacon, Dignitary, or Prebendary is empowered to do with respect to land for the site of a church and churchyard in and by an act passed in the Parliament of Ireland in the thirty-third year of the reign of King *George* the Second, among other things, to encourage the building of new churches: Provided always, that such grant shall and may be made either to the churchwardens of the parish in which such land shall be situate, and their successors for ever, according to the directions of the said act of the thirty-third year of King *George* the Second, or to the commissioners for general controul and correspondence appointed under the said recited act of the first and second years of his present Majesty's reign, and their heirs and successors, as the Lord Lieutenant, or other Chief Governor or Governors of Ireland, with the advice of his Majesty's Privy Council in Ireland, shall order and direct; and such grant shall be good and effectual against such Archbishop, Bishop, Dean, Dean and Chapter, Archdeacon, Dignitary, or Prebendary, and his and their successor and successors, and the churchwardens of such parish and their successors for ever, or such commissioners as aforesaid, and their heirs and successors, shall be and are hereby empowered and made capable of receiving and enjoying the benefit of any such grant for the purpose aforesaid, in like manner as by the said acts or either of them is provided with respect to any land granted for the site of a church and churchyard or lunatic asylum respectively.

Archbishops, &c., may grant land for lunatic asylums, in like manner as for churches under 23 G. 2, (1.), c. 11.

Conveyance shall be made either to churchwardens, as under that act, or to the commissioners under 1 & 2 G. 4, c. 33.

11 Geo. 4 & 1 Will. 4, c. 22.—29th May, 1830.

An Act for appropriating the Richmond Lunatic Asylum in Dublin to the Purposes of a District Lunatic Asylum, 11 Geo. 4 & 1 Will. 4, c. 22. amended by 1 Will. 4, c. 13—11th March, 1831.

MADHOUSES IN SCOTLAND.

55 Geo. 3, c. 69.—7th June, 1815.

55 G. 3, c. 69.

An Act to regulate Madhouses in Scotland.

WHEREAS it is expedient that provision should be made for the proper reception and the due care and confinement of furious and fatuous persons and lunatics, in that part of the United Kingdom called Scotland: May it therefore please your Majesty, that it may be enacted; and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That from and after the passing of this act it shall and may be lawful for the sheriffs and stewarts depute and substitute, of every county and stewartry in that part of the United Kingdom called Scotland, and they are hereby empowered to grant licences in the manner directed by this act, for the reception and the care and confinement of furious and fatuous persons and lunatics, within their respective counties and stewartries.

Sheriffs to
grant licences

No person to
keep a mad-
house without
a licence.

II. And be it further enacted, That from and after the expiration of one calendar month after the passing of this act it shall not be lawful for any person or persons to keep a house for the reception and the care or confinement of furious and fatuous persons and lunatics, within any part of Scotland, or to detain any such persons therein, without a licence for that purpose granted and received in the manner directed by this act; in which shall be specified the name, description, and age, of every such furious or fatuous person or lunatic; and if any person or persons shall keep a house for the reception and care or confinement of furious or fatuous persons or lunatics, without such licence, or shall, upon any pretence whatever, conceal, harbour, entertain, or confine, in any house or place kept for the confinement of furious or fatuous persons or lunatics, in any part of the United Kingdom called Scotland, any furious or fatuous person or persons, or lunatic or lunatics, or any person or persons as such, without having a licence as required by this act, every such person shall, for every such offence, forfeit the sum of two hundred pounds, and the expenses attending the recovery of the same.

Licences to be
renewed every
year; rate to
be paid for the

III. And be it enacted, That every such licence shall be made out by the sheriff or stewart clerk of the county or stewartry wherein the same is granted, and the same shall be

renewed every year; and for the first and every annual licence there shall be paid at the rate of two guineas for every furious or fatuous person or lunatic specified therein; and all monies received by any sheriff or steward clerk for such licences shall be paid by him, after deducting the sum of two shillings and sixpence, as his fee for making out such licence, and form part of the rogue money in such county or stewartry; from which fund all the expenses required to be disbursed in the execution of this act shall be paid and defrayed, upon the order of the sheriff or steward depute of the county or stewartry; and if any sheriff or steward clerk shall neglect or delay so to pay to the collector of the rogue money all monies received by him for such license, subject to such deduction, for the space of ten days after the same shall have been received by him, every such sheriff or steward clerk shall, for every such neglect or delay, forfeit the sum of five pounds, and the expense of recovering the same.

§ 6 G. 3, c. 69.
same; and
application of
the monies.

IV. And be it enacted, That within one calendar month after the passing of this act, and thereafter annually, the Royal College of Physicians in Edinburgh shall elect four of their ordinary resident fellows as inspectors of madhouses; and that the faculty of physicians and surgeons in Glasgow shall in like manner within one calendar month after the passing of this act, and thereafter annually, elect four of their ordinary resident members as inspectors of madhouses.

Inspectors to
be elected.

V. And be it enacted, That within two calendar months after the passing of this act the sheriff depute or substitute of Edinburgh or Mid Lothian shall employ any of the said four fellows of the Royal College of Physicians of Edinburgh to inspect every house which shall be then kept for the reception, care, and confinement of furious or fatuous persons or lunatics within the city of Edinburgh or county of Mid Lothian, and the sheriff depute or substitute of Lanarkshire shall employ any of the said four members of the said faculty of physicians and surgeons of Glasgow to inspect every such house in Lanarkshire; and the sheriff or steward depute or substitutes in every other county or stewartry in Scotland, where any house shall be kept for the reception, care, and confinement of furious or fatuous persons or lunatics, shall employ for the said inspection, physicians qualified to make such inspection, unless where local or other circumstances shall render it inexpedient to employ such physicians, in which case they shall employ either members of the Royal College of Physicians of London, or of the Royal College of Physicians of Edinburgh or of the Royal College of Surgeons of Edinburgh, or medical men having a diploma from the Royal College of Surgeons of Edinburgh or from the Royal College of Surgeons of London, or from the faculty of physicians and sur-

To inspect
madhouses.

55 G. 3, c. 69. geons in Glasgow, or who have acquired a right to practise from having served in the army or navy.

Other medical persons to be employed.

VI. Provided always, and be it enacted, That it shall be lawful for any sheriff or stewart depute or substitute (where, from their distance from the place of inspection or other circumstances, medical persons of the above description cannot be easily procured) to employ any medical person or persons of character to make such or any inspection hereinafter directed by this act; and to pay to every medical person employed by them in the execution of this act such sum of moneey or reasonable allowance for his attendance and trouble, as to such sheriff depute or stewart depute shall seem adequate; subject to the control and direction of the commissioners of supply of such county or stewartry.

Sheriffs to ascertain whether persons are improperly confined.

VII. And be it enacted, That the said sheriffs and stewarts depute or substitutes shall order and direct every matter and thing to be done which may be necessary, for the purpose of ascertaining whether any person or persons confined in such houses ought to be confined therein as a furious or a fatuous person or persons or lunatic or lunatics, and to make such order for their care or confinement, or for their being set at liberty, as the circumstances of the case may seem to require.

Sheriff to make an order for reception of lunatics.

VIII. And be it enacted, That from and after the passing of this act no person or persons shall be received into any house kept for the reception and the care or confinement of furious or fatuous persons or lunatics, in that part of the United Kingdom called Scotland, without an order made by the sheriff or stewart depute or substitute of the county or stewartry where such house shall be, who shall forthwith satisfy himself as to the propriety of granting such an order, by the certificate or report of medical persons, and otherwise, as the circumstances of the case may seem to require; pursuant to which order a licence shall be granted in the manner directed by this act, for which a fee of two guineas shall be paid for every person specified therein, to be accounted for and paid into the rogue money of such county, by the sheriff or stewart clerk, after deducting the sum of two shillings and sixpence, as his fee for making out such licence; and every furious or fatuous person or lunatic, for the reception of whom such order shall have been made, shall be specified and described in the next annual licence granted to the person or persons by whom he shall have been so received to be taken care of and confined as a furious or fatuous person or lunatic; and if any person or persons shall receive any furious and fatuous person or lunatic, to be taken care of or confined in any such house kept for the reception and the care and confinement of such persons, without such order and licence, every such person or persons so offending shall for every such offence forfeit the sum of two hundred pounds, and the expen-

ses attending the recovery thereof: And if any medical person shall sign or give any such certificate or report, without having carefully visited and examined the person to whom it relates, and without having endeavoured to ascertain in a proper manner, by such examination and otherwise, that such person is a furious or fatuous person or lunatic, and proper to be confined in a house for the reception of such persons, every such medical person shall forfeit and pay for such offence or neglect the sum of fifty pounds, and the expenses of recovering the same. 55 G. 3, c. 69.

IX. And be it enacted, That every certificate or report, upon which a sheriff depute or substitute shall give an order for the confinement of any person in a house kept for the reception, care, and confinement of furious or fatuous persons or lunatics, shall be signed by a medical man, who is either a physician, or has a diploma from the Royal College of Surgeons in Edinburgh or of London, or from the faculty of physicians and surgeons of Glasgow, or who has acquired a right to practise from having served in the army or navy, except in those cases where no medical man of the above description can be conveniently applied to, in which event such certificate may be signed by any medical practitioner of character whom such sheriff or steward depute or substitute may think proper to employ. Upon a report or certificate signed by a medical person;

X. Provided nevertheless, and be it enacted, That it shall and may be lawful for any such sheriff or steward depute or substitute to make such order, or to give such directions, as the circumstances of the case may seem to require, for the care and confinement of any furious or fatuous person or lunatic, in the mean time, until he shall be satisfied that he ought to grant an order for the reception and the care and confinement of any such person in any house kept for the reception and care and confinement of furious or fatuous persons or lunatics, in the manner hereby directed, not exceeding a period of fourteen days. Sheriff may make interim order.

XI. And be it enacted, That every house kept for the reception and care or confinement of furious or fatuous persons or lunatics in Scotland, shall be inspected at least two several times in the year, once by the sheriff or steward depute or substitute, and once by the sheriff or steward depute in person, of the county or stewartry wherein the same shall be situated, and such of the medical inspectors above described, and, failing them, such medical person or persons as he shall think proper to direct to accompany him, on such day or days as he shall think proper from time to time to appoint for that purpose; and it shall and may moreover be lawful for such sheriff or steward himself to inspect, or to order such inspection to be made, as often as he may think proper. Madhouses to be inspected twice a-year.

58 G. 3, c. 68.

Inspectors may inspect at any time.

XII. And be it further enacted, That it shall be lawful to any of the said inspectors appointed by the Royal College of Physicians in Edinburgh, at any time with concurrence of the sheriff depute of Mid Lothian, and to any of the said inspectors appointed by the faculty of physicians and surgeons of Glasgow, with concurrence of the sheriff depute of Lanarkshire, to inspect any of such houses for the reception, care, and confinement, of furious or fatuous persons or lunatics within the respective districts of the said sheriffs, and to report to the said sheriff deputies: Provided always, that for such inspections no sum of money shall be paid, and no allowance given for attendance and trouble.

Sheriff or steward may set persons improperly detained at liberty.

XIII. And be it enacted, That if, upon any inspection made as directed by this act, it shall appear that any person or persons are improperly detained in any such house as aforesaid, it shall and may be lawful for the sheriff or steward depute, or steward of the county or stewartry where such improper detention shall take place, to set such person or persons at liberty, or otherwise to do in the premises as the circumstances of the case may seem to require.

Licence may be recalled.

XIV. And be it enacted, That it shall and may be lawful for any sheriff or steward depute to recall any licence which may have been granted pursuant to this act, if it shall appear to him proper so to do, upon a report to that effect made to him by any two of the inspectors acting under the authority of this act as aforesaid.

Sheriff may make rules and regulations.

XV. And be it enacted, That it shall and may be lawful for the sheriff and steward depute of every county or stewartry in Scotland, from time to time to make such rules and regulations as such sheriff or steward may think proper, for the proper management of houses kept for the reception and the care or confinement of furious or fatuous persons or lunatics within their several counties or stewartries, which may tend to the due preservation of the health, and ensuring the proper treatment of the persons confined therein, and to enforce the same by such penalties not exceeding the sum of twenty pounds for each offence, as such sheriff or steward depute shall think proper, to be recovered and applied as any penalty or forfeiture granted by this act may be recovered and applied; such rules and regulations being always first duly notified in writing to the person or persons by whom any such house or houses may be kept.

Regulations to be transmitted to the clerk of the Court of Justiciary.

XVI. Provided always, and be it enacted, That before any such rules and regulations shall be put in force the said sheriff or steward depute shall transmit a copy of the said rules and regulations to the clerk of the High Court of Justiciary, who shall lay the same before the Lords Commissioners of Justiciary for their consideration, and such Lords Commissioners of Justiciary shall forthwith signify to the said sheriff or stew-

art debate what shall appear to them thereupon, and upon being approved of by the said Lords Commissioners of Justiciary, all such rules and regulations shall receive effect in the manner in which they shall have been finally settled pursuant to such communication thereof so made to the said Lords Commissioners of Justiciary, who shall cause the same to be inserted in the records of such court.

56 G. 3, c. 69.

XVII. Provided always, and be it enacted, That nothing in this act contained shall extend or be construed to extend to any of the public hospitals, or public lunatic asylums in Scotland, further than to authorize the said sheriffs or stewarts to visit and inspect the same, or to order such inspection as aforesaid.

Act not to extend to public hospitals;

XVIII. Provided also, and be it enacted, That nothing in this act contained shall extend or be construed to extend to any house where only one furious or fatuous person or lunatic is confined, unless such person shall be confined in such house for gain or reward.

nor to where only one person is confined.

XIX. And be it enacted, That it shall and may be lawful for the procurator fiscal of every county or stewartry where any house for the reception and the care or confinement of furious or fatuous persons or lunatics is situated, and he is hereby required to enforce the due execution of this act, and to sue for and recover all penalties or forfeitures granted by this act, by action or complaint before the Court of Session, or the sheriff or steward's court: Provided always, that such action or complaint shall be brought within twelve calendar months after the offence shall have been committed, or the penalty incurred.

Procurator fiscal to enforce the act and recover penalties.

XX. And be it enacted, That all penalties recovered by virtue of this act shall be paid into and form part of the rogue money of the county or stewartry by whose procurator fiscal the same shall have been recovered; and all the expenses incurred in carrying this act into execution shall be paid out of such rogue money.

Application of penalties, and provision for the expense of executing the act.

XXI. And be it enacted, That the sheriff or steward deputy or substitute of every county or stewartry in Scotland, where any house is kept for the reception and the care or confinement of furious or fatuous persons or lunatics, shall lay before or cause to be transmitted, an account of all expenses incurred by his directions in carrying this act into execution, and of all monies received by the sheriff or steward clerk of his county or stewartry, for any licence or licences granted in pursuance of this act, and of all monies recovered by the procurator fiscal of his county or stewartry, by virtue of this act, to the Commissioners of Supply of his county or stewartry, on the day on which they assemble in every year for the assessment of the land tax.

Sheriff to transmit accounts to commissioners of supply.

55 G. 3, c. 69.

Sheriff to transmit accounts to College of Physicians, and to Courts of Justiciary.

XXII. And be it enacted, That the sheriff or steward depute or substitute of every county or stewartry in Scotland, where any house is kept for the reception and the care or confinement of furious or fatuous persons or lunatics, shall at the same time transmit a copy of such account, with a report of all that shall have been done by and under his direction in the execution of this act, containing a statement of the number of houses kept in their respective counties or stewartries, for the reception and the care or confinement of furious or fatuous persons or lunatics, and the names, number, and description of persons confined therein, to the president of the Royal College of Physicians in Edinburgh, and also to the clerk of the High Court of Justiciary at Edinburgh, who shall cause such account and report to be inserted in the records of such court.

Powers granted by this act to be without prejudice to powers granted by law.

XXIII. And be it enacted, That the powers and authorities granted by this act to sheriffs and stewards depute and their substitutes shall be without prejudice and in addition to all powers and authorities now competent to them by law; all which powers and authorities shall and may be exercised in the execution of this act, as well as the powers and authorities hereby granted.

Public act.

XXIV. And be it enacted, That this act shall be deemed and taken to be a public act; and shall be judicially taken notice of as such, by all judges, justices, and others, without being specially pleaded.

9 Geo. 4, c. 34.—27th June, 1829.

9 Geo. 4, c. 34.

An Act for altering and amending an Act passed in the Fifty-fifth Year of the Reign of his late Majesty, intituled An Act to regulate Madhouses in Scotland.

55 G. 3, c. 69.

What sums shall be paid for licences granted for the care of insane persons.

† *Sic.*

WHEREAS an act was passed in the fifty-fifth year of the reign of his late majesty King George the third, intituled *An Act to regulate Madhouses in Scotland*, which requires to be altered and amended in some respects; be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present parliament assembled, and by the authority of the same, That for and in respect of any licence to be granted by any sheriff, for the care and confinement of any factious † or furious person, or lunatic, within his county, in the manner directed by the said recited act, there shall be paid only ten shillings and sixpence for every person confined, in place of two guineas, as required by the said recited act, to be accounted for in the manner there-

by directed: Provided always, that for no licence to be so granted shall there be paid less than the sum of two guineas. 9 Geo. 4, c. 34.

II. And be it enacted, That a book shall be kept in every house so licensed, in which shall be inserted the name and date of admission of every insane person into such house, and also the death or discharge of every such person, specifying the state of mind in which such person was at the date of such death or discharge, and the cause of his or her death.

Books to be kept for entering the time of admission and of discharge of insane persons.

III. And be it enacted, That whenever any coercion, severity, or restraint, beyond that of solitary confinement, shall be used towards any person confined in such house, an entry shall be made in the foresaid book on the same day on which such coercion, severity, or restraint shall be first used, setting forth the nature of such coercion, severity, or restraint, together with the special cause thereof; and it is further provided, that the keeper of such house shall make or cause to be made an entry in said book on each succeeding day during which such coercion, severity, or restraint may be continued, shewing the progress of the disorder, and how far such coercion, severity, or restraint has been increased, diminished, continued, or put an end to, as also the reasons for the continuance or change of such treatment.

Whenever coercion shall be made use of towards any person confined, an entry thereof to be made in such books.

IV. And be it enacted, That such book or books shall be produced to the inspectors authorized to visit and inspect such houses, which inspectors are hereby required to mark thereon the date of such inspection, together with any observations which they may deem material as to the state of such house, or of all or any of the persons therein confined; and any keeper of such house who shall neglect to keep the books hereby ordered, or to make therein any of the entries hereby ordered, at the times and in the terms hereby prescribed, or who shall refuse or neglect to produce such books when duly required, shall forfeit the sum of five pounds for each offence, to be recovered in the same manner as penalties may be recovered under the said recited act.

Books to be produced to inspectors, who are to insert the date of their inspection, &c.

V. And be it enacted, That no insane person shall be received into any public hospital or public lunatic asylum without a warrant from the sheriff, such as is required by the said recited act in the case of a private madhouse; and the said sheriff is hereby required to inspect such hospitals and asylums in the same way as private madhouses; and he is further authorized to order any person to be discharged from such hospital or asylum, who, after due inquiry and medical inspection, shall be considered by him as improperly detained therein.

No insane person to be received into an hospital without a warrant from the sheriff, who is to inspect hospitals.

VI. And be it further enacted, That in every house of reception for two or more insane persons there shall, if it contain one hundred patients, be a resident physician or sur-

Houses of reception to be visited by medical men.

9 Geo. 4, c. 24. geon; and every such house containing less than one hundred patients, (in case such house shall not be kept by a physician or surgeon), shall be visited twice in every week by a physician or surgeon; and such resident attendant or visiting physician or surgeon is hereby respectively required to report to the keeper the condition of the house, and state of health of the patients, and shall once in every week enter and sign the same in a register, according to the form in the schedule hereunto annexed; and such register shall by the keeper of such house be regularly laid before the inspectors appointed by this and the before-recited act, who are hereby required to sign the same in testimony of its production.

Ministers empowered to visit mad-houses within their parishes.

VII. Provided always, and be it further enacted, That the established minister of the parish wherein any house for the reception of insane persons is situate, with the consent in writing of the sheriff, shall have liberty to visit all such houses at any hour between eight in the morning and eight in the evening; but notwithstanding such written consent as aforesaid, the keeper of any such house may refuse such minister access to any patient, if he shall think such visit prejudicial to the due care or recovery of the patient, provided such refusal, and the grounds thereof, shall be duly entered in the register, and reported by such keeper to the inspectors at their then next ensuing visitation.

Regulations as to persons with whom lunatics are privately confined.

VIII. And be it further enacted, That no person shall receive into his exclusive care and maintenance, except he be a relative, any one insane person, without first having an order and certificate signed by two physicians or surgeons in terms similar to that which is required on the admission of any insane person into a licensed house; and that every such person so having received into his charge any insane person as aforesaid shall, within five days thereof, transmit to the sheriff of the county a copy of such certificate, and shall also state the parish wherein such house shall be situate, and the name of the occupier thereof; and such order and return may be sealed, and indorsed "Private return;" and also on the first day of January, or within seven days thereof, in every year, every such person shall also transmit to such sheriff a certificate signed by two physicians or surgeons, describing the then actual state of such insane person; and in case of the death or removal of such insane person, he shall forthwith notify the same to such sheriff; all which said certificates and notifications shall be duly preserved; and the said sheriff shall make or cause to be made therefrom a separate register, containing the true Christian and surname of each insane person so confined, together with the place of confinement; which register shall be open to the inspection of his Majesty's principal Secretary of State for the Home Department, or the Lord President of the Court of Session, or the Lord Justice Clerk, or to such other persons as shall be au-

thorized to inspect the same, by an order under their respective hands; and any person receiving into his care any person contrary to this enactment, shall incur a penalty of fifty pounds, to be recovered in the manner before specified. 9 Geo. 4, c. 34.

IX. Provided always, and be it further enacted, That it shall and may be lawful for his Majesty's said principal Secretary of State, in all cases in which any such patient shall have been discharged cured, upon his or her application, verified, as to the identity of person and other facts, to the satisfaction of such Secretary of State, to direct that the name of such patient shall be wholly erased from the said register. Secretary of State empowered to erase name of lunatic from register.

X. And be it enacted, That it shall and may be lawful for the justices of the peace of every county in Scotland to name and appoint, at a court of quarter sessions to be held annually on the same day on which the Michaelmas meeting of freeholders takes place, if they shall think fit so to do, any three of their number to visit and inspect any private madhouses or asylums for the custody of lunatics situated in such county; and such three justices so appointed, or any two of them, shall have power to visit and inspect any such madhouses or public hospitals or asylums in their county accordingly, and to report annually there anent to the justices met in quarter sessions as aforesaid. Justices may appoint three of their number to inspect hospitals, &c.

XI. And be it enacted, That this act shall be deemed and taken to be a part of the said recited act; and this act and the said recited act shall be construed together, in giving effect to the said recited act and this act. This act and the recited act to be construed together.

SCHEDULE.

WEEKLY REGISTER to be kept in each house and to be laid before the Inspectors.

Number of curable men.	Number of incurable men.	Number of curable women.	Number of incurable women.	Number of men under restraint.	Number of women under restraint.	General remarks.

In cases of restraint the necessity to be certified by the physician, surgeon, or apothecary.

TREATMENT OF INSANE PERSONS IN ENGLAND.

—♦—

2 & 3 Will. 4, c. 107.—11th August, 1832.

2 & 3 Will. 4, c. 107. *An Act for regulating for Three Years, and from thence until the End of the then next Session of Parliament, the Care and Treatment of Insane Persons in England.*

9 Geo. 4, c. 41. WHEREAS an act was made in the ninth year of the reign of his late Majesty King George the Fourth, intituled *An Act to regulate the care and treatment of insane persons in England*, and which act was amended by another act made in the tenth year of the reign of his said late Majesty, 10 G. 4, c. 18. intituled *An act to explain, amend, and alter the act of the ninth year of the reign of his present Majesty, for regulating the care and treatment of insane persons in England*: And whereas it is expedient that the provisions of the said acts should be amended and consolidated, for the more effectually carrying into execution the purposes thereof: Be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That from and after the passing of this act, the said recited acts of the ninth and tenth years of the reign of his late Majesty King George the Fourth shall be and the same are hereby repealed: Provided always, that until the appointment of commissioners and visitors, and their respective clerks, under the provisions of this act, the authority of the commissioners and visitors, and of their respective clerks, appointed under the said recited acts, shall continue as if given by this act; and that all matters and things at any time done or directed to be done by them respectively under the said recited acts or this act shall be and remain as good, valid, and effectual, to all intents and purposes, as if the said recited acts had not been repealed, and as if such commissioners and visitors and clerks had been appointed under this act, except so far as specially altered by this act as to the visitation of single patients.

Recited acts repealed; but existing appointments to continue until others are made.

Interpretation of certain words used in this act.

II. And inasmuch as, in order to avoid unnecessary repetition, and to remove doubts as to the meaning of certain words in this act, be it enacted, That the word "county" shall be deemed to include any county, riding, division of the county of Lincoln, liberty, county of a city, county of a town, city, cinque port, or town corporate; that the word "parish" shall be deemed to include any township, hamlet, vill, tithing, extra-parochial place, or place maintaining its own poor; that the words "county rate" shall be deemed to include any funds assessed upon or raised in or belonging to any county, riding, division of the county of Lincoln, liberty, county of a city,

county of a town, cinque port, or town corporate, in the nature of county rates, and applicable to the purposes to which county rates are applicable; that the word "visitor" shall be deemed to include all justices, physicians, surgeons, or apothecaries appointed at a general or adjourned quarter sessions to visit houses of reception for two or more insane persons; that the words "insane persons" shall be deemed and construed to extend to all persons who are idiot, lunatic, or of unsound mind; that the words "parish pauper" shall be deemed to include every person sent to and maintained at any house licensed under this act, wholly or in part at the expense of any parish; that the word "proprietor" shall be deemed to include every person exercising any superintending or proprietary duties in any house licensed under this act; that the words "clerk of the peace" shall be deemed to include any person acting as such, or any deputy duly appointed; that the word "physician" shall be deemed to include any fellow or licentiate of the Royal College of Physicians in London; that the word "surgeon" shall be deemed to include any member of the Royal College of Surgeons in London; and that the word "apothecary" shall be deemed to include any person authorized to practise as such under an act passed in the fifty-fifth year of the reign of his late Majesty King George the Third, intituled *An act for the better regulating the practice of apothecaries throughout England and Wales*, or under an act passed in the sixth year of the reign of his late Majesty King George the Fourth, intituled *An act to amend and explain the said act of the fifty-fifth year of his late Majesty (a)*; and the words "treasurer of the county" shall be deemed to include any officer who has the custody of any funds assessed upon or raised in or belonging to any county, riding, division of the county of Lincoln, liberty, county of a city, county of a town, cinque port, or town corporate, in the nature of county rates, and applicable to the purposes to which county rates are applicable: And further, that in the construction of this act, in cases where the singular number only is used, the word importing the singular number shall be held to include and shall be applied to several persons or things as well as one person or thing, in the same manner as if the plural number had been also used; and in cases where the plural number only is used the word importing the plural number shall be held to include those applied to one person or thing as well as several persons or things, in the same manner as if the singular number had also been used; and where any word in this act shall import the masculine gender only the same shall be held to include and be applied to females as well as males, in the same manner as if a word importing the feminine gender had been also used: Provided always, that the provisions of the present clause shall in each case apply only so far as the ap-

2 & 3 Will. 4.
c. 107.

55 G. 3, c. 194.

6 G. 4, c. 133.

Construction
of act.

(a) See *ante*, p. 559, n. (g).

2 & 3 Will. 4, c. 107. plication thereof shall be consonant with or not repugnant to the subject and context of this act.

Lord Chancellor, &c., to appoint Commissioners within London, &c.; of whom four or five to be physicians.

III. And be it further enacted, That it shall and may be lawful for the Lord Chancellor or the Lord Keeper or Commissioners (b) of the Great Seal of Great Britain, or other the person or persons for the time being intrusted by virtue of the King's sign manual with the care and commitment of the custody of the persons and estates of persons found idiot, lunatic, or of unsound mind, annually, on the first day of September in every year, or within ten days then next following, by an instrument under his hand and seal, to appoint, at his discretion, not less than fifteen nor more than twenty persons to be commissioners, during the space of one year, for licensing and visiting all houses for the reception of two or more insane persons, to be situate within the cities of London and Westminster, the county of Middlesex, the Borough of Southwark, and also within the several parishes and places hereinafter enumerated; (*videlicet*) Brixton, Battersea, Barnes, Saint Mary Magdalen Bermondsey, Christ Church, Clapham, Saint Giles Camberwell, Dulwich, Saint Paul Deptford, Grave-nay, Kew Green, Kennington, Saint Mary Lambeth, Mortlake, Merton, Mitcham, Saint Mary Newington, Norwood, Putney, Peckham, Saint Mary Rotherhithe, Roehampton, Streatham, Stockwell, Tooting, Wimbledon, Wandsworth, and Walworth, in the county of Surrey; Blackheath, Charlton, Deptford, Greenwich, Lewisham, Lee, Southend, and Woolwich, in the county of Kent; and East Ham, Layton, Laytonstone, Low Layton, Plaistow, West Ham, and Walthamstow, in the county of Essex; and to be called "The Metropolitan Commissioners in Lunacy;" of which commissioners not less than four nor more than five, at the discretion of the said Lord Chancellor or other the person or persons intrusted as aforesaid, shall be physicians, and two barristers; and the jurisdiction of the said Metropolitan Commissioners shall be deemed to include any township, liberty, tithing, vill, or any other extra-parochial place within the cities of London and Westminster, and within seven miles thereof, and within the county of Middlesex, any thing herein contained to the contrary notwithstanding; and the said Lord Chancellor, or other the person or persons intrusted as aforesaid, shall cause the names of such commissioners to be published in the London Gazette within ten days after their appointment; and the said commissioners are hereby empowered to grant licences (if they shall think fit) in the manner directed by this act for persons to keep houses for the reception of two or more insane persons, of one or both sexes, as the said commissioners shall think fit, within the jurisdiction of

Jurisdiction of Commissioners.

Commissioners to grant licences for houses.

(b) The powers given by this act to the Lord Chancellor, &c., were by the 9 Geo. 4, c. 41, vested in the Secretary of State for the Home Department. See *ante*, p. 478.

the said commissioners; and every commissioner shall be allowed and paid his travelling expenses while employed in executing the duties of his office; and each and every such commissioner, being a physician as aforesaid, shall be allowed and paid the sum of one pound for every hour he shall be employed in executing the duties of the office of commissioner, exclusive of travelling expenses.

2 & 3 Wm. 4.
c. 107.
Allowance to
Commission-
ers.

IV. And be it further enacted, That as often as any of the commissioners to be appointed as aforesaid shall die, or refuse to act, or become unable, by illness or otherwise, it shall and may be lawful for the Lord Chancellor, or other the person or persons intrusted as aforesaid, by an instrument under his hand and seal, to appoint a commissioner in the room of every commissioner who shall die, or refuse or become unable to act; and the name of such new commissioner shall be published, within ten days after his appointment, in the London Gazette.

In case of
death or re-
fusal of Com-
missioners,
others to be
appointed.

V. And be it further enacted, That every person who shall be appointed a commissioner as aforesaid shall, before he acts in the execution of his duty as a commissioner, take an oath, or, if a quaker, make a solemn affirmation, to the following effect; (that is to say)—

Commission-
ers to take the
following
oath.

‘ I, *A. B.* do swear, [or solemnly affirm], That I will discreetly, impartially, and faithfully execute all the trusts committed unto me by virtue of an act of Parliament made in the year of the reign of his Majesty King *William* the Fourth, intituled *An act for regulating for three years, and from thence until the end of the then next session of Parliament, the care and treatment of insane persons in England*; and that I will keep secret all such matters as shall come to my knowledge in the execution of my office, (except when required to divulge the same by legal authority), or so far as I shall feel myself called upon to do so for the better execution of the duty imposed on me by this act.’ ‘So help me GOD.’

which oath or solemn affirmation it shall and may be lawful for the Lord Chancellor, or other the person or persons intrusted as aforesaid, to administer to every such commissioner so to be appointed as aforesaid; and any five of the said Metropolitan Commissioners, who shall have previously taken the oaths, are hereby authorized to administer such oath at any meeting held under the authority of this act.

VI. And be it further enacted, That the said Lord Chancellor, or other the person or persons intrusted as aforesaid, is hereby empowered, by an instrument under his hand and seal, to appoint during pleasure a fit person to be treasurer or clerk to the said Metropolitan Commissioners, and to allow such person such salary for his trouble as the Lord Chancellor, or other the person or persons intrusted as aforesaid, shall think reasonable, exclusive of the fees to be received by him under

Treasurer or
clerk to be
appointed;

2 & 3 WHIL. 4,
c. 107.

this act; and all official duties to be performed by such clerk (except as hereinafter is excepted) shall be subject to the inspection, direction, and controul of the said commissioners.

and to take
the following
oath.

VII. And be it further enacted, That every such person so appointed shall, at the first meeting of the said Metropolitan Commissioners next after his appointment, take the following oath, to be administered by any one of such commissioners:

'I, *A. B.* do swear, That I will faithfully execute all such trusts as shall be committed to my charge as treasurer and clerk to the Metropolitan Commissioners in lunacy for executing an act of Parliament made in the second and third year of the reign of his Majesty King *William* the Fourth, intituled *An act for regulating for three years, and from thence until the end of the then next session of Parliament, the care and treatment of insane persons in England*; and that I will keep secret all such matters as shall come to my knowledge in the execution of my office, (except when required to divulge the same by legal authority); and that I am not, nor have been at any time within the two last years, directly or indirectly concerned or interested in keeping any house licensed for the reception of insane persons.

'So help me GOD.'

Meetings of
Commissioners to grant li-
cences.

VIII. And be it further enacted, That the said Metropolitan Commissioners, or any five of them, two of whom at the least shall not be physicians as aforesaid, shall meet at such place as the said Lord Chancellor, or other the person or persons intrusted as aforesaid, may direct, on the first Wednesday in the months of November, February, May, and July in every year, in order to receive applications from persons requiring houses to be licensed for the reception of two or more insane persons within their jurisdiction, and (if they shall think fit) to license the same; and in case on any such occasion five such commissioners shall not then and there be present, the meeting shall take place on the next succeeding Wednesday, and so on weekly till such quorum of five shall be assembled for the above-mentioned purpose; and the said Commissioners assembled at every such meeting shall have power to adjourn such meeting from time to time and to such place as they shall see fit.

Five commis-
sioners may
assemble for
general pur-
poses at any
time, notice
of such meet-
ing having
been given by
the clerk.

IX. Provided also, and be it further enacted, That it shall, and may be lawful to and for any five of the said Metropolitan Commissioners (two of whom at the least shall not be physicians as aforesaid) to assemble themselves when and as often as they shall think fit, for the purpose of executing and performing the several matters and things by this act intrusted to them, notice being given under their hands to require the clerk of the said commissioners to convene a meeting of the said commissioners; and the said clerk is hereby required and commanded duly to summon the rest of the said commission-

ers four clear days before such intended meeting; and that at all meetings of the said Metropolitan Commissioners a chairman shall be chosen, who, in case of an equality of votes, shall have a second or casting vote.

s & 3 Will. 4,
c. 107.
Chairman of
meetings.

X. And be it further enacted, That in all other parts of England the justices of the peace assembled in general or quarter sessions shall have like authority within their respective counties (except within the jurisdiction of the Metropolitan Commissioners) to license houses (if they shall think fit) for the reception of two or more insane persons, in the same manner as the Metropolitan Commissioners within their jurisdiction.

Justices in
quarter ses-
sions (except
in metropol-
itan district)
to grant li-
cences.

XI. And be it further enacted, That the said justices shall, at the Michaelmas general quarter sessions of the peace in every year, appoint three or more justices of the peace, and also one or more physician, surgeon, or apothecary, to act as visitors of each house licensed for the reception of two or more insane persons within the county; and the said justices, physician, surgeon, or apothecary, so appointed as visitors for each house as aforesaid, shall and are hereby authorized and empowered to visit every such house in manner directed by this act; and such visitors shall at their first meeting take the oath required by this act to be taken by the Metropolitan Commissioners, *mutatis mutandis*, such oath to be administered by a justice of the peace, being one of such visitors; and every such visitor, being a physician, surgeon, or apothecary, shall be allowed and paid, for every day he shall be employed in executing the duties imposed upon him by this act, such sum as the justices in general quarter sessions shall be pleased to direct, to be paid him by the clerk of the peace out of the monies to be received by him for licences granted under this act, and in case of deficiency, then out of the county rates: Provided also, that in case of the death of any justice, physician, surgeon, or apothecary so appointed visitor as aforesaid, or of his refusal or inability, by reason of illness or otherwise, to act as such, it shall and may be lawful for the said justices, at any general or adjourned sessions of the peace, to appoint a visitor in the room of such justice, physician, surgeon, or apothecary who shall die, or refuse or become unable to act as aforesaid; and the names of all such visitors so appointed at the Michaelmas quarter sessions, or any general or adjourned sessions of the peace, shall, within seven clear days after such appointment, be published in some newspaper circulated in the county wherein such licensed house shall be situate: and the appointment of such visitors shall, within twenty-one clear days, be communicated by the clerk of the peace to the clerk of the Metropolitan Commissioners, who shall register the same in a book to be kept for that purpose; and in case of default of such communication the clerk of the peace

Justices at
sessions to ap-
point visitors,
&c.

2 & 3 Will. 4, shall forfeit and pay a penalty of five pounds, to be recovered
c. 107. as is hereinafter directed.

Commissioners or visitors not to keep any licensed house, &c.;

nor medical commissioners or visitors to attend patients in any licensed house, except by order, &c.

Communication thereof to be made to Lord Chancellor or clerk of the peace;

and appointment to be void.

Clerk of the peace, or some person appointed by the justices, to be clerk to the visitors.

Assistant to the clerk.

XII. And be it further enacted, That no person shall be eligible to be appointed commissioner or visitor as aforesaid, nor shall any justice of the peace act in granting any licence, who shall be, or who shall have been within two years then next preceding, directly or indirectly interested in the keeping any house licensed for the reception of insane persons; and no physician as aforesaid appointed a commissioner, and no physician, surgeon, or apothecary appointed a visitor, shall professionally attend upon the patients in any such licensed house, unless he be specially directed to visit any patient by any relation or friend under whose order such patient has been admitted into any such licensed house, or by a committee appointed by the Lord Chancellor or by the Lord Keeper or Commissioners of the Great Seal of Great Britain, or other the person or persons for the time being intrusted by virtue of the King's Sign Manual with the care and commitment of the custody of the persons and estates of persons found idiot, lunatic, or of unsound mind; and if any such commissioner or visitor shall after his appointment become so interested, or shall professionally attend upon the patients in any licensed house (except as aforesaid), such commissioner or visitor shall respectively signify the same in writing to the Lord Chancellor, or other the person or persons intrusted as aforesaid, or to the clerk of the peace, as the case may require; and the appointment of such commissioner or visitor shall thenceforth become null and void, and it shall not be lawful for him to act as such commissioner or visitor.

XIII. And be it further enacted, That the clerk of the peace, or some other person to be appointed by the justices at quarter sessions shall act as clerk to the visitors so appointed as aforesaid; and such clerk shall summon the said visitors to meet at such time and place, for the purpose of executing the duties imposed upon them by this act, as the said justices in sessions shall appoint; and such clerk to the visitors shall at their first meeting take the oath required by this act to be taken by the clerk of the Metropolitan Commissioners, *mutatis mutandis*, such oath to be administered by one of such visitors; and the said clerk of the peace, or other person so appointed, shall be paid out of the county rate, for his services in attending the said visitors, such remuneration as the justices in quarter sessions assembled shall think fit; and the appointment of any such deputy clerk shall within twenty-one clear days be communicated by the clerk of the peace to the clerk of the Metropolitan Commissioners, under the like penalty for omitting to do so, and to be recovered in like manner as is declared in default of the communication of the appointment of visitors.

XIV. And be it further enacted, That if the clerk of the

commissioners or the clerk of the peace, or other person appointed as aforesaid, shall at any time, in the due execution of this act, find it necessary to employ any assistant in the copying any of the orders, certificates, registers, returns, or written papers or documents which shall come into the possession of such clerk in pursuance of this act, or in any other matters relating to the execution thereof, then the clerk of the Metropolitan Commissioners is hereby required to certify such necessity, and the name of such assistant, to the said commissioners, and the clerk of the peace or other person appointed as aforesaid shall certify such necessity, and the name of such assistant, to one of the visitors, being a justice of the peace; and if they respectively shall approve thereof, they are hereby respectively empowered and required to administer the following oath to such assistant previously to his being employed as aforesaid :

2 & 3 Wm. 4.
c. 107.

' I, *A. B.*, do solemnly swear, That I will faithfully keep secret all such matters and things as shall come to my knowledge in consequence of my employment as assistant in the office of the clerk to the commissioners [or clerk of the visitors, *as the case may be.*] appointed by virtue of an act of Parliament made in the second and third year of the reign of his Majesty King *William* the Fourth, intituled *An act for regulating for three years, and from thence until the end of the then next session of Parliament, the care and treatment of insane persons in England*, unless required to divulge the same by legal authority. So help me GOD.'

Oath to be taken by assistant.

XV. And be it further enacted, That all persons who shall apply or intend to apply to have a house licensed for the reception of insane persons shall give notice to the clerk of the Metropolitan Commissioners or to the clerk of the peace, as the case may be, fourteen clear days at the least prior to any quarterly or other meeting of the Metropolitan Commissioners, or to any general or quarter session of the peace for the county where he shall apply for a licence respectively; which notice shall contain the true Christian and surname and place of abode of the person so applying and intending to keep such house, and, in case such person so applying does not propose to reside himself in the licensed house, the Christian and surname and previous occupation of the superintendent who is to reside therein; and such notice, when given for any house which shall not have been previously licensed, shall be accompanied by a plan of every such house, to be drawn upon a scale of not less than one eighth of an inch to a foot, with a description of the situation thereof, and the length, breadth, and height of, and a reference by a figure or letter to, every room and apartment therein, and a statement of the greatest number of patients proposed to be received into such house; which notice and plan shall be laid by the clerk of the Metro-

Notice of application for and plan of licensed house to be given to the clerk of the commissioners or clerk of the peace 14 days previous to their meeting.

2 & 3 WILL. 4,
c. 117.

politan Commissioners before the said commissioners, or by the clerk of the peace before the justices respectively, at such time as they shall take into their consideration the application for such licence.

Detached buildings to be considered part of the house.

XVI. And be it further enacted, That if there be any place or building detached from any house, licensed or to be licensed, but belonging to or in anywise appertaining to such house, such place or building shall be considered part of such licensed house for all the purposes of this act.

Upon alteration of house, notice and amended plan to be given to commissioners, &c.

XVII. And be it further enacted, That notice of any additions or alterations which shall from time to time be made to any house licensed under this act shall be given, by the person to whom the licence shall have been granted, to the clerk of the commissioners or to the clerk of the peace, as the case may require, within one calendar month next after the completion thereof, accompanied with a plan of all the additions and alterations, to be drawn upon the scale aforesaid; and if any person shall (wilfully and with intention to deceive) not give a full and complete plan of the whole of the house to be licensed, or notice of any and all such additions and alterations as shall have been made, he shall be deemed guilty of a misdemeanor.

Licences to be made out by the clerk of the commissioners or clerk of the peace, and to be renewed yearly.

XVIII. And be it further enacted, That every such licence shall be made out by the clerk of the Metropolitan Commissioners or the clerk of the peace, as the case may require, according to the form in schedule (A.) annexed to this act, for such time, not exceeding thirteen calendar months, as the said Metropolitan Commissioners or Justices shall think fit; and for every licence to be granted to any person for keeping a house for the reception of insane persons there shall be paid to the clerk of the commissioners or clerk of the peace, exclusive of the sum to be paid for the stamp, the sum of ten shillings for every insane person not being a parish pauper, and the sum of two shillings and sixpence for every parish pauper, proposed to be received into such house, but for no licence to be so granted shall be paid less than fifteen pounds; and such licence shall not be delivered, nor be of any avail, until the sum due on such licence shall be paid: Provided always, that if the period for which such licence shall be granted be less than thirteen calendar months, or if from the change of the proprietor or of the house to be licensed, or any casual circumstance happening before the expiration of the original licence, it shall be requisite to grant or renew a licence for a less period of time than thirteen calendar months, then and in any of the said cases it shall and may be lawful for the said commissioners and justices, if they think fit, to reduce the payments to be made on such licence to not less than five pounds in the whole.

Charge for licence.

Commissioners may reduce fees on licence in certain cases.

Licences to

XIX. Provided always, and it is hereby enacted, That all

licences granted by the Metropolitan Commissioners or Justices shall be duly stamped with a ten shillings stamp, and shall be under the hands and seals of five or more of the Metropolitan Commissioners, two of whom shall not be physicians, as aforesaid, or of three or more of the said justices in quarter sessions assembled.

2 & 3 Will. 4,
c. 107.
be stamped,
and to be
under seal.

XX. And be it further enacted, That all monies to be received for such licences shall be retained by the clerk of the Metropolitan Commissioners, or clerk of the peace, as the case may be, and from such monies all the expenses required to be disbursed in the execution of this act shall be paid; and such clerk of the commissioners shall keep a true account of all receipts and payments; which account shall be made up to the first day of August in each year, and shall be signed by five at least of the said commissioners; and such account shall specify the several heads of expenditure, and shall be laid before Parliament on or before the twenty-fifth day of March in each year, if Parliament shall be then sitting, or, if Parliament shall not be then sitting, within one month after the then next sitting of Parliament; and the like account shall be transmitted to the Commissioners of his Majesty's Treasury, who shall thereupon, if they shall deem it necessary, direct the balance to be paid into the Exchequer to the account of the Consolidated Fund; and if at any time there shall be any balance due to the said clerk to the commissioners, on account of expenses or liabilities incurred in the execution of or incidental to this act, it shall be lawful for the Commissioners of his Majesty's Treasury, or any three or more of them, and they are hereby empowered, from time to time, if they shall think fit, (on an application to them for such a sum of money as shall have been agreed upon at some quarterly or other meeting of the Metropolitan Commissioners, attended by seven at the least of the said commissioners, and to be certified under their hands,) to cause to be issued and paid, out of the growing produce of the Consolidated Fund, to the clerk of the said Metropolitan Commissioners, such a sum of money as the said Metropolitan Commissioners shall have so certified as requisite to defray the expenses incurred under the provisions of or incidental to this act.

Application
of monies.

Clerk to keep
an account of
receipt and
expenditure,
which shall be
made up
yearly.

Account to
be transmitted
to the Treas-
ury, who
may apply or
make up the
balance, and
issue such
sums as shall
be requisite to
defray the ex-
penses under
this act.

XXI. And be it further enacted, That the clerk of the peace or other person appointed as aforesaid shall keep like accounts of all receipts and payments in respect of this act, and which accounts shall respectively be made up to the first day of August in every year, and shall be approved by two at least of the visitors, and signed by them in testimony thereof; and the said accounts, when so made up, shall be laid by the clerk of the peace, or other person appointed as aforesaid, before the justices at their Michaelmas quarter sessions; and if it shall appear by the said accounts that there is a balance in the hands of the clerk of the peace or other person appointed as

Clerk of the
peace to keep
accounts.

Balances in
hand of or
due to clerk
of the peace.

2 & 3 Will. 4, c. 107. aforesaid, the same shall within twenty-one clear days be paid, by an order of the said visitors, to the treasurer of the county in aid of the county rate; and when there shall be found to be any balance due to such clerk of the peace or other person appointed as aforesaid, such balance shall be paid to him by the treasurer of the county out of the county rate, upon an order for such payment being made and signed by two or more justices in quarter sessions assembled.

No house to be kept without being licensed.

Licences granted under 9 G. 4, c. 41, to be valid, and plans sufficient.

Provision in case of death of licensed proprietor.

XXII. And be it further enacted, That from and after the commencement of this act it shall not be lawful for any person to keep a house for the reception of two or more insane persons, unless the same shall have been first duly licensed in the manner directed by this act; and every person keeping a house for the reception of two or more insane persons, not duly licensed, shall be deemed guilty of a misdemeanor: Provided always, that no one licence shall authorize any person to keep more than one house; but all licences which shall have been heretofore granted shall remain in full force until the period for which they shall have been granted shall have expired, unless revoked as hereinafter directed; and all plans heretofore delivered shall be deemed sufficient for the purposes of this act, if the commissioners or justices shall so think fit.

XXIII. Provided always and be it enacted, That if any person to whom a licence for keeping a house shall have been duly granted under this act shall die before the expiration of the said licence, and the legal representatives of such deceased person shall, within ten days next after such death, give notice thereof to the clerk of the Metropolitan Commissioners or to the clerk of the peace, as the case may be, it shall be lawful for the said Metropolitan Commissioners at any meeting duly assembled, or for the said justices of the peace at the next general quarter sessions respectively, if they shall think fit, by an order in writing under the hands of five of the said commissioners or three of the said justices, to confirm the said licence, with all the conditions and liabilities annexed thereto, for the term unexpired, to such person as shall at the time of such death be the superintendant of such house, or have the care of the patients therein, or to such other persons as the said commissioners or justices respectively shall think fit, and in the meantime such previous licence shall, notwithstanding the death of such person, remain in full force.

Commissioners may grant new licences to other persons or for other houses in certain cases.

XXIV. And be it further enacted, That if any person duly licensed under this act shall by sickness or other sufficient reason become incapable of keeping such house, or if any licensed house shall be pulled down or occupied under the provisions of any act for public purposes, or shall by fire, tempest, or other unavoidable calamity be rendered unfit for the accommodation of insane persons, it shall and may be lawful for the said Metropolitan Commissioners, or any five of them, two of whom shall not be physicians, at any quarterly or other

meeting convened as aforesaid, or for the said justices at any ^{2 & 3 WILL. 4,} general or quarter sessions, upon the payment of not less than c. 107. one pound for each licence, exclusive of the sum to be paid for the stamp, to grant a new licence to such other person as they shall think fit, and also to grant to the person whose house has been so rendered unfit a licence to keep such other house for the accommodation of insane persons, as the said commissioners or the said justices shall think fit: Provided always, that the notice of such intended change of persons, and all plans and statements of such new house, shall be given as are required when application is made for a licence for the first time: Provided also, that the cause of such change of house shall be duly specified in writing to the clerk of the commissioners or clerk of the peace, as the case may be, within three clear days after the happening thereof.

XXV. And be it further enacted, That in case the Metropolitan Commissioners or justices shall think fit to refuse to renew any licence for keeping a house for insane persons, notice of such refusal shall be given in manner hereinafter mentioned in the case of revoking any such licence; and the Lord Chancellor, or other the person or persons intrusted as aforesaid, for the time being, is hereby empowered, upon the representation of the said commissioners or justices respectively, by an instrument under his hand and seal, to be delivered within one month after receiving such representation, to sanction and confirm the refusal of the said commissioners or justices to renew such licences: Provided nevertheless, that such refusal by them shall be effectual, unless the said Lord Chancellor, or other the person or persons intrusted as aforesaid, shall, within one calendar month from the time of the receipt of the said representation of the said commissioners or justices, refuse to confirm the determination of the said Metropolitan Commissioners or justices.

When commissioners or justices shall refuse to renew any licence, notice thereof to be given to the Secretary of State for the Home Department.

XXVI. And be it further enacted, That if at any meeting under this act a majority of the Metropolitan Commissioners then and there present, or any three visitors, shall think fit to recommend to the Lord Chancellor, or other the person or persons intrusted as aforesaid, for the time being, that any licence granted by the said commissioners or justices respectively should be revoked, it shall and may be lawful for such Lord Chancellor, or other the person or persons intrusted as aforesaid, after making such inquiries as he shall think necessary, to revoke the same by an instrument under his hand and seal, such revocation to take effect at a period not exceeding three calendar months from the time notice thereof shall have been given in the London Gazette; and a copy of such instrument of revocation shall be transmitted to the person to whom such licence shall have been granted, his executors or administrators, or to the superintendent, in case the person to whom

Revoking licences.

2 & 3 WIL. 4, such licence shall have been granted shall not reside in the licensed house, before any such publication shall take place; but if the Lord Chancellor, or other the person or persons intrusted as aforesaid, shall not think fit to comply with such recommendation, he shall communicate his refusal to the said commissioners or justices respectively as soon as conveniently can be: Provided always, that in case of such revocation being recommended to the Lord Chancellor, or other the person or persons intrusted as aforesaid, notice in writing thereof shall be given to the parties so complained of seven clear days previous to the transmission of such recommendation to the Lord Chancellor, or other the person or persons intrusted as aforesaid.

Insane persons not to be received into a licensed house without an order and medical certificate.

XXVII. And be it further enacted, That no person (not being a parish pauper) shall be received into any house licensed for the reception of insane persons in that part of the United Kingdom called England, without an order under the hand of the person by whose direction such insane person is sent, which order shall be according to the form in schedule (B.) annexed to this act, and in it shall be stated the Christian and surname, and place of abode, and the degree of relationship or other circumstance of connection between such person and the insane person; and the true name, age, place of residence, former occupation, and the asylum or other place (if any) in which the insane person shall have been previously confined, and whether such person shall have been found lunatic or of unsound mind under a commission issued for that purpose by the Lord Chancellor or other the person or persons intrusted as aforesaid; nor shall any such person be received into any such house without a medical certificate of two physicians, surgeons, or apothecaries, in the manner directed by this act; and if any person shall knowingly and wilfully receive any insane person or person represented or alleged to be insane, to be taken care of or confined in any house licensed under this act, without such order and medical certificate, and without making, within three clear days after the reception of such patient, a minute or entry in writing in a book to be kept for that purpose, according to the form in schedule (M.) annexed to this act, of the true name of the patient, and also the Christian and surname, occupation, and place of abode of the person by whom such patient shall be brought, every person so offending shall be deemed guilty of a misdemeanor.

Medical certificate of insanity.

XXVIII. And be it further enacted, That every medical certificate upon which any order shall be given for the confinement of any person (not a parish pauper) in a house licensed under this act shall be according to the form in schedule (C.) annexed to this act, and shall be signed by two medical practitioners, not being in partnership, and each of them being a physician, surgeon, or apothecary, who shall

have separately visited and personally examined the patient to whom it relates not more than seven clear days previous to such confinement, and such certificate shall be signed and dated on the day on which he or she shall have been so examined, and shall state that such person is insane and proper to be confined; and every such certificate for the confinement of any person in a house licensed under this act shall, if the same be not signed by two medical practitioners, state the special circumstance which shall have prevented the patient being visited by two medical practitioners; and any patient may under such special circumstance be admitted into any such house upon the certificate of one medical practitioner, provided such certificate shall be further signed by some other medical practitioner within seven days next after the admission of such patient into any such house as aforesaid; and any person who shall, knowingly and with intention to deceive, sign any such medical certificate, untruly setting forth any of the particulars required by this act, shall be deemed guilty of a misdemeanor (c): Provided always, that no physician, surgeon, or apothecary shall sign any certificate of admission of a patient to any licensed house who is wholly or partly the proprietor or the regular professional attendant of such licensed house, nor shall any physician, surgeon, or apothecary sign any certificate for the reception of a patient into any such house, of which his father, son, brother, or partner is wholly or in part proprietor or the regular professional attendant, on pain of being deemed guilty of a misdemeanor.

2 & 3 Will. 4.
c. 107.

Physicians,
&c. not to
sign certifi-
cates of ad-
mission if in-
terested.

XXIX. And be it further enacted, That no parish pauper shall be received into any house licensed for the reception of insane persons without an order according to the form in schedule (D.) annexed to this act, under the hand and seal of one justice of the peace, or an order according to the form in schedule (E.) annexed to this act, signed by the officiating clergyman and one of the overseers of the poor of the parish to which such pauper shall belong, and also a medical certificate according to the form in schedule (F.) annexed to this act, signed by one physician, surgeon, or apothecary, that such parish pauper is insane, and a proper person to be confined; and if any person shall knowingly and wilfully receive any parish pauper represented or alleged to be insane into any licensed house, without such order and medical certificate, every person so offending shall be deemed guilty of a misdemeanor.

Pauper lunatics,
&c. not ad-
missible.

XXX. And in order that the said Metropolitan Commissioners and visitors may know when any patient is received into any house licensed for the reception of insane persons, be it further enacted, That the proprietor or resident superintendant of every house licensed under this act, whether by the said Metropolitan Commissioners or by the said justices,

Notice to be
given to clerk
of the commis-
sioners,
&c. within
two days after
the admission
of every pa-
tient.

2 & 3 WILL. 4.
c. 107.

shall, within the space of two clear days next after the day on which any person shall have been received into such house, transmit a copy of such order and medical certificates as aforesaid, with a notice according to the form in schedule (G.) annexed to this act, to the clerk of the commissioners; and the proprietor or resident superintendant of every house licensed within the jurisdiction of the visitors shall also within the same space of time transmit a duplicate copy thereof to the clerk of the peace; and every proprietor or resident superintendant of any such house who shall knowingly and wilfully neglect so to do shall be deemed guilty of a misdemeanor; which copies the said clerk of the commissioners or clerk of the peace is hereby required to preserve, and also within five clear days to enter in a register to be provided for that purpose the Christian and surname of each insane person so returned to him, and of the persons by whose order and upon whose medical certificates such insane persons shall be confined, and the house in which such insane person is confined, according to the form in schedule (M.) annexed to this act; and the clerk of the commissioners and clerk of the peace shall for every omission or neglect in this particular forfeit and pay, on conviction before any one of his Majesty's justices of the peace, the sum of five pounds, to be recovered and applied as hereinafter mentioned.

The like notice to be given on the removal or death of a patient.

XXXI. And be it further enacted, That whenever any patient confined in any house licensed for the reception of insane persons shall be removed therefrom, or shall die, the proprietor or resident superintendant of such house shall, within two clear days next after such removal or death, transmit a written notice thereof to the clerk of the Metropolitan Commissioners or clerk of the peace, according to the form in schedule (H.) annexed to this act; and in cases of removal such notice shall state by whom removed, and in what state of mind such person shall have been when removed, and (if within his knowledge) to what place removed; which notices shall in like manner be preserved and entered by the clerk of the commissioners or clerk of the peace as is required in the case of the notice of the admission of any patient into such licensed house; and every proprietor or resident superintendant of any such house, who shall knowingly and wilfully neglect so to do, shall be deemed guilty of a misdemeanor.

Statement of pauper patients dying to be transmitted to clerk of commissioners or clerk of visitors.

XXXII. And be it further enacted, That in case of the death of any parish pauper patient in any licensed house, a statement of the causes of the death of such patient shall be drawn up and signed by the medical attendant of such licensed house, and a copy thereof, duly certified by the proprietor or resident superintendant of such house, shall be by him transmitted to the clerk of the Metropolitan Commissioners or the clerk of the visitors respectively within two clear

days of the death of such patient; and every medical attendant and proprietor, or resident superintendant, who shall knowingly or wilfully neglect to draw up, sign, or transmit such statement as aforesaid, shall respectively, on conviction thereof before one justice of the peace, forfeit and pay the sum of ten pounds, to be recovered as hereinafter directed.

XXXIII. And be it further enacted, That in every house licensed under this act there shall (if it contain one hundred patients) be a resident physician, surgeon, or apothecary; and every such house containing less than one hundred patients (in case such house shall not be kept by a physician, surgeon, or apothecary) shall be visited twice in every week by a physician, surgeon, or apothecary; and such resident attendant or visiting physician, surgeon, or apothecary is hereby respectively required once in every week to make and sign a statement of the health of all the patients, and the condition of the house, according to the form in schedule (L.) annexed to this act; and such statement shall be entered in a book to be kept at such house, and be regularly laid before the visiting Metropolitan Commissioners or visitors, for their inspection and signature.

XXXIV. Provided always, and be it further enacted, That when any house shall be licensed to receive less than eleven insane persons, then and in such case it shall and may be lawful for a majority of the said commissioners at any meeting under this act, or any three of the said visitors, if they shall so think fit, to direct and permit that such house shall be visited by the physician, surgeon, or apothecary once at the least in four weeks, instead of twice in every week: Provided always, that such permission shall be in writing under the hands and seals of five of the said commissioners or three of the said visitors, as the case may require, according to the form in schedule (K.) annexed to this act, and shall be subject to such alteration or revocation as the said commissioners or justices respectively shall think fit; and that such physician, surgeon, or apothecary shall enter in a book to be kept for that purpose the date of his visit, and the condition of the house, and state of health of the patients therein.

XXXV. And be it further enacted, That every licensed house within the jurisdiction of the Metropolitan Commissioners shall be visited by three at least of the said Metropolitan Commissioners, one of whom at the least shall not be a physician as aforesaid, four times at the least in every year, on such days and at such hours of the day, between the hours of eight in the morning and six in the evening from the twenty-first day of September to the twenty-first day of March, and between the hours of six in the morning and eight in the evening from the twenty-first day of March to the twenty-first day of September, in each year, and with-

2 & 3 WHL. 4,
c. 107.

Licensed houses containing 100 patients to have a resident medical man; containing less than 100 to be visited by medical men.

Commissioners, &c. may alter the periodical visits of medical attendants.

Houses to be inspected by commissioners four times a-year;

2 & 3 WILL. 4.
c. 107.

shall, within the space of two clear days next after the day on which any person shall have been received into such house, transmit a copy of such order and medical certificates as aforesaid, with a notice according to the form in schedule (G.) annexed to this act, to the clerk of the commissioners; and the proprietor or resident superintendant of every house licensed within the jurisdiction of the visitors shall also within the same space of time transmit a duplicate copy thereof to the clerk of the peace; and every proprietor or resident superintendant of any such house who shall knowingly and wilfully neglect so to do shall be deemed guilty of a misdemeanor; which copies the said clerk of the commissioners or clerk of the peace is hereby required to preserve, and also within five clear days to enter in a register to be provided for that purpose the Christian and surname of each insane person so returned to him, and of the persons by whose order and upon whose medical certificates such insane persons shall be confined, and the house in which such insane person is confined, according to the form in schedule (M.) annexed to this act; and the clerk of the commissioners and clerk of the peace shall for every omission or neglect in this particular forfeit and pay, on conviction before any one of his Majesty's justices of the peace, the sum of five pounds, to be recovered and applied as hereinafter mentioned.

The like notice to be given on the removal or death of a patient.

XXXI. And be it further enacted, That whenever any patient confined in any house licensed for the reception of insane persons shall be removed therefrom, or shall die, the proprietor or resident superintendant of such house shall, within two clear days next after such removal or death, transmit a written notice thereof to the clerk of the Metropolitan Commissioners or clerk of the peace, according to the form in schedule (H.) annexed to this act; and in cases of removal such notice shall state by whom removed, and in what state of mind such person shall have been when removed, and (if within his knowledge) to what place removed; which notices shall in like manner be preserved and entered by the clerk of the commissioners or clerk of the peace as is required in the case of the notice of the admission of any patient into such licensed house; and every proprietor or resident superintendant of any such house, who shall knowingly and wilfully neglect so to do, shall be deemed guilty of a misdemeanor.

Statement of pauper patients dying to be transmitted to clerk of commissioners or clerk of visitors.

XXXII. And be it further enacted, That in case of the death of any parish pauper patient in any licensed house, a statement of the causes of the death of such patient shall be drawn up and signed by the medical attendant of such licensed house, and a copy thereof, duly certified by the proprietor or resident superintendant of such house, shall be by him transmitted to the clerk of the Metropolitan Commissioners or the clerk of the visitors respectively within two clear

days of the death of such patient; and every medical attendant and proprietor, or resident superintendant, who shall knowingly or wilfully neglect to draw up, sign, or transmit such statement as aforesaid, shall respectively, on conviction thereof before one justice of the peace, forfeit and pay the sum of ten pounds, to be recovered as hereinafter directed.

XXXIII. And be it further enacted, That in every house licensed under this act there shall (if it contain one hundred patients) be a resident physician, surgeon, or apothecary; and every such house containing less than one hundred patients (in case such house shall not be kept by a physician, surgeon, or apothecary) shall be visited twice in every week by a physician, surgeon, or apothecary; and such resident attendant or visiting physician, surgeon, or apothecary is hereby respectively required once in every week to make and sign a statement of the health of all the patients, and the condition of the house, according to the form in schedule (L.) annexed to this act; and such statement shall be entered in a book to be kept at such house, and be regularly laid before the visiting Metropolitan Commissioners or visitors, for their inspection and signature.

XXXIV. Provided always, and be it further enacted, That when any house shall be licensed to receive less than eleven insane persons, then and in such case it shall and may be lawful for a majority of the said commissioners at any meeting under this act, or any three of the said visitors, if they shall so think fit, to direct and permit that such house shall be visited by the physician, surgeon, or apothecary once at the least in four weeks, instead of twice in every week: Provided always, that such permission shall be in writing under the hands and seals of five of the said commissioners or three of the said visitors, as the case may require, according to the form in schedule (K.) annexed to this act, and shall be subject to such alteration or revocation as the said commissioners or justices respectively shall think fit; and that such physician, surgeon, or apothecary shall enter in a book to be kept for that purpose the date of his visit, and the condition of the house, and state of health of the patients therein.

XXXV. And be it further enacted, That every licensed house within the jurisdiction of the Metropolitan Commissioners shall be visited by three at least of the said Metropolitan Commissioners, one of whom at the least shall not be a physician as aforesaid, four times at the least in every year, on such days and at such hours of the day, between the hours of eight in the morning and six in the evening from the twenty-first day of September to the twenty-first day of March, and between the hours of six in the morning and eight in the evening from the twenty-first day of March to the twenty-first day of September, in each year, and with-

2 & 3 WML. 4,
c. 107.

Licensed houses containing 100 patients to have a resident medical man; containing less than 100 to be visited by medical men.

Commissioners, &c. may alter the periodical visits of medical attendants.

Houses to be inspected by commissioners four times a-year;

S & S WHL. 4.
c. 107. out notice, and for such length of time as they shall think fit, and they are hereby empowered to examine the persons confined therein in such manner as they shall see fit.

and by visitors three times a-year at least;

but not by the clerk of the commissioners or justices.

XXXVI. And be it further enacted, That every licensed house within the jurisdiction of the said visitors appointed at quarter sessions shall be visited by two at least of the said visitors three times at the least in every year, in like manner and with like powers as is herein-before directed and given to the Metropolitan Commissioners: Provided always, that it shall not be lawful for the clerk of the said Metropolitan Commissioners, or clerk of the peace, or other person appointed as aforesaid, to accompany the said commissioners or visitors on any visit of inspection to any of the said houses, unless he be required for any special purpose by such commissioners or visitors.

Commissioners and visitors to inquire and state whether Divine Service is performed.

If not performed the proprietor to state the reason.

XXXVII. And be it further enacted, That the Metropolitan Commissioners or visitors, upon their several visitations hereinbefore mentioned, shall inquire whether any and at what times Divine Service is read and performed for the benefit and consolation of any of the patients, or what religious aid they receive under any circumstances of intellectual improvement, and what description of employment, amusement, or recreation (if any) is provided for them; and such commissioners or visitors shall at the time of such visitation state, in the book directed by this act to be kept for recording the visits of the Metropolitan Commissioners or visitors respectively, the result of such their inquiry, with such observations as they shall think useful or necessary; and in those houses where it shall appear that Divine Service is not performed, or that religious communication with any minister is not permitted, the proprietor or resident superintendant of such house shall state in the said book the reason thereof.

Plan of house to be hung up, and copy of act kept; and at each visitation Commissioners to make minutes.

XXXVIII. And be it further enacted, That there shall be hung up in some conspicuous part of every licensed house a copy of the plan delivered to the Metropolitan Commissioners or justices, and there shall also be kept in every such house a King's Printer's copy of this act bound up in a book, in which book the said commissioners or visitors within their jurisdictions are hereby required, at every such visitation, to make minutes in writing of the condition of such house, as to the care of the patients therein, and all such other particulars as they shall think deserving of their notice, together with their observations thereupon; and the said Metropolitan Commissioners or visitors shall transmit a copy of such minute to the respective clerk of the commissioners or clerk of the peace.

Minutes to be transcribed into a book.

XXXIX. And be it further enacted, That the clerk of the Metropolitan Commissioners and the clerk of the peace respectively, or other person appointed as aforesaid, shall enter

such copy of minute in a book to be kept by them for that purpose; and all such minutes shall be laid before the said commissioners or justices respectively previous to the consideration of any renewal of the licence to the house to which such minutes shall relate.

XL. And be it further enacted, That if the proprietor or resident superintendant of any licensed house shall fraudulently conceal or attempt to conceal any part of such house or premises, or any person detained therein as insane, from any such commissioners or visitors, or from any medical or other person authorized under the provisions of this act to visit and inspect any such house and the patients confined therein, every person so offending shall be deemed guilty of a misdemeanor.

Concealing persons from inspection to be deemed a misdemeanor.

XLI. And be it further enacted, That if it shall appear, after three separate and distinct visits, to be made by three at the least of the said Metropolitan Commissioners, or three at the least of the said visitors, within their respective jurisdictions, two of which commissioners at the least shall be physicians, or one of which visitors shall be a medical practitioner, fourteen days at the least to intervene between each visit, that any person is detained in any such house without sufficient cause, and notice thereof in writing shall have been given by the clerk of such commissioners or visitors to the proprietor or resident superintendant of such house, and to the person by whose authority such insane person was sent, it shall and may be lawful for the said commissioners, at one of their quarterly meetings, or at a meeting specially summoned at four clear days' notice, or for the justices in quarter sessions, to set such person at liberty, or otherwise to act under the circumstances as the case may seem to require: Provided always, that in case of illness or other reasonable cause preventing the subsequent visitations to be made by the same medical commissioners or medical visitors, then such subsequent visitation may be made by any other medical commissioner or medical visitor; but such power of liberation shall not extend to the case of any person who shall have been found idiot, lunatic, or of unsound mind under a commission issued for that purpose by the Lord Chancellor or other the person or persons intrusted as aforesaid, nor to any insane person confined under any order or authority of his Majesty's principal Secretary of State for the Home Department; but it shall and may be lawful for the said Metropolitan Commissioners or visitors, if they shall think fit, to examine into the state of mind or condition of any such person, and to report their opinion in writing of the state of mind or condition of such person to the Lord Chancellor or other the person or persons intrusted as aforesaid, or to his Majesty's principal Secretary of State for the Home Department, as the case may be.

Commissioners may set at liberty persons improperly confined.

Exception.

2 & 3 Will. 4,
c. 107.

Commissioners, upon information of malpractices in any licensed house, may visit the same at night.

In case of inquiry whether any particular patient is in confinement, the commissioners, &c. may give an order to the clerk, who shall furnish the information.

Annual report of houses to be made to the Lord Chancellor, &c.

Transcript of minutes of visitors to all houses to be sent to the clerk of the commissioners by the clerk of the peace. &c.

XLII. And be it further enacted, That it shall and may be lawful to and for any two or more of the said commissioners or visitors respectively, upon receiving information upon oath (which oath they are or any one of them is hereby empowered to administer) that the party making such oath hath cause to suspect and doth verily believe that some malpractices have taken place in any house licensed under this act, which malpractices cannot be ascertained by examination and inspection during the day, to visit and to inspect any such house at such hour of the night as they shall think fit.

XLIII. And be it further enacted, That if any person shall apply to one of the Metropolitan Commissioners or any visitor within their respective jurisdictions, in order to be informed whether any particular person is confined therein, and the said commissioner or visitor shall think it reasonable to permit such inquiry to be made, and shall sign an order directed to the clerk of the commissioners or clerk of the peace, or other person appointed as aforesaid, for that purpose, the said clerk of the commissioners or clerk of the peace, or other person appointed as aforesaid, is hereby required, upon the receipt of such order, and upon payment of the sum of seven shillings and no more for his trouble, to make search; and if it shall appear upon search that the person so inquired after is or has within the last twelve months been confined in any of the said houses, the said clerk of the commissioners or clerk of the peace, or other person appointed as aforesaid, shall deliver to the person so applying, in writing, the name of the proprietor or resident superintendant in whose house the person so inquired after is or has been confined, the situation of such house, and (if required) a copy of the order and medical certificates upon which such person was received into such house.

XLIV. And be it further enacted, That the Metropolitan Commissioners shall in the month of June in every year make a report of the state and condition of the several houses licensed by them under this act, and also as to the care of the patients therein, and such other particulars as they shall think deserving of notice, to the Lord Chancellor or other the person or persons intrusted as aforesaid.

XLV. And be it further enacted, that the clerks of the peace within their respective jurisdictions shall in the month of June in every year prepare a complete transcript of the minutes of the said visitors on their several visitations to the several houses within their respective jurisdictions licensed under this act, which transcript shall be transmitted by the respective clerks of the peace, on or before the first day of August, to the clerk of the Metropolitan Commissioners, who shall preserve the same for the inspection of the said Metropolitan Commissioners, his Majesty's principal Secretary of State for the Home Department, the Lord Chancellor or other

the person or persons intrusted as aforesaid, and any other person having authority from them respectively. s. & s. with 4. c. 107.

XLVI. And be it further enacted, That no person (except he be a guardian or relative who does not derive any profit from the charge or a committee appointed by the Lord Chancellor or other the person or persons intrusted as aforesaid,) shall, under pain of being deemed guilty of misdemeanor, receive to board or lodge in any house not licensed under this act, or take the care or charge of any insane person, without first having the like order and medical certificates as are required on the admission of an insane person (not being a parish pauper patient) into a licensed house (d).

No person to receive any insane person into an unlicensed house without an order and medical certificates.

XLVII. And be it further enacted, That every person (except as aforesaid) who shall receive to board or lodge in any house not licensed under this act, or take the care or charge of, any insane male or female person, shall within twelve calendar months next after, if such insane persons respectively shall not previously have returned to their own or usual place of abode, transmit to the clerk of the Metropolitan Commissioners a copy of such order and medical certificates, sealed, and indorsed "private return," and not to be inspected by any person except by the said clerk or other person authorized by the Lord Chancellor or his Majesty's Secretary of State for the Home Department; and every such person (except as aforesaid) shall also (if such insane male or female person shall not have been removed) on the first day of January in every succeeding year, or within seven clear days after, transmit to such clerk a certificate signed by two physicians, surgeons or apothecaries, describing the then actual state of mind of such insane person, and to be indorsed "private return;" and all such orders, medical certificates, and returns shall be preserved by the said clerk, and shall be open only to the inspection of his Majesty's principal Secretary of State for the Home Department, and of the Lord High Chancellor or other the person or persons intrusted as aforesaid, and of such other persons as shall be authorized to inspect the same by an order under their respective hands and seals; and every person (except as aforesaid) who shall receive to board or lodge in any house not licensed under this act, or take the care or charge of, any insane person in any such house, and who shall omit to transmit such copies of orders and certificates, shall be deemed guilty of a misdemeanor; and the clerk of the Metropolitan Commissioners in lunacy, with the sanction in writing of his Majesty's principal Secretary of State for the Home Department, is hereby required to enforce the due execution of this provision of law; and he shall be paid or allowed such a sum of money for any proceedings thereabout as his Majesty's

Copy of such order and certificates to be sent to clerk of Metropolitan Commissioners, indorsed "private return."

(d) This provision differs from that in the 9 Geo. 4, c. 41, s. 40. See *ante*, pp. 480—482.

2 & 3 Will. 4,
c. 107. principal Secretary of State for the Home Department shall think fit, and to be charged upon the contingency fund of the Home Office.

Lord Chancellor and Secretary of State may order visitation of patients in care of relatives &c. :

XLVIII. Provided always, and be it further enacted, That it shall and may be lawful for the Lord High Chancellor or other the person or persons intrusted as aforesaid, or for his Majesty's principal Secretary of State for the Home Department, in case of any person being confined as a state lunatic, or under the order of any criminal court of justice, if they shall think fit, at any time or times, by an order by either of them directed to the said Metropolitan Commissioners, or to any other person whom they shall think fit to appoint, to require the said Metropolitan Commissioners or other person so to be appointed to visit and examine any person confined as an insane person, who shall be confined in the care of any guardian or relative, or of any other person, and to make a report to the Lord Chancellor or other the person or persons intrusted as aforesaid, or to his Majesty's principal Secretary of State for the Home Department, of such matters as they shall be directed to inquire into: Provided always, that the said Secretary of State shall have no authority under this act to order a visitation or examination of any patient under the care of a committee appointed by the Lord High Chancellor or other the person or persons intrusted as aforesaid.

but not patients under a committee.

Lord Chancellor or Secretary of State may order commissions, &c. to visit lunatic asylums and public hospitals.

XLIX. And be it further enacted, That it shall and may be lawful for the Lord Chancellor or other the person or persons intrusted as aforesaid, or his Majesty's principal Secretary of State for the Home Department, if he shall think fit, to employ any Metropolitan Commissioner appointed under this act, or medical or other person, to inspect and inquire into the state of any lunatic asylum, public hospital, or other house or place wherein any insane person, or person represented to be insane, shall be confined, and to report to him the result of such inspection and inquiry; and every such commissioner, medical or other person, employed to visit any person to inspect any place as aforesaid, shall be paid or allowed such sum of money for his attendance and trouble as to the Lord Chancellor or other the person or persons intrusted as aforesaid, or his Majesty's Secretary of State for the Home Department, shall seem to be an adequate and reasonable allowance, and such expenses shall be charged on the contingency fund of the Home Office.

Orders, &c. relative to persons dying or cured to be delivered up to the Lord Chancellor.

L. Provided always, and be it further enacted, That in all cases in which any patient shall die, or have been discharged as cured, the order, medical certificates, and notices required under this act, or under the said recited act of the ninth year of the reign of his said late Majesty, may be delivered up to

the Lord Chancellor, or other the person or persons intrusted as aforesaid, to be cancelled, and the name of such person to be wholly erased from the register thereof, within one year after the period of such death or discharge.

2 & 3 Will. 4.
c. 107.

LII. Provided always, and be it further enacted, That, after the passing of this act, the clerk to the Metropolitan Commission appointed under the former act for licensing houses for the reception of insane persons shall forthwith deliver up any register of private patients which may be in his possession to the Lord Chancellor, or other person or persons intrusted as aforesaid, in order that the same may be cancelled.

Registers of private patients to be delivered up to the Lord Chancellor.

LIII. And for the better enabling the Metropolitan Commissioners and visitors executing this act to inquire into the several matters and things by this act referred to them, be it enacted, That it shall be lawful to and for any three of the said commissioners, one of whom shall not be a physician, or the said visitors, from time to time as they shall see occasion, to require, by summons (according to the form in schedule (N.) annexed to this act), any person to appear before them to testify the truth touching any matters relating to the execution of the powers given by this act, on oath or affirmation, which oath or affirmation the said commissioners or visitors are hereby empowered to administer; and every person who shall not appear before the said commissioners or visitors pursuant to such summons, without assigning some reasonable excuse for not appearing, or appearing shall refuse to be sworn or examined, and being thereof convicted before one of his Majesty's justices of the peace, upon information thereof upon oath before any such justice, shall for every such neglect or refusal forfeit and pay such sum of money, not exceeding fifty pounds nor less than ten pounds, as such justice shall think fit and order.

Commissioners may summon witnesses, who shall be subject to penalty for neglect.

LIII. And for the more effectual prosecution of offences punishable by summary conviction under this act, be it enacted, That where any person shall be charged upon the oath of a credible witness before a justice of the peace for any offence against the provisions of this act, the justice may summon the person charged to appear at a time and place to be named in such summons; and if he shall not appear accordingly, and upon proof of the due service of the summons (by leaving the same at his last or usual place of abode), the said justice, with another justice, may either proceed to hear and determine the case, or issue his warrant for apprehending such person and bringing him before him or some other justices of the peace; and the justices before whom the person so charged shall appear or be brought shall proceed to hear and determine the case.

Summary conviction.

LIV. And be it further enacted, That the justices before whom any person shall be convicted of any offence against this act may cause the conviction to be drawn up in the fol-

Form of conviction.

2 & 3 Will. 4,
c. 107.

lowing form of words, or in any other form of words to the same effect, as the case may require; and that no conviction under this act shall be void through want of form:

‘ BE it remembered, That, on the day of ,
‘ in the year of our Lord , at ,
‘ in the county of , A. B. is convicted before
‘ us, . of his Majesty’s justices of the peace
‘ for the said county, for that he the said
‘ did , and we the said
‘ adjudge the said for his
‘ offence, to pay the sum of .’

Proceedings
of proprietors
to be justified
in course of
common law.

LV. And whereas it is not intended by this act to give the proprietors or resident superintendant of any licensed house, or any other person concerned in confining any of his Majesty’s subjects, any new justification from their being able to prove that the person so confined has been sent there by such order and upon such medical certificates as are required by this act; be it therefore enacted, That in all proceedings which shall be had under his Majesty’s writ of *habeas corpus*, and in all indictments, informations, and actions and other proceedings that shall be preferred or brought against any person for confining or ill-treating any of his Majesty’s subjects, insane, or represented or alleged to be insane, the parties complained of shall be obliged to justify their proceedings according to the course of the common law, in the same manner as if this act had not been made.

Recovery and
application of
penalties.

LVI. And be it further enacted, That all complaints and informations of and for offences against this act, where any fines, penalties, or forfeitures are imposed by virtue of this act, and not otherwise provided for, shall and may be made before one or more justices of the peace for the county or place wherein the offence shall be committed, and such justice is hereby authorized and empowered to take cognizance thereof, and to summon the person complained of to appear before two or more justices of the peace, and upon complaint upon oath to issue their warrant for the apprehension of any such person, and upon the appearing or not appearing of such person pursuant to such summons, or upon such person being apprehended with such warrant, to hear the matter of every such complaint and information, by examination of any witness upon oath, and to make any such determination thereon as such justices shall think proper; and, upon conviction of any persons, such justices shall and may issue a warrant under their hands and seals for levying the fine, penalty, or forfeiture by virtue of this act imposed for such offence, by distress and sale of the goods and chattels of the person so convicted; and it shall and may be lawful for any such justice to order any person so convicted to be detained and kept in the custody of any constable or other peace officer until return

can be conveniently made to such warrant of distress, unless the said offender shall give sufficient security, to the satisfaction of such justice, for his appearance before the said justice on such day as shall be appointed for the return of such warrant of distress, such day not being more than seven days from the time of taking any such security, and which security the said justice is hereby empowered to take by way of recognizance or otherwise; but if upon the return of such warrant of distress it shall appear that no sufficient distress can be had whereupon to levy the said penalty or forfeiture and such costs and charges as aforesaid, and the same shall not be forthwith paid, or in case it shall appear to the satisfaction of such justice, either by the confession of the offender or otherwise, that the offender hath not sufficient goods and chattels whereupon the said penalties, forfeitures, fines, costs, and charges may be levied under a warrant of distress, such justice shall not be required to issue such warrant of distress; and thereupon it shall be lawful for such justice, and he is hereby authorized and required, by warrant under his hand and seal, to commit such offender to the common gaol or house of correction for any term not exceeding three calendar months unless such penalty or forfeiture, and all reasonable charges attending the recovery thereof, shall be sooner paid and satisfied; and all such fines, penalties, and forfeitures, when recovered, shall be paid into the hands of the overseers of the poor of the parish where the offence shall be committed; and the overplus (if any) arising from such distress and sale, after payment of the penalty, and the costs and charges attending the same, shall be returned, upon demand, to the owner of the goods and chattels so distrained.

LVII. Provided always, and be it further enacted, That any person thinking himself aggrieved by any order or determination of any justice of the peace in pursuance of this act may, within four calendar months after such order made or given, complain to the justices of the peace at the general or quarter sessions of the peace to be held in and for the county wherein the offence shall be committed, the person appealing having first given at least fourteen clear days' notice in writing of such appeal, and the nature and matter thereof, to the person appealed against, and forthwith after such notice entering into a recognizance before some justice of the peace, with two sufficient sureties, conditioned to try such appeal, and to abide the order and award of the said court thereupon; and the said justices, upon the proof of such notice and recognizance having been given and entered into, shall, in a summary way, hear and determine such complaint at such general or quarter sessions of the peace to be held for the said county, or, if they think proper, adjourn the hearing hereof until the next general or quarter sessions of the peace to be held for the said

Appeal to
quarter ses-
sions.

† *sc.*

2 & 3 Will. 4.
c. 107.

county, and, if they see cause, may mitigate any forfeiture or fines, and may order any money to be returned which shall have been levied in pursuance of such order or determination, and shall and may also award such further satisfaction to be made to the party injured, or such costs to either of the parties, as they shall judge reasonable and proper; and all such determinations of the said justices shall be final, binding, and conclusive upon all parties, to all intents and purposes whatsoever.

Limitation of actions.

LVIII. And be it further enacted, That if any action or suit shall be commenced or brought against any person for any thing done in pursuance of this act, the same shall be commenced within six calendar months next after the fact committed, and shall be laid or brought in the county, city, or place where the cause of action shall have arisen, and not elsewhere; and the defendant in every such action or suit shall and may at his election plead specially, or the general issue not guilty, and give this act and the special matter in evidence at any trial to be had thereupon, and that the same was done in pursuance and by the authority of this act; and if the same shall appear to be so done, or that such action or suit shall be brought in any other county, city, or place, or shall not have been commenced within the time before limited for bringing the same, that then the jury shall find a verdict for the defendant; and upon a verdict being so found, or if the plaintiff shall be nonsuited, or discontinue his action or suit after the defendant shall have appeared, or if, upon demurrer, judgment shall be given against the plaintiff, then the defendant shall recover treble costs, and have such remedy for recovering the same as any defendant hath or † have in any other cases by law.

General issue.

Treble costs.

† Sic.

Actions not to be brought except by order of commissioners or justices.

LIX. Provided always, and it is hereby further enacted, That it shall not be lawful for any person whomsoever to commence, prosecute, enter, file, or prefer any action, bill, plaint, information, or indictment against any person, under or by virtue of this act, unless the same be commenced, prosecuted, entered, filed, or preferred by order of the said Metropolitan Commissioners at some one of their meetings, or by the justices at their general quarter sessions, within their respective jurisdictions, or as is otherwise directed by this act; and if any action, bill, plaint, information, or indictment shall be commenced, entered, filed, or preferred by or in the name of any person whomsoever (except as aforesaid), the same and all proceedings thereupon had shall be null and void; and the Court and justice, where or before whom such action, bill, plaint, information, or indictment is or shall be or † commenced, prosecuted, entered, filed, or preferred, shall not permit or suffer any proceedings to be had; and no Metropolitan Commissioner, justice, or visitor shall in anywise be liable to

† Sic.

any criminal proceeding or civil action for any reasons to be given in the execution of this act. & 3 Will. 4, c. 107.

LX. And be it further enacted, That it shall and may be lawful for the clerk of the Metropolitan Commissioners or clerk of the peace to sue for and recover all penalties or forfeitures granted by this act; and they are hereby respectively required to enforce the due execution of this act upon their own authority, in all cases not otherwise directed to have the previous order of the said commissioners or justices, or by the Lord Chancellor or other person or persons intrusted as aforesaid, or by his Majesty's principal Secretary of State for the Home Department, for the doing thereof.

Clerk of the commissioners, &c. to enforce act and recover penalties.

LXI. And be it further enacted, That the prosecution for every offence under this act (except such as are committed within the jurisdiction of the Metropolitan Commissioners, or such as are punishable by summary conviction,) shall be by indictment preferred to a grand jury at the assizes to be held in and for the county wherein the offence shall have been committed.

Prosecution to be by indictment at assizes.

LXII. Provided always, and be it further enacted, That nothing in this act contained shall be construed to extend to the royal hospital of Bethlehem, or any building erected adjacent thereto, for the confinement of criminal lunatics, or to the royal military or naval hospitals, or to any lunatic asylum already erected and established under an act passed in the forty-eighth year of the reign of his late Majesty King George the Third, intituled *An act for the better care and maintenance of lunatics, being paupers or criminals, in England*, or erected and established, or hereafter to be erected and established, under the provisions of an act passed in the ninth year of the reign of his late Majesty King George the Fourth, intituled *An act to amend the laws for the erection and regulation of county lunatic asylums, and more effectually to provide for the care and maintenance of pauper and criminal lunatics, in England*.

Act not to extend to Bethlehem hospital, or to county lunatic asylums.

48 G. 3, c. 98.

9 Geo. 4, c. 40.

LXIII. Provided also, and be it further enacted, That nothing in this act contained shall extend to any public hospital or parts of public hospitals, or other charitable institutions supported wholly or partly by voluntary contributions, or by applying the excess of payments of the more affluent in reduction of the payment by persons in more limited circumstances, excepting so far as relates to visitations appointed by the Lord Chancellor or other the person or persons intrusted as aforesaid, or his Majesty's principal Secretary of State for the Home Department, and the transmission in the month of August in every year of a full and complete report, according to the form schedule (M.) to this act, of every patient confined therein, or who shall have been confined therein within the

Nothing herein to extend to public hospitals or institutions, except as to visitations and to the transmission of names of patients.

2 & 3 WILL. 4, twelve months preceding, and ending on the thirty-first day of July, to the Lord Chancellor or other person or persons intrusted as aforesaid, and also to the clerk of the Metropolitan Commissioners, who shall file and preserve the same for the inspection of the said Metropolitan Commissioners.

Commencement of act.

LXIV. And be it further enacted, That this act, and the several matters and things therein contained, shall commence and take effect from and after the passing of this act, and not sooner, and shall continue in force for the term of three years and from thence to the end of the next session of Parliament; and shall be deemed and taken to be a public act.

Public act.

SCHEDULES TO WHICH THIS ACT REFERS.

SCHEDULE (A.) (f).

FORM OF LICENCE.

KNOW all men, That we the undersigned, being five of the Metropolitan Commissioners in Lunacy, [*or we, the undersigned justices of the peace acting in and for in quarter sessions assembled,*] do hereby certify, That *A.B.* of the parish of _____, in the county of _____, hath delivered a notice to and deposited with our clerk [*or clerk of the peace*] a plan and description of a house and premises proposed to be licensed for the reception of insane persons; and we, having considered and approved the same, do hereby authorize and empower the said *A.B.* [*or C.D. as superintendant, the said A.B. not intending to reside therein himself,*] to use and employ the house and buildings situate at _____, in the parish of _____, in the county of _____, as a house for the reception of _____ insane persons [*male and female, or male or female only*] whereof _____ to be parish pauper patients; and this licence to continue in force for the space of _____ calendar months and no longer.

Given under our hands and seals this _____ day of _____, in the year of our Lord _____.

(L.S.)
(L.S.)
(L.S.)
(L.S.)
(L.S.)

Witness

A.B.

Clerk to the Metropolitan Commissioners,

or

Clerk of the Peace.

Note:—Fourteen days' previous notice of the intention to renew this licence must be given to the clerk of the Metropolitan Commissioners or clerk of the peace.

(f) See *ante*, p. 596, s. 18.

SCHEDULE (B.) (g).

STATEMENT and ORDER to be annexed to the medical certificates authorizing the reception of an insane person.

The patient's true Christian and sur- }
name at full length - - - }
The patient's age - - - }
Married or single - - - }
The patient's previous occupation (if }
any) - - - }
The patient's previous place of abode }
The licensed house or other place (if }
any) in which the patient was before }
confined - - - }
Whether found lunatic by inquisition, }
and date of commission - - }
Special circumstance which shall pre- }
vent the patient being separately ex- }
amined by two medical practitioners }
Special circumstance which exists to }
prevent the insertion of any of the }
above particulars - - - }

Sir,

UPON the authority of the above statement, and the annexed medical certificates, I request you will receive the said _____, as a patient into your house.

I am, Sir,

Your obedient Servant,

Name - - - _____
Occupation (if any) - - - _____
Place of abode - - - _____
Degree of relationship (if any) } _____
to the insane person - }

To Mr.
Proprietor of

SCHEDULE (C.) (h)

FORM OF MEDICAL CERTIFICATES.

I, the undersigned, hereby certify, that I separately visited and personally examined _____, the person named in the annexed statement and order, on the _____ day of _____, one thousand eight hundred and _____,

(g) See *ante*, p. 600, s. 27.

(h) *Ibid.* s. 28.

s & 3 Will. 4. and that the said _____ is of unsound mind, and a
 c. 107. proper person to be confined.

(Signed) Name - - - _____
 Physician, surgeon, or } _____
 Apothecary - - - } _____
 Place of abode - - - _____

I, the undersigned, hereby certify, that I separately visited and personally examined _____, the person named in the annexed statement and order, on the _____ day of _____, one thousand eight hundred and _____, and that the said _____, is of unsound mind, and a proper person to be confined.

(Signed) Name - - - _____
 Physician, surgeon, or } _____
 Apothecary - - - } _____
 Place of abode - - - _____

SCHEDULE (D). (i).

FORM of ORDER by justice of peace in cases of pauper lunatics.

to wit. } WHEREAS it appears to me,
 of his Majesty's justices of the peace in and for
 the _____, having called to my assistance Mr.
 that _____, chargeable to the parish of _____ in
 the said county, is of unsound mind; you are hereby directed
 to cause the said _____ to be conveyed to the luna-
 tic asylum in the county of _____ [or the house of
 at _____, duly licensed for the
 reception of insane persons].

Given under _____ hand and seal, this _____ day of _____,
 one thousand eight hundred and _____

(L. S.)

To the overseers of the poor of the
 parish of _____, in the county of _____

SCHEDULE (E.) (k).

FORM of ORDER by officiating clergyman and one overseer of the parish.

WHEREAS it appears to us, the undersigned, being the officiating clergyman of the parish of _____, and one of the overseers of the poor of the said parish of _____, having called to our assistance A. B. [physician, surgeon or

(i) See *ante*, p. 601, s. 29.

(k) *Ibid.*

apothecary], that E.K., chargeable to the parish of _____, 2 & 3 WILL. 4, is of unsound mind, and a proper person to be received into _____ c. 107. a house licensed for the reception of insane persons, we request you to receive the said E.K. into your licensed house.

(Signed) _____ Officiating clergyman.
_____ Overseer.

SCHEDULE (F.) (l).

FORM OF MEDICAL CERTIFICATE in the above cases.

I do hereby certify, That, by the directions of _____, justice of the peace in and for the county of _____ [or the Reverend _____, of the parish of _____, officiating minister, and _____ overseer] I have personally examined the said _____, and that the said _____ is of unsound mind.

Dated this _____ day of _____, one thousand eight hundred and _____.

(Signed) { _____ Physician,
_____ Surgeon,
or
_____ Apothecary.

SCHEDULE (G.) (m).

NOTICE.

Sir,

I AM to acquaint you, That _____ was received into my house on the _____ day of _____, and I herewith transmit a copy of the order and medical certificates.

(Signed) _____

To

The clerk of the Metropolitan Commissioners,

[or
The clerk of the peace.]

SCHEDULE (H.) (n).

FORM OF NOTICE on discharge, removal, or death of patient.

I _____ of _____ hereby give you notice, That _____ of _____ a patient in the licensed house situate in _____, was

(l) See ante, p. 601, s. 29.

(m) See ante, pp. 601-2, s. 30.

(n) See ante, p. 602, s. 31.

s & s Wm. 4, removed therefrom by _____, of _____, [or
 c. 107. died] on the _____ day of _____ one thousand eight
 hundred and _____
 [Here describe the state of mind on removal.]
 Dated this _____ day of _____ one thousand eight
 hundred and _____

(Signed) _____

To
 The Clerk of the Metropolitan Commissioners in Lunacy,
 [or,
 Clerk of the Peace.]

SCHEDULE (I.) (o).

MEDICAL JOURNAL and WEEKLY STATEMENT to be kept in each licensed house for the inspection of commissioners or visitors.

Names of probably curable men.	Names of probably curable women.	No. of probably curable men.	No. of probably incurable men.	No. of probably curable women.	No. of probably incurable women.	No. of men under restraint.	No. of women under restraint.	General remarks on the state of health of the patients, and condition of the house.

In cases of restraint, the approbation or disapprobation of the physician, surgeon, or apothecary to be certified.

(Signed) _____

Physician, Surgeon, or Apothecary.

To be inspected by the commissioners or visitors at their visitation, and signed accordingly.

SCHEDULE (K.) (p).

FORM OF PERMISSION for regulating Medical Attendance.

WHEREAS, by an act of Parliament made and passed in the second and third year of the reign of his present Majesty, intituled "An act for regulating for three years, and from thence until the end of the then next session of Parliament, the care and treatment of insane persons in England," it is amongst other things provided and enacted, That, when any house licensed for the reception of insane persons shall be licensed to receive less than eleven insane persons, then it shall and may be lawful for a majority of the said commissioners, at any meeting under this act, or the said visitors, if they shall so think fit, to direct and permit that such house shall be visited by the physician, surgeon, or apothecary once at the least in every four weeks, instead of twice in every week, as required by the said act: And whereas, on the day of the Metropolitan Commissioners appointed under the said act [*or* the justices] duly granted a licence for the space of calendar months to for a house situate at in the county of for the reception of insane persons: And whereas the said hath applied to the said commissioners [*or* visitors] that they will be pleased to direct and permit the said house to be visited once in every four weeks instead of twice in every week: Now know ye, That we the undersigned commissioners [*or* visitors], having thought fit to accede to the above request, do by this instrument in writing under our hands and seals direct and permit that the house so licensed to the said as aforesaid shall be visited by a physician, surgeon, or apothecary once at the least in four weeks, instead of twice in every week, as required by the said act; provided always, and it is hereby expressly declared, that this permission shall be subject to such revocation or alteration as the said Metropolitan Commissioners [*or* visitors] shall think fit. Witness our hands and seals, this day of one thousand eight hundred and

Witness

(L.S.)
(L.S.)
(L.S.)
(L.S.)
(L.S.)

SCHEDULE (M.) (g).

FORM of BOOK of ENTRY of Patients to be kept in the Licensed Houses, and of REGISTER to be kept by the Clerk of the Metropolitan Commissioners and Visitors, and of ANNUAL REPORT to be made by Public Hospitals and Charitable Institutions.

Surname and Christian names, sex and age of patient, and whether single or married.	Occupation or profession.	Place of residence.	Date of admission of patient, and by whose authority sent.	Date of medical certificate, and by whom signed.	Whether found lunatic by inquisition.	When discharged.	Cured, not cured, or incurable.	Death.

* In the book of entry of patients to be kept in a licensed house, the name, occupation, and place of abode of the person by whom such patient shall be brought must be entered; and in the register to be kept by the clerk of the commissioners or clerk of the peace, the name of the proprietor or resident superintendant, and of the licensed house in which the patient is confined, must be added.

(g) See *act*, pp. 600, 602, ss. 27 & 30, and p. 613, s. 63.

SCHEDULE (N.) (r).

FORM OF SUMMONS.

WE whose names are hereunto set and seals affixed, [commissioners or visitors] appointed under and by virtue of an act of Parliament made and passed in the second and third year of the reign of his present Majesty, intituled "An act for regulating for three years, and from thence until the end of the then next session of Parliament, the care and treatment of insane persons in England," do hereby summon and require you personally to appear before us at _____ in the parish of _____, in the county of _____, on _____ next, the _____ day of _____, at the hour of _____ in the _____ noon of the same day, and then and there to be examined, and testify the truth touching certain matters relating to the execution of the said act.

Given under our hands and seals, this _____ day
of _____, in the year of our Lord _____.

(L.S.)
(L.S.)
(L.S.)

(r) See *ante*, p. 609, s. 52.

LIST OF HOUSES.

Licensed for the reception of Lunatics, by the Metropolitan Commissioners in Lunacy for 1831 & 1832, under statutes 9 Geo. 4, c. 41, and 10 Geo. 4, c. 18 (a).

PROPRIETORS.	SUPERINTENDENTS.	Greatest Number licensed.	
		Private Patients	Parish Pauper Patients
Ayres, Wm., (Gore House) Kensington-gore	Self - - -	20	
Bradbury, Mary (Hollywood House) Chelsea	Self - - -	20	
Burrow, Mary, (Holly House) Hoxton -	Self - - -	40	75
Burrows, Dr., (Retreat) Clapham - -	Mrs. E. Stevens -	30	
Birkett, Richard, (Northumberland House) } Green-lanes, Stoke Newington - - }	Self - - -	40	
Cann, T., (Sleaford House) Battersea-fields	Self - - -	20	
Coles, J., Ravensbourne-terrace, Lewisham	Self - - -	6 M	
Diamond, W.B., (Weston House) St. Pancras	Self - - -	15 M	
Dobles, W., (Surrey House) High-st. Battersea	Self - - -	17	
Douglass, Mary, Ealing - - -	Self - - -	6 F	
Finch, W. C., (Kensington House) Kensington	Self - - -	12 F	
Fleming, Mary, Fulham Road - - -	Self - - -	18 M	
Fox, L. H., (Grange House) Kingsland Road	Self - - -	6	
Haines, Paul, (Althorpe House) Battersea	Self - - -	6	
Jackson, J. T., Turnham-green-terrace -	Self - - -	30	
Knight, T. M., (Hope House) Hammersmith	Self - - -	3	
Do. do. do. Brook Green	{ Robert Johnson, } M. Thorogood	24 F	
Langdon, W., Melina-place, St. John's Wood	Jos. Barber Knight	20 M	
Moyse, W., Lower Tooting, Surrey - -	Self - - -	5	
Mence, C., (as Trustee for Mrs. Mence and } Miss Pierce), (Beaufort House) Fulham - }	Self - - -	20	
Monro, Dr., (Brook House) Upper Clapton	Self - - -	10	
Mott, C.—Taylor, G. J.—Armstrong, Peter, } (Peckham House) Peckham - - - }	Misses Pettingall -	50	
Mullins, John, (Manor Cottage) King's Road, } Chelsea - - - }	Peter Armstrong -	48	172
Oxley, W., (London Retreat) Hackney - -	Self - - -	24 F	
Pope, Jonas Hall, Hanwell - - -	Self - - -	30	
Pell, Mary, (Baxter House) Church-terrace, } St. Pancras - - - }	Miss Hall - - -	10	
Pollard, William Henry, (Clapham Road) -	Self - - -	6 F	
Stillwell, James, & Jas. Stillwell, jun. (Moor- } Croft House) Hillingdon - - - }	Self - - -	30 M	
Stillwell, William, Castle Bar, Ealing - -	Self - - -	45 F	
Sutherland, Dr., (Blackland's House) Chelsea	Ann Ward - - -	6 F	
Sutherland, Dr., (Fisher House) Lr. Islington	Mary Collins - -	30 M	
Symmons, Wm. Hitchman, (Cowper House) } Old Brompton - - - }	Self - - -	12	
Talfourd, E. & A., (Normand House) Fulham	Self - - -	20	
Tuke, E. F. (Sidney House) Hackney Wick	Self - - -	10	
Warburton, T., (White House) Bethnal Green	Charles Beverley -	160	260
Ditto (Bethnal House) ditto -	Matthew Davis -	70	290
Wastell, William, (Hoxton House) Hoxton -	{ J. Watts, E. Watts, } Eliz. Hewlett }	90	260
Warburton, Dr. J., (Whitmore House) Hoxton	Robert Benfield -	70	
Williams, Wm, (Pembroke House) Hackney	Self - - -	35	
Ditto (West House) ditto -	David Appleton -	35	
Ditto (Melbourne Lodge) ditto -	Elizabeth Evans -	15	

(a) The licences must be renewed yearly. See ante, p. 596, s. 18.

PART II.

SUMMARY OF THE PRACTICE IN LUNACY.

PETITIONS in lunacy must be left at the office of the secretary of lunatics in Southampton Buildings, and must be served on the party to be affected by them two clear days before the time appointed for their hearing. Petitions in the matter of a person found an idiot by inquisition, and petitions in lunacy, where the lunatic has neither an heir-at-law nor next of kin, ought to be served on the Attorney General (a) or the Solicitors for the Treasury or their agent. An order to amend a petition in lunacy may be obtained (b), although it seems that the Court is not prevented by the form of the petition from granting such relief as the nature of the case may require (c). Certain days between each term are appointed for the hearing of lunatic petitions, but parties are in the constant habit of bringing such petitions before the Lord Chancellor at all times, as well during term as vacation, and the Lord Chancellor hears and determines according as the interest of the lunatic or his property requires his Lordship's attention (d). It seems that where an order for adjourning a petition in lunacy to the next day of petitions has been made, it will not be rescinded unless a petition for the purpose is presented (e). Affidavits in lunacy must be sworn before a Master in Chancery at the Public Office in Southampton Buildings, Chancery Lane, or the Master's house, if the parties reside in London or within twenty miles from London, in other cases they may be taken before a Master Extraordinary of the Court of Chancery, not being the solicitor employed in prosecuting the commission (f). Such affidavits are generally filed in the office of the Secretary of Lunatics, but sometimes in the offices of the Masters, and of the Clerk of the Custodies.

When it is ascertained that the state of a party's mind is such as to require the management of his affairs to be placed under the direction of the Lord Chancellor, and it is desired to obtain a commission of lunacy to inquire into the state of mind of the party, a petition signed by the party preferring it, and attested by his solici-

(a) *Ex parte Watson*, Jac. Rep. 161.

(b) *In re Worsley*, 15th Dec. 1828.

(c) *Ex parte Proctor*, 1 Swanst. 537.

(d) Return of the secretary of lunatics

ordered by the House of Commons to be printed 8th June, 1830.

(e) *In re Frank*, 31st August, 1831.

(f) 3 Atk. 813. See *ante*, p. 178.

tor, and stating the residence and degree of relationship or other connexion which the petitioner bears towards the subject of the commission, that he is now of unsound mind, and the period for which he has been so, must be presented to the Lord Chancellor, praying that a commission of lunacy may issue. Such petition must be supported by the affidavits of medical and other persons, shewing the insanity or unsound state of mind of the party against whom the commission is desired to be obtained, by setting forth such instances of irrational conduct as afford strong proof that he is insane, and incapable of managing his own concerns. The petition and a copy thereof, with the affidavits in support of it, must be left at the office of the secretary of lunatics, in order to be submitted to the consideration of the Lord Chancellor and to obtain his order thereon.

The five regular commissioners are usually named for executing commissions in and near London, though in some cases special commissioners are appointed for the purpose.

Country commissions are directed to such persons as the Lord Chancellor shall approve, in which two barristers are usually included.

Where a *caveat* has been entered against the issuing of a country commission, the party against whom it is prayed, upon shewing sufficient cause by affidavit, will be allowed to propose a list of commissioners, as well as the party applying for the commission.

If the person against whom a commission of lunacy is sought to be obtained, or any one on his behalf, has entered a *caveat* against its issuing, he will be entitled to have notice of the application to the Lord Chancellor, and to attend and oppose it in the first instance: a *caveat* merely requires notice to be given to the party or his agent of the particular proceeding, is entered at the office of the secretary of lunatics, costs five shillings, and remains in force one year. When the Lord Chancellor has made an order for issuing a commission, the petition and order must be left with the Clerk of the Custodies (g), who will make out the commission and cause it to be passed under the Great Seal, for which he is entitled to receive 3*l.* 7*s.* 6*d.* unless the seal be private, when the costs are higher.

In London commissions, notice must be given to the three commissioners in rotation, which may be ascertained by inquiring of the junior commissioners in the list. Such three commissioners will then appoint a time for executing the commission, at the place mentioned in the Lord Chancellor's order, being usually near the residence of the supposed lunatic.

(g) By stat. 2 & 3 Will. 4, c. 111, after reciting that it is expedient that the offices thereafter mentioned should be abolished, as soon as provision can be made for the due performance of the duties thereunto belonging, it is enacted, that the several offices therein mentioned, including "the clerk of the custodies of lunatics and idiots," shall utterly cease

and determine from and after the 20th day of August, 1833. By the 26th section of the act it is enacted, that nothing therein contained shall be construed to determine any of the aforesaid offices then holden, in possession or reversion, by any person appointed thereto, on or before the 1st day of June, 1832, until the decease or resignation of such person.

The solicitor prosecuting the commission must prepare a precept, with seals annexed, on paper, to be signed and sealed by the major part of the commissioners (for doing which they are entitled to a fee of one guinea each), to the sheriff, directing him to summon a jury of twenty-four persons, to make the inquiries directed by the commission. The precept is to be left at the sheriff's office, and the under sheriff will summon the jury.

Subpoenas written on paper, signed by the major part of the commissioners, should be served in the usual way, upon the witnesses whose attendance is required. If the persons having the supposed lunatic in their custody, refuse or are unwilling to produce him, a warrant for his production at the execution of the commission, written on paper, should be signed and sealed by the major part of the commissioners, for which they are entitled to receive one guinea each; copies of such warrant should be served on such parties as have or are suspected to have the custody of the lunatic's person. On application to the Lord Chancellor, his order may be obtained for the production of the lunatic at the inquiry, and a party disobeying such an order will be guilty of a contempt. The Lord Chancellor will also, on a proper application by petition, order persons who are opposing the commission to have access to the alleged lunatic, in order to enable them to conduct his defence. It is not now the practice to ascertain before the commissioners and jury, the nature and amount of the lunatic's property; but that inquiry, as well as who are his heir-at-law and next of kin, is made before the Master in Chancery to whom the matter is referred after the party has been found to be a lunatic. An inquisition in blank must be prepared on a large sheet of paper.

The commissioners and jury having assembled to execute the commission, the jury having been sworn well and truly to try and a true inquiry to make concerning the lunacy of the party, and to return a verdict according to the evidence adduced; and proclamation having been made, the commission will be read to the jury and the chief commissioner in attendance, will explain to them the nature of the inquiry they are to make, which may be partly collected from the words of the commission itself; and if they find the party to be a lunatic, the next question is when he became so, and whether he enjoys any lucid intervals or not.

The counsel (if any are employed) for the petitioner states the case to the jury, with such observations as may be necessary to explain it. The witnesses to prove the lunacy of the party are then examined and cross-examined, as in other cases; the lunatic ought also to be examined by the commissioners or jury, all other parties being absent; he has also a right to insist on such examination, and to be present at the execution of the commission. After the lunatic has been examined by the commissioners and jury, the junior counsel for the petitioner will sum up the evidence, and observe upon it as in other cases. The counsel opposing the commission will then address the jury, and call such witnesses as he may think expedient, either to contradict those on the other side or to prove the sanity of the

party. The counsel for the petition will then be entitled to reply; after which the evidence will be summed up by the chief commissioner, for the consideration of the jury, twelve of whom must concur in a verdict, whether it be that the party is of sound mind or not. After a verdict has been returned, the inquisition on paper is then signed by the commissioners and jury, after having been previously read over, and is retained in the possession of the solicitor for the commission, on behalf of the jury. Each jurymen is entitled to one guinea for his trouble, for every day in which he is engaged in the inquiry. The usual fee for a commissioner is two guineas for each day. The under sheriff is entitled to the same fee as a commissioner, and the summoning officer to a fee of two guineas. The solicitor for the commission then prepares an engrossment of the inquisition upon parchment, and annexes it to the commission, with these words written on the back: "The execution of this commission appears by the inquisition hereunto annexed;" which the commissioners sign, and then, fixing labels and seals to the bottom of the inquisition, three for the commissioners on the left hand side, and, on the other side, one for each of the jurors, it is to be carried with the commission annexed, and the inquisition on paper before signed by the commissioners and jury, to the commissioners, who will sign and seal the engrossed inquisition, for which they are entitled to be paid one guinea each. The commission and engrossed inquisition must then be filed at the Petty Bag office, and office copies of them must be taken for use on all occasions in Court. The fees at the Petty Bag office are the following—

	<i>s.</i>	<i>d.</i>
For filing - - - - -	2	6
Copying, <i>per sheet</i> - - - - -	8	0
Signing the copy - - - - -	2	0

If the party found to be a lunatic, or of unsound mind, or his friends, or any other party having an interest, are dissatisfied with the finding of the jury, and mean to controvert the matter any further, application to the Lord Chancellor must be made, by petition, in the name of the lunatic or such other party, praying leave to traverse the inquisition; and if, upon hearing the petition, there appear sufficient grounds to doubt whether the party is lunatic or not, leave to traverse will be given, with such directions as to the time of filing the traverse and proceeding to trial, and other matters, as may be necessary (*h*).

An office copy of the Lord Chancellor's order to allow a traverse must be left at the Petty Bag office, where the traverse is drawn up and filed; an office copy of it must be taken by the prosecutor of the commission, who replies in the name of the Attorney-General on behalf of the Crown. The traverse is usually prepared by the petitioner's solicitor, and is signed by counsel when filed; no rule (as in other cases) is given for the Attorney-General to reply; but he replies of course, and proceeds to issue a copy of which is delivered to the lunatic's clerk in court, or solicitor, and notice of

(*h*) See *ante*, Chap. IV. s. 6.

trial given; the record is made up, the *venire* issued, and the record in the usual manner transmitted into the King's Bench for trial.

After it has been determined that the party is a lunatic, a petition must be preferred to the Lord Chancellor, for a reference to the Master to inquire who are the heir or heirs-at-law and next of kin of the lunatic, and who are proper persons to be appointed committees of his person and estate.

In cases where the property is very small, and that fact appears by satisfactory evidence, it may be referred in one petition to the Master to appoint committees, and to certify who are the heir or heirs-at-law and next of kin of the lunatic, and to inquire into the nature of the lunacy, and the amount of the fortune, and what will be proper to be allowed for the maintenance of the lunatic (i). In other cases, the reference as to maintenance is made on a separate petition, after the appointment of the committees.

The petition for the reference to the Master must be left with the Secretary of Lunatics to obtain the Lord Chancellor's order thereon, which, with such petition, is afterwards filed in the office of the Clerk of the Custodies, who gives an office copy, on payment of the regular fees. Such office copy, with a state of facts, supported by affidavits, and a proposal, must be left with the Master to whom the matter is referred, and warrants must be taken out and served for the attendance of the heir-at-law and next of kin of the lunatic before the Master, on his proceeding in the inquiries directed by the order. The relationship of the parties must be proved by the production of certificates of births and marriages, and such other evidence as the nature of the case may require. After the Master has made and signed his report, and it has been filed with the Clerk of the Custodies, application by petition must be made to the Lord Chancellor for confirming the report, and for a reference to the Master to appoint committees, and to inquire into the amount of the lunatic's fortune, and what it will be proper to allow for his future maintenance; and in some cases the Master is directed to take an account of the debts owing by the lunatic, and to advertise for his creditors to come in and prove their debts before the Master. The petition, with a copy thereof, must be left with the secretary of lunatics to be answered and set down in the paper for hearing. Counsel are employed as in other cases.

After the Lord Chancellor has made an order for the appointment of the committees, an application must be made for a grant of the custody of the person and estate; in order to obtain this, an affidavit of the nature and amount of the lunatic's property, the above order, and office copies of the commission and inquisition must be filed by the Clerk of the Custodies, who will obtain the Attorney-General's directions as to the amount of the security to be given by the committees and two sureties, whose names and additions must be left with the Clerk of the Custodies, who will prepare

(i) *In re Avery*, 29th January, 1828.

the bond and affidavits of the sureties as to their responsibility. The committee and his sureties must give security in double the amount of the value of all personal property to which the lunatic is absolutely entitled, and in three times the amount of the annual income of the lunatic's real estate, and of such of his personal estate in which he has an interest for life only.

Any person claiming to be heir-at-law or next of kin of the lunatic, may enter a *caveat* at the office of the Secretary of Lunatics against the appointment and grant to the committees approved by the Master, without having notice; or may present a petition against such appointment and grant, and propose other persons as committees. The lunatic may also prefer a petition to the Lord Chancellor, praying him to supersede the commission, on being examined and inspected by him; when a day will be appointed for that purpose, against which it will be proper for the alleged lunatic to be furnished with the affidavits of one or more eminent physicians, as to his sanity and capacity to manage his own affairs (*k*).

After the committees have been appointed, a petition must be preferred by them, for a reference to the Master, to settle the sum to be allowed for the maintenance of the lunatic (*l*), unless directions for that purpose were given in the order made upon the petition for appointment of committees. The order for the reference as to maintenance must be left at the Master's office, together with a state of facts, and a proposal as to the amount to be allowed; where the lunatic's fortune is large, the Master will require a scheme for the future establishment of the lunatic to be laid before him, to guide him in forming an opinion with respect to the propriety and probable expense of such an establishment.

The Master's report must be filed with the Clerk of the Custodies, and an office copy procured; when a petition must be preferred, for confirming the report, which will be set down in the paper of petitions in lunacy, to be heard in due course; the next of kin may consent to it by Counsel. The order, when made, will be drawn up by the Secretary of Lunatics, who requires the production of an office copy of the report, and such order must be called for at his office, by the solicitor, and filed (like other orders and reports) by the Clerk of the Custodies.

Orders wherein directions are given to the Accountant-General of the Court of Chancery, must be drawn up by the register of that Court, from the original orders obtained from the Secretary of Lunatics, who delivers duplicates to be filed by the Clerk of the Custodies, at whose office copies may be obtained. Reports on which the Accountant-General is to act, must be filed in the Report Office of the Court of Chancery, and also with the Clerk of the Custodies, for which purpose the Master likewise delivers duplicates.

In order to pass the accounts of the committees, they must prefer a petition, on which an order for passing them is made in the first

(k) See forms of such affidavits, *post*, pp. 639—644. (l) See *ante*, Chap. V. s. 6.

instance. This petition and order thereon are filed with the Clerk of the Custodies, of which a copy must be left with the Master, together with the accounts, and warrants thereon must be obtained and served on the parties interested (*m*).

The Master then makes a report of the balance due to or from the committee of the estate, as the case may require, which report is filed with the Clerk of the Custodies, and a petition is presented to the Lord Chancellor to have the balance reported due to the committee paid to him out of the lunatic's estate, or the balance reported due from the committee paid into Court, and laid out in the purchase of 3 *per cent.* Consol. Bank Annuities, which latter petition is answered in the first instance without a hearing; a duplicate of the order thereon is made by the Secretary of Lunatics to be acted on at the Register Office, and the original is filed with the Clerk of the Custodies.

Every person who intermeddles in the matter of a lunatic, is intended to be interested for his advantage. Therefore, where a solicitor who had acted in some of the proceedings under a commission of lunacy, afterwards acted as attorney for a creditor of the lunatic, and issued an execution and took his household furniture, the Lord Chancellor of Ireland restrained the sale, the committee entering into security for the value of the goods, to be paid by instalments, out of the savings of the income(*n*). An attorney concerned in the matter of a lunacy, and as agent for an adverse party, is bound to prefer his duty to the Court in the former capacity(*o*).

(*m*) See *ante*, Chap. V. s. 9.

(*n*) *In re Bull*, 2 Molloy, 145.

(*o*) *Ibid.* 146.

 PART III.

 PRECEDENTS.

 COMMISSION OF LUNACY, AND PROCEEDINGS
 RELATING THERETO.

Commission in the nature of a Writ De Lunatico Inquirendo.

WILLIAM the Fourth, by the grace of God of the United Kingdom of Great Britain and Ireland King, Defender of the Faith, to his beloved [*the names of five commissioners are here inserted*], Esqrs., greeting: Know ye, that we have assigned ye, or any three of ye, to inquire, by the oath of good and lawful men of our county of Middlesex, as well within liberties as without, by whom the truth of the matter may be better known, whether *A. B.* of &c., in the county of &c., is a lunatic, or enjoys lucid intervals, so that he is not sufficient for the government of himself, his manors, messuages, lands, tenements, goods, and chattels; and if so, from what time, after what manner, and how; and if the said *A. B.*, being in the same condition, hath alienated any lands or tenements, or not; and if so, what lands and what tenements, to what person or persons, where, when, and after what manner, and how; and what lands and tenements, goods and chattels, as yet remain to him; and of what person or persons, as well the lands and tenements so alienated, as the lands and tenements by him retained, are held; and by what service, after what manner, and how; and how much they are worth by the year in all issues; and who is his nearer heir, and of what age. And therefore we command ye, or any three of ye, that at certain days and places which ye shall for this purpose appoint, ye diligently make inquisition in the premises; and the same distinctly and plainly made, to us into our Chancery, under the seals of ye or any three of ye, and the seals of those persons by whom it shall be made, without delay ye send, and these our letters patent. For we command, by the tenour of these presents, our sheriff of our county of Middlesex aforesaid, that at certain days and places which ye shall make known to him, he cause to come before ye, or any three

of ye, so many and such good and lawful men of his bailiwick, as well within liberties as without, by whom the truth of the matter in the premises may be better known and inquired into. In testimony whereof we have decreed these our letters to be made patent. Witness ourself at Westminster, the 6th day of July, in the third year of our reign.

◆

Precept to the Sheriff to summon a Jury.

BY virtue of a commission in the nature of a writ *de lunatico inquirendo*, under the Great Seal of Great Britain, bearing date at Westminster, the 6th day of July instant, to us, whose names are hereunder written, and others in the same commission named, directed to inquire whether *A. B.* of , in the county of , Esq., be a lunatic or not. These are therefore to will and require you to cause to come and appear before us twenty-four honest and lawful men of your county, on Wednesday, the 17th day of July instant, at one o'clock in the afternoon of that day, at the house of , and known by the name of ; and then and there upon their oaths to inquire of the lunacy of the said *A. B.*, and of all such matters and things as shall be given them in charge, by virtue of the said commission; and hereof fail not, at your peril. Given under our hands and seals this day of , in the year of the reign of our Sovereign Lord William the Fourth, by the grace of God of the United Kingdom of Great Britain and Ireland King, Defender of the Faith, and in the year of our Lord, 18 .

To the sheriff of the county of } [*The signatures and seals of*
Middlesex, or his deputy. } *three Commissioners.*]

The return of the Sheriff indorsed on the back of the precept.

The execution of this precept appears in the panel hereto annexed.

The answer of *C. D.* Esq. } Sheriff.
 E. F. Esq. }

Middlesex.—Names of the jurors to inquire according to the tenor of the precept annexed.

[*Here follow the names of the jurors.*]

◆

Subpœna to compel the Attendance of Witnesses before the Commissioners and Jury (a).

BY virtue of a commission in the nature of a writ *de lunatico inquirendo*, under the Great Seal of Great Britain, bearing date at Westminster, the day of , in the third year of the reign of King William the Fourth, to us, whose names are

(a) See *antc.*, p. 103.

hereunder written, and others in the same commission named, directed, to inquire whether
 in the county of _____, Esquire, be a lunatic, or not.
 These are to will and require you, that you personally be and appear before us, at the house of _____, commonly called and known by the name of &c., situate at &c. aforesaid, on the _____ day of _____ instant, by ten of the clock of the forenoon of the same day, and there upon your oath to testify the truth, according to your knowledge, touching the lunacy of the said _____, and of all such matters as shall be demanded of you by virtue of the said commission. Hereof fail not, at your peril. Given under our hands and seals, the _____ day of _____, in the year of our Lord, 1832.

[Signatures and seals of three Commissioners.]

Warrant to produce the Lunatic (b).

BY virtue of a commission in nature of a writ *de lunatico inquirendo*, under the Great Seal of Great Britain, bearing date at Westminster, the _____ day of _____, in the third year of the reign of King William the Fourth, to us whose names are hereunder written, and others in the same commission named, directed to inquire whether _____ of _____, in the county of _____, Esquire, be a lunatic or not. These are to will and require you to produce before us the said _____, at the execution of the said commission at the house of _____, commonly called or known by the sign of &c., situate at &c. aforesaid, on the _____ day of _____ instant, by ten of the clock in the forenoon of the same day, there to be examined touching the matters aforesaid, and you are to give him notice accordingly; as also to any other person or persons who are guardians of him or trustees of his estate, that they may appear in his defence if they shall think fit. Given under our hands and seals, &c.

To Mr. *W. P.* or such other person or persons as now have the said _____ in their custody or power. } [Signatures and seals of three Commissioners.]

Inquisition (c).

AN inquisition taken at the house of _____, situate at _____ in the county of Middlesex, commonly called or known by the name of _____, this _____ day of _____, in the second year of the reign of our Sovereign Lord William the Fourth, by the grace of God of the United Kingdom of Great Britain and Ireland King, Defender of the Faith, and in the year of our Lord, 1832, before [three names] Esquires, commissioners of our said Lord the

(b) See *ante*, pp. 98, 99.

(c) See *ante*, Chap. IV..a. 5.

King, by virtue of his Majesty's commission in the nature of a writ *de lunatico inquirendo*, under the Great Seal of Great Britain, bearing date at Westminster the day of instant, to them the said commissioners, and others in the said commission named, directed, and to this inquisition annexed, to inquire, amongst other things, of the lunacy of *A. B.*, of &c., upon the oaths of &c. &c., [*here the names of the jurors are set forth*], good and lawful men of the said county, who being sworn and charged upon their oath say, that the said *A. B.* at the time of taking this inquisition is a lunatic, and does not enjoy lucid intervals, so that he is not sufficient for the government of himself, his manors, messuages, lands, tenements, goods and chattels; and that he, the said *A. B.*, hath been in the same state of lunacy from the day of , in the year , but how, and by what means he the said *A. B.* so became a lunatic, the jurors aforesaid know not, unless by the visitation of God. And the jurors aforesaid, upon their oath aforesaid, further say, that whether the said *A. B.*, being in the same condition, hath alienated any lands or tenements, as also what lands and tenements, goods and chattels, as yet remain to the said *A. B.* the jurors aforesaid know not. And the jurors aforesaid, upon their oaths aforesaid, further say, that [*who is the nearer heir they know not*], *G. H.*, of &c., is the nearer heir of the said lunatic, and is now of the age of , or thereabouts. In testimony whereof, as well the said commissioners, as the jurors aforesaid, have to this inquisition set their hands and seals, the day and year first above written.

[*The names and seals of three Commissioners.*]

[*The names and seals of the Jurors.*]

Bond given by the Committee of the Estate of a Lunatic and his Sureties (d).

KNOW ALL MEN by these presents, That we [*the committee of the estate and two sureties*] are bound and firmly obliged to our most serene Lord William the Fourth, by the grace of God of the United Kingdom of Great Britain and Ireland King, Defender of the Faith, in pounds of good and lawful money of Great Britain, to be paid to the same lord the King, his heirs, or successors; to which payment well and truly to be made, we severally bind ourselves, our heirs, executors, and administrators, and the heirs, executors, and administrators of each of us firmly by these presents sealed with our seals. Dated this day of , in the year of the reign of our said now lord the King, &c., and in the year of our Lord, one thousand eight hundred and .

THE CONDITION of the above written obligation is such, that WHEREAS the Right Honorable Henry Lord Brougham and Vaux,

(d) See *ante*, Chap. V. s. 5, and p. 627; and *post*, pp. 645-6.

Lord High Chancellor of Great Britain, hath given directions that the above bounden [committee] shall have a grant under the Great Seal of Great Britain of the custody of the person and management of the real and personal estate of [lunatic], he being unable to govern himself or to manage his estate during the continuance of his lunacy. IF, THEREFORE, the said [committee] shall yearly, or oftener if he be thereunto required, make a just and true account of all and singular the rents, issues, and profits of the real estate of the said [lunatic], and also of his personal estate, and the profits thereof as now are, or hereafter shall, come to his hands, custody, or possession, and which he may receive out of or concerning the said estate, and shall carefully observe, perform, and keep, the orders and directions of the Lord Chancellor of Great Britain, Lord Keeper, or Lords Commissioners for the custody of the Great Seal of Great Britain for the time being, made, or hereafter to be made, touching or concerning the said [lunatic] and his estate, and touching all such monies as shall yearly remain due upon the foot of his account duly taken by one of the Masters of the High Court of Chancery, and filed in the office for that purpose appointed; and shall be careful to see the houses, buildings, and structures of the said [lunatic] to be well and sufficiently repaired and so kept and maintained during the continuance of the said grant; and shall carefully preserve and keep all the deeds, evidences, and writings, touching the manors, messuages, lands, tenements, hereditaments, and estate of the said [lunatic], as now are, or hereafter shall come to his hands, custody, or possession; and shall carefully provide for the person of the said [lunatic], and for his safety, and for his family, if any be or shall be during the continuance of the said grant, and shall not sell or alien his interest in the said custody or grant to any person or persons whomsoever, without the consent or agreement of the Lord Chancellor of Great Britain, Lord Keeper, or Lords Commissioners for the custody of the Great Seal of Great Britain for the time being, but shall in all things demean himself as a careful and faithful grantee or committee of the estate of the said [lunatic], then the said obligation to be void, or else the same to stand, remain, and be in full force and virtue.

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Grant of the Custody of the Person and Estate of a Lunatic (e).

WILLIAM the Fourth, by the grace of God of the United Kingdom of Great Britain and Ireland King, Defender of the Faith, to all to whom these our present letters shall come, greeting. WHEREAS, by a certain inquisition taken at the house of _____, situate at _____, in the county of Middlesex, commonly called or known by the name of _____, the _____ day of _____, in the third year of our reign, by virtue of our commission, in the nature of a writ *de lunatico inquirendo*, in that behalf duly made and

(e) See *ante*, p. 130.

issued, to inquire (amongst other things) of the lunacy of *A.B.* of _____, in the county of Middlesex, Esq. It is FOUND (amongst other things) that the said *A.B.*, at the time of taking this inquisition, is a lunatic, and does not enjoy lucid intervals, so that he is not sufficient for the government of himself and his estate, as by the same inquisition (amongst other things) remaining on record may more fully appear; for the tuition of whom, and for the management of his estate, it belongs to us to provide. And whereas sufficient security is given to us on the behalf of the said *A.B.* by [*the names and additions of two sureties*], as in such cases hath been heretofore used. KNOW YE, That we, of our special grace, and of our certain knowledge and mere motion, have given, committed, and granted, and by these presents, for us, our heirs, and successors, do give, commit, and grant unto the said [*committee*], the custody of the person, tuition, regulation, and government of the said *A.B.*, TO HAVE AND TO HOLD the aforesaid custody of the person, tuition, regulation, and government of the said *A.B.* from the date of these presents, so long as it shall please us during the continuance of the lunacy of the said *A.B.*

KNOW YE ALSO, That we, of our like special grace, and of our own certain knowledge and mere motion, have given, committed, and granted, and by these presents, for us, our heirs and successors, do give, commit, and grant unto the said [*committee*], the custody, regulation, occupation, disposition, and receipt, as well of all manors, messuages, lands, tenements, houses, farms, revenues, services, and hereditaments, with the appurtenances, and of all rents, revenues, and profits thereof, which the aforesaid *A.B.* hath, or ought to have, in possession or reversion, or which, by any lawful ways and means, at any time or times hereafter, may or ought to come, descend, or accrue to the said *A.B.*, or which any other or others hath or may have, to the use and profit of the said *A.B.*, in the county of Middlesex aforesaid, or elsewhere, within our kingdom of Great Britain, as also the custody and government of all the goods and chattels, farms, stock of cattle, wealth, plate, debts, money, jewels, traffic, merchandizes, and other commodities and profits whatsoever to the said *A.B.* belonging or in any manner appertaining; and also the use and negotiation of the same to the use and behoof, profit and advantage, of the said *A.B.*, and for the maintenance, sustenance, and support of the said *A.B.* and his family (if he hath any, or in time to come may have), and also for the maintenance, preservation, and repair of the messuages, lands, tenements, houses, farms, and the residue of the premises of the said *A.B.*, TO HAVE AND TO HOLD the aforesaid custody, regulation, occupation, disposition, and receipt of the aforesaid manors, messuages, lands, tenements, houses, farms, goods, and chattels of the said *A.B.*, and all and singular other the premises above given, committed, and granted, or mentioned to be given, committed, and granted unto the said [*committee*], from the date of these presents, so long as it shall please us, during the continuance of the lunacy of the said *A.B.*: PROVIDED ALWAYS, That the said [*committee*], his executors and administrators, shall

render a true account of the issues, revenues, and profits of the manors, messuages, lands, tenements, and of the goods, chattels, and debts aforesaid, and of the profits thereof, and of the rest of the premises, once in every year at least, and as often as and whensoever to the Lord Chancellor of Great Britain, Lord Keeper, or Lords Commissioners of our Great Seal of Great Britain, shall seem meet; and shall obey and fulfil the order and orders of the Lord Chancellor, Lord Keeper, or Lords Commissioners of our Great Seal of Great Britain, made or hereafter to be made, any ways touching or concerning the premises, or any part thereof, or the issues or profits thereof, or any account or accounts thereof. And further, we will, and by these presents grant, that these our letters patent, or the enrolment of the same, shall be in and by all things good, firm, valid, and effectual in law, notwithstanding the not reciting, or not rightly reciting, any office or offices, inquisition or inquisitions, made of or concerning the premises or any of them, or any other thing, cause, or matter whatsoever to the contrary thereof in anywise notwithstanding. IN TESTIMONY whereof, we have caused these our letters to be made patent. Witness ourself, at Westminster, the 10th day of July, in the third year of our reign.

◆

Grant of the Custody of the Person of a Lunatic (f).

WILLIAM the Fourth, by the grace of God of the United Kingdom of Great Britain and Ireland King, Defender of the Faith, to all to whom these our present letters shall come, greeting: WHEREAS, by a certain inquisition taken at the house of _____, known by the name of _____, situate at _____, in the county of _____, the _____ day of _____, in the second year of our reign, by virtue of our commission in the nature of a writ *de lunatico inquirendo* in that behalf duly made and issued, to inquire (amongst other things) of the lunacy of *A. B.* of &c. It is FOUND (amongst other things) that the said *A. B.* is, at the time of taking this inquisition, a lunatic, and enjoys lucid intervals, but so that he is not sufficient for the government of himself and his estate, as by the same inquisition (amongst other things) remaining on record may more fully appear, for the tuition of whom, and for the management of his estate, it belongs to us to provide. KNOW YE, that we, of our special grace and of our certain knowledge and mere motion, have given, committed, and granted, and, by these presents, for us, our heirs, and successors, do give, commit, and grant unto *C. D.*, of &c., the custody of the person, tuition, regulation, and government of the said *A. B.*, TO HAVE AND TO HOLD the aforesaid custody of the person, tuition, regulation, and government of the said *A. B.* from the date of these presents, so long as it shall please us during the lunacy of the said *A. B.*: PROVIDED ALWAYS, that the aforesaid *C. D.*, from time to time during the

(f) There is usually but one grant, as in the preceding form.

continuance of this grant, shall find, sustain, and keep the aforesaid *A. B.* with sufficient sustenance, clothing, diet, and other necessities of life according to his quality and condition, as is fitting in case of lunacy, and shall obey and fulfil all and every the order and orders of the Lord Chancellor of Great Britain, Lord Keeper, or Lords Commissioners of our Great Seal of Great Britain, made, or hereafter to be made, any ways touching or concerning the said *A. B.*: AND FURTHER, we will, and by these presents grant, that these our letters patent, or the enrolment of the same, shall be in and by all things good, firm, valid, and effectual in law, notwithstanding the not reciting, or not rightly reciting, any office or offices, inquisition or inquisitions, made of or concerning the premises or any of them, or any other thing, cause, or matter whatsoever to the contrary thereof in anywise notwithstanding. IN TESTIMONY whereof we have caused these our letters to be made patent. WITNESS ourself, at Westminster, the day of , in the second year of our reign.

◆

*Supersedeas of a Commission of Lunacy before any Grant to
Committees (g).*

WILLIAM the Fourth, by the grace of God of the United Kingdom of Great Britain and Ireland King, Defender of the Faith, to all to whom these our present letters shall come, greeting: Whereas, by a certain inquisition taken at the house of , at the sign of , in the county of , the 4th day of April in the second year of our reign, by virtue of our commission in the nature of a writ *de lunatico inquirendo*, under our Great Seal of Great Britain, bearing date at Westminster the 20th day of March, in the second year of our reign, in that behalf duly made and issued, to inquire (amongst other things) of the lunacy of *A. B.*, of &c. It was found (amongst other things), that the said *A. B.* was, at the time of taking the said inquisition, a lunatic, and did not enjoy lucid intervals, so that she was not sufficient for the government of herself and her estate, as by the same inquisition, (amongst other things) remaining on record, may more fully appear; but, upon full examination in our Court of Chancery before us had in this behalf, it sufficiently appears to us that the said *A. B.* is recovered of her lunacy aforesaid, and is of sound mind, memory, and understanding, so that she is sufficient for the government of herself and her estate; and we, in this behalf, being willing that what is just and right be done to the said *A. B.*: Know ye therefore, that we, for and in consideration that the said *A. B.* now is not lunatic, but of sound mind, sane memory, and understanding, and for divers other good causes and considerations us in this behalf especially moving, have superseded and determined, and, by these presents, do supersede and determine the aforesaid commission in the nature of a writ *de lunatico inquirendo*, and the aforesaid inquisition and all other proceedings

(g) See affidavits in support of a petition for *supersedeas*, post, pp. 648—652.

thereupon had and made, and all and singular the same, to all intents and purposes whatsoever, we annul, make void, and fully discharge, by these presents. In testimony whereof we have caused these our letters to be made patent. Witness ourself, at Westminster, the day of _____, in the _____ year of our reign.

—◆—

Supersedeas of a Commission of Lunacy after the grant to a Committee (g).

WILLIAM the Fourth, by the grace of God of the United Kingdom of Great Britain and Ireland King, Defender of the Faith, to all to whom these our present letters shall come, greeting: WHEREAS, by a certain inquisition taken at the house of _____, situate in _____, in the county of _____, and commonly called or known by the name of _____, the _____ day of _____, in the _____ year of our reign, by virtue of our commission in the nature of a writ *de lunatico inquirendo* in that behalf duly made and issued, to inquire (amongst other things) of the lunacy of *A. B.*, IT WAS FOUND (amongst other things) that the said *A. B.* was, at the time of taking the said inquisition, a lunatic, and did not enjoy lucid intervals, so that he was not sufficient for the government of himself and his estate, as by the same inquisition (amongst other things) remaining on record may more fully appear. AND WHEREAS, by our letters patent bearing date the _____ day of _____, in the first year of our reign, we did give, commit, and grant unto *C. D.* the custody of the person, tuition, regulation, and government of the said *A. B.*, TO HAVE AND TO HOLD the aforesaid custody of the person, tuition, regulation, and government of the said *A. B.*, from the date thereof so long as it should please us during the lunacy of the said *A. B.*: AND WHEREAS, by our same letters patent, we did give, commit, and grant unto the said *C. D.* the custody, regulation, occupation, disposition, and receipt, as well of all manors, messuages, lands, tenements, houses, farms, revenues, services, and hereditaments, with the appurtenances, and of all rents, revenues, and profits thereof which the aforesaid *A. B.* had, or ought to have in possession or reversion, as also the custody and government of all the goods and chattels, farms, stock of cattle, wealth, plate, debts, money, jewels, traffic, merchandises, and other commodities and profits whatsoever to the said *A. B.* belonging, or in any manner appertaining, and also the use and negotiation of the same, TO HAVE AND TO HOLD the aforesaid custody, regulation, occupation, disposition, and receipt of the aforesaid manors, messuages, lands, tenements, houses, farms, goods, and chattels, and the rest of the premises of the said *A. B.* unto the said *C. D.*, from the date thereof so long as it should please us during the lunacy of the said *A. B.*, or to the uses and intents and under the provisos in the same letters patent contained and specified, as by the same letters patent (amongst other things) remaining on record may more

. (g) See *ante*, Chap. V. s. 11.

fully appear. BUT BECAUSE, upon full examination in our Court of Chancery, before us had in this behalf, it sufficiently appears to us that the said *A. B.* is recovered of his lunacy aforesaid, and is of sound mind, memory, and understanding, so that he is sufficient for the government of himself and his estate, and we in this behalf being willing that what is just and right be done to the said *A. B.*; KNOW YE THEREFORE, that we, for and in consideration that the said *A. B.* now is not lunatic, but of sound mind, sane memory and understanding, and for divers other good causes and considerations us in this behalf especially moving, have superseded and determined, and, by these presents, do supersede and determine the aforesaid commission in the nature of a writ *de lunatico inquirendo*, and all process thereupon made and had, and also our letters patent aforesaid, and the several grants thereby made to the said *C. D.* aforesaid, and all and singular in the same letters patent contained and specified, to all intents and purposes whatsoever, and all and singular the same we annul and make void by these presents; and also the aforesaid *C. D.* from the custody, regulation, and government of the person of the said *A. B.*, and from the custody, regulation, occupation, disposition, and receipt of the aforesaid manors, messuages, lands, tenements, houses, farms, goods and chattels of the said *A. B.*, and all and singular other the premises, we fully discharge by these presents, requiring that the aforesaid *C. D.* shall by no means suffer any person or persons to intermeddle touching the said *A. B.* or his estate, for the future. And the said *A. B.* to the regimen and government of himself and all his we fully restore by these presents. IN TESTIMONY whereof we have caused these our letters to be made patent. WITNESS ourself, at Westminster, the second day of _____, in the second year of our reign.

FORMS OF AFFIDAVITS.

AFFIDAVITS IN SUPPORT OF PETITIONS FOR COMMISSIONS OF LUNACY (h).

Affidavit of a Physician that he had examined a Party, and found him of unsound Mind, and the Grounds upon which his Opinion was founded.

IN the matter of *A. B.*, Esq., a supposed lunatic.
C. D. of &c., Doctor of Physic, maketh oath and saith, that, by

(h) These affidavits must be left at the office of the Secretary of Lunatics, with the petition for a commission: it can be scarcely necessary to observe that they must be adapted to the facts of each case.

the desire of —, he, this deponent, visited the said *A. B.* at the house of Messrs. *J.* and *K.*, situate at &c., on Tuesday the 20th instant, for the purpose of investigating the state of mind of the said *A. B.* And this deponent saith, after sufficient personal examination of the said *A. B.*, that he, this deponent, is fully convinced that the mind of the said *A. B.* is now unsound, and that, by reason of such unsoundness, the said *A. B.* is wholly unfit for the management of himself and of his affairs. And this deponent further saith, that the unsound state of mind of the said *A. B.* was rendered manifest by a very great loss of memory and understanding, so as to render him incapable of discourse, or of directing and continuing his attention to any subject, by the frequent utterance of indistinct sounds, as if talking to himself, by a want of all connection in the little he said, and by his addressing himself in whispers, with a variety of unintelligible gestures, in the presence of this deponent, to two images placed over the chimney-piece for ornament. And this deponent further saith, that, in the early part of the year 1832, he, this deponent, also visited the said *A. B.* at his lodgings in —, when, as this deponent was informed and believes, the said *A. B.* was first put under restraint, in consequence of an attempt then recently made by the said *A. B.* to destroy himself.

C. D. { Sworn at the Public Office, Southampton Buildings, Chancery Lane, London, this 22d day of March, 1832. Before me,
[*A Master in Chancery.*]



Affidavit of another Physician as to the Unsoundness of Mind of a Party.

IN the matter of *A. B.*, Esq., a supposed lunatic.

W. W. of &c., Doctor of Physic, maketh oath and saith, that he did, on the 23rd day of March instant, visit the above-named *A. B.*, who is now in a lunatic asylum kept by Messrs. *J.* and *K.*, at &c., with the view of ascertaining his state of mind. And this deponent further saith, that, at his said visit, he, this deponent, took great pains to examine into the intellectual capacity of the said *A. B.*, and, from such examination, this deponent is firmly convinced that the said *A. B.* is a person of unsound mind, and totally incapable of governing himself, or of managing his affairs; and, as evidence of such unsoundness of mind on the part of the said *A. B.*, this deponent saith, that the said *A. B.* came into the room in which deponent waited for him, in a very hurried manner, and saluted deponent with apparent cordiality, but instantly drew himself up, turned aside his face, and continued to look with some suspicion at deponent as he walked up and down in the room; at deponent's request, he at last sat down near deponent, and listened, apparently with attention, to remarks and questions of deponent touching his family and present residence, but answered only now and then, and

so indistinctly, that deponent could hardly catch a word of what he said; at last, putting his hands on deponent's knees, and bringing his face close to deponent's, with a peculiar grin, and with great rapidity of utterance, he said, he knew deponent to be Sir Edmund, and that he would tell deponent many secrets; he then relapsed into his thoughtful fit, and said no more. His expression of countenance has become very unmeaning, and strongly indicates a chronic absence of reason.

W. W.

Sworn &c.

Affirmation of the Keeper of a Lunatic Asylum, as to the Unsoundness of Mind of a Party confined there.

IN the matter of *A. B.*, Esq., a supposed lunatic.

J. K. of &c., Surgeon, being one of the people commonly called Quakers, upon his solemn affirmation saith, that in and prior to the year 1826, he, this affirmant, kept an asylum for the reception of persons of unsound mind, and that on or about the 26th day of September, 1826, he, at the desire of *C. B.*, received into his care and custody the above-named *A. B.*, as a person of unsound mind and understanding. And this affirmant further saith, that the said *A. B.* hath ever since continued and now is at — aforesaid, under the care and custody of him this affirmant and his partner *B. K.* And this affirmant further saith, that the conduct and discourse of the said *A. B.*, from the time of his entering the establishment of this affirmant, until the present period, has been wild, incoherent, and irrational; at times, he will shout, halloo, and beat the bed violently with his fists during the greater part of the night, at other times he will remain for hours without uttering a syllable—or, if he speaks, his words are without sense or connection; in short, his whole behaviour has been that of an insane person. And this affirmant lastly saith, that he saw the said *A. B.* on the morning of this present 22nd day of March, when the said *A. B.* was decidedly of unsound mind and understanding, and altogether unfit for the management of his affairs.

J. K.

Solemnly affirmed at &c.

Affidavit of a Surgeon as to Mental Imbecility, arising from old Age.

IN the matter of *C. D.*, a supposed lunatic.

J. S., of &c., in the county of Surrey, Surgeon, maketh oath and saith, that he has for ten years last past known and been acquainted with *C. D.* of —, in the said county, and been in the habit occasionally of attending him professionally; that he has visited him very lately, that he finds his bodily health good, but his mental faculties impaired through extreme old age; that his mental imbecility has greatly increased within the last eight weeks, that he has conversed with the said *C. D.*, who talks in a very incohe-

rent manner, and without any connected subject, and is not capable of understanding what he is about, but is liable to be imposed upon by signing any instrument relating to the management of his property, or otherwise. And this deponent further saith, that the said *C. D.* is now of the age of seventy-eight years or thereabouts, and, in the judgment and belief of this deponent, now deprived of his reason and understanding, and is in noways capable, but wholly unfit, to manage himself or his affairs. And this deponent further saith, that he verily believes that the said *C. D.* will not again recover his mental faculties.

J. S. } Sworn at Guildford, in the county of Surrey, the
 { 23rd day of July, 1832. Before me,

X. Y.

A Master Extraordinary in Chancery.

Affidavit of a Nephew residing with his Uncle, as to his Incapacity to manage his Affairs.

IN the matter of *C. D.*, a supposed lunatic.

E. S., of &c., maketh oath and saith, that *C. D.*, of &c., is the only brother of this deponent's late mother *M. S.*, deceased: And this deponent further saith, that the said *C. D.* is a widower and has no child, and this deponent and his brothers — are the only children of the said *M. S.*, the only sister of the said *C. D.*, and are the only next of kin of the said *C. D.* And this deponent further saith, that he is acquainted with the estates and concerns of the said *C. D.*: and this deponent hath, in the schedule to this his affidavit, set forth an account of the real estates of which the said *C. D.* is seised, and also of the persons who now occupy the same; of the parishes and counties in which the same are situate; and of the respective annual rents now received and made payable for the same; the whole of which rents, according to this deponent's computation thereof, and which he verily believes to be true, amounts to the sum of £—, but which is subject to some deductions for land tax and quit rents: And this deponent further saith, that the said *C. D.* is possessed of no other real estates to the knowledge or belief of this deponent than such as are contained in the said schedule so annexed to this his affidavit: And this deponent further saith, that the said *C. D.* is entitled to the sum of £— *per annum* Long Annuities, or thereabouts, and other personal estate: And this deponent further saith, that he has resided with his uncle, the said *C. D.*, for the last six months, and he has lately applied to the tenants in possession of the real estates of the said *C. D.* for payment of the rents due from them respectively, but they have refused to pay the same, and several of the said tenants of the said *C. D.* have said, that they cannot, owing to the state of mind of the said *C. D.*, be obliged to pay their rents to any person, or be turned out of the property occupied by them respectively: And this deponent further saith, that one *J. W.* stands indebted to the said *C. D.* in the sum of £—, and

this deponent has applied to him, the said *J. W.* for payment of the interest money due thereon, but he refuses to pay the same; and it is not in this deponent's power to maintain and support the said *C. D.* without being paid some portion of the rents and interest monies now due and owing to him the said *C. D.*

The Schedule to which the foregoing affidavit refers, being a particular of the real estates of the said C. D.

A copyhold dwelling-house, garden, and land, situate at &c., let to *H. D.* at the yearly rent of £—.

A freehold, &c., &c.

E. S.

Sworn at &c. Before &c.

Affidavit of a Physician as to Unsoundness of Mind, arising from Delusion.

IN the matter of *E. F.*, Esqr., a supposed lunatic.

G. H., of &c., Doctor of Physic, maketh oath and saith, that for fourteen months now last past he hath professionally attended the above-named *E. F.*; and that, in the opinion of this deponent, he, the said *E. F.*, hath during the whole of that time been decidedly of unsound mind and wholly unfit for the management of himself and of his affairs. And this deponent saith, that the unsoundness of the mind of the said *E. F.* is rendered manifest by a total inattention on the part of the said *E. F.* to the natural evacuations from the body, by an inability to assist himself, by a constant refusal of all food, unless he be fed by the persons in attendance upon him, by his declared conviction that poison is mixed with every kind of nourishment that is presented to him, by his talking perpetually to himself, or conversing with imaginary beings from which it is scarcely possible to divert him, by a total want of power to direct his attention steadily to any one subject for five minutes, by a supposition that he has fleets and armies at his command, to which he is very often giving his orders aloud, and by the frequent utterance of unintelligible and unconnected words and sentences. And this deponent further saith, that he professionally visited the said *E. F.* on Tuesday last, the 25th day of this present month of October, and that the said *E. F.* then continued in the same state of unsoundness of mind, whereby he is rendered totally insufficient for the management of himself and of his property.

G. H.

Sworn at &c.

Affidavit of Unsoundness of Mind arising from old Age, erroneous Perceptions, and Loss of Memory.

IN the matter of the Rev. *H. H.*, Clerk, a supposed lunatic.

J. P., of &c., Clerk, maketh oath and saith, that he is married to *Ann*, the daughter of the above-named *H. H.*, of &c., and that he has

been in the habit of seeing the said *H. H.* almost every day for the last eighteen months past, who, during that period, was living in the house of this deponent for six months, and the latter twelve months in the adjoining house. And this deponent further saith, that, when the said *H. H.* first came to the deponent's house, he was much struck at finding the faculties of the said *H. H.* so much impaired, as the said deponent had not then seen the said *H. H.* for three years; and that during the last eighteen months his faculties have been gradually failing, and this deponent now considers them altogether gone: and that the said *H. H.* is now perfectly childish, and unable to transact or undertake any business whatever; and as an instance and in support thereof, this deponent saith, that the said *H. H.* frequently addresses him as a perfect stranger, and altogether forgets that this deponent is married to his, the said *H. H.*'s, daughter. And that the said *H. H.* has once or twice stated to this deponent that he recollects him at Harrow School, where the said *H. H.* was at school, though the said deponent was not there, and there is upwards of fifty years difference in their ages. And this deponent further saith, that the said *H. H.* was formerly a Fellow of Trinity College, Cambridge, and, when at his meals he is drinking the common table beer of the family, he says, "this is very good ale, this is our audit ale, we get it from Trinity College, Cambridge." [*Other instances of a failure of understanding were stated.*]

J. P.

Sworn at &c.



Affidavit of a Surgeon as to Unsoundness of Mind arising from Loss of Memory.

IN the matter of the Rev. *H. H.*, Clerk, a supposed lunatic.

R. F., of &c., Licentiate of the Company of Apothecaries, and Member of the Royal College of Surgeons, London, aged thirty-one years or thereabouts, maketh oath and saith, that he has known the Rev. *H. H.*, of &c., for near two years last past, has during that time attended him professionally, and has generally seen him twice or three times in the course of a week. And this deponent further saith, that he believes the said *H. H.* to be labouring under great imbecility of mind, and that his memory and perception are so much impaired as to render him incapable of distinguishing between past and present events, or comprehending persons and things in an intellectual manner. And this deponent further saith, that he believes the said *H. H.* to be incapable of taking care of his person or estate.

K. F.

Sworn at &c.

Affidavit of the Value of the Property belonging to the Lunatic, to be made with the view of ascertaining the Amount of the Security to be required of the Committee of the Estate and his Sureties (i).

IN the matter of *A. B.*, a lunatic.

C. D., of &c., maketh oath and saith, that he is well acquainted with the whole of the property of the above-named *A. B.* of —, a lunatic, and that his freehold and leasehold estates consist of the following particulars (that is to say) a freehold estate in the parishes of —, in the county of *N.*, now in the occupation of —, as tenant thereof, at the yearly rent of £—. And &c., [*set forth the particulars of the other estates*]: And this deponent further saith, that the personal estate of the said *A. B.* consists of the following particulars (that is to say) the sum of £—, secured on mortgage of an estate at &c., by a certain indenture dated &c., and made between &c. The household goods, plate, linen, china, books, and pictures in the house of the said *A. B.*, situate in &c., which have been lately valued by a sworn appraiser at the sum of £—. [*The particulars of the other personal property, according to the circumstances of each case, should be stated*]. And this deponent further saith, that the sum of £—, 3 per cent. Consolidated Bank Annuities, lately standing in the name of the said *A. B.*, and to which he is entitled, has, in pursuance of an order of the Lord Chancellor bearing date the day of —, been transferred into the name of the Accountant-General of the High Court of Chancery, in trust in the matter of the said *A. B.*, a lunatic (*j*). And this deponent further saith, that, according to the best of his knowledge, information, and belief, the said *A. B.* is not possessed of, interested in, or entitled to, any other property, real or personal, either in possession, reversion, remainder, or expectancy, than such as is mentioned and described in the particulars hereinbefore set forth.

C. D.

Sworn at &c. (*k*).

Affidavit of the Sufficiency of the two Persons proposed as Sureties in the Bond entered into by the Committee.

IN the matter of *A. B.*, a lunatic.

T. S., of &c., and *G. S.*, of &c., each of them speaking for himself only, severally make oath and say. And first this deponent *T. S.* for himself saith, that he is really and truly worth the sum of £— (*l*) of lawful money of Great Britain, over and besides what is suffi-

(*i*) See *ante*, p. 633.

(*j*) The particulars of the property, which has been deposited or transferred for the purpose of reducing the amount of the security, should be stated.

(*k*) This and the two following affida-

vits are filed with the Clerk of the Custodies.

(*l*) The sureties must together justify in a sum equal to the amount of the penalty of the bond.

cient to pay and discharge all his just debts. And this deponent, *G. S.*, for himself saith, that he is really and truly worth the sum of £— of like lawful money, over and besides what is sufficient to pay and discharge all his just debts.

T. S. }
G. S. }

Sworn at &c.

Affidavit of the Execution of the Bond by the Committee and his Sureties.

IN the matter of *A. B.*, a lunatic.

G. H., of the Inner Temple, London, Clerk to Messrs. *C. & D.* of the same place, Gentlemen, maketh oath and saith, that *J. K.* of the same place, clerk to the said Messrs. *C. & D.*, and this deponent, were present, and did see the bond hereunto annexed, bearing date the 6th day of July, 1832, in the penalty of £4,000, duly signed, sealed, and delivered by the therein named obligors *C. D.*, of &c., *T. S.*, of &c., and *G. S.*, of &c., as their respective act and deed, To the use of his present Majesty, King William the Fourth; And that, to the execution thereof by the said *C. D.*, *T. S.*, and *G. S.* respectively, the said *J. K.* and this deponent did subscribe their respective names as witnesses thereto.

G. H.

Sworn at &c.

Affidavit of the Service of a Copy of a Petition and Order.

IN the matter of *A. B.*, a person of unsound mind.

C. D., of Ely Place, in the county of Middlesex, Clerk to *E. F.* of the same place, Gent., solicitor for *C. B.*, widow and relict of *R. B.*, Esq., deceased (who was the eldest son and heir apparent of the said *A. B.*) and mother and natural guardian of —, the infant children of the said *R. B.*, maketh oath and saith, that he, this deponent, did, on the 8th day of August instant, serve Mr. *G. H.* who acts as solicitor for *J. K.*, the committee of the estate of the said *A. B.*, with a true copy of a petition of the said *C. B.* presented to the Lord Chancellor in this matter, and of his Lordship's order thereon, bearing date the 7th day of August, inst. by delivering such copy to, and leaving the same with, a clerk of the said *G. H.* at his chambers in Lincoln's Inn, in the said county of Middlesex, and at the same time shewing to such clerk the said original petition and order. And this deponent further saith, that he, this deponent, did on the same day serve Messrs. *L., M. & N.*, who act as solicitors of the younger children of the said *A. B.* with a true copy, &c. [*As before, and further deposition as to service of copy of petition on the solicitor for the wife of the lunatic.*]

C. D.

Sworn at &c.

*Affidavit of Service of Notice of Day being appointed for hearing
Petition.*IN the matter of *A. B.*, a lunatic.

C. D., of &c., Gent., maketh oath and saith, that he did on the 23rd day of June instant, personally serve *E. F.*, of &c., one of the next of kin of the said lunatic, with a true copy of the notice hereunto annexed, marked (A).

C. D.

Sworn at &c.

(A).

In the matter, &c.

Take notice, that the Right Honourable the Lord High Chancellor of Great Britain has appointed Thursday, the 28th day of June, instant (being the first day of his sitting after Trinity term) for the hearing of the petition of *G. H.* and *J. K.* presented in this matter, a copy of which petition, together with a copy of his Lordship's order thereon, was served on you on the 19th day of April last. Dated this 22nd day of June, 1832.

Yours, &c.

C. D.

To *E. F.*, one of the
next of kin of the
said lunatic. }

Solicitor for the petitioners,
2 Middle Temple Lane,
London.

*Affidavit of Service of Notice of Motion.*IN the matter of *C. D.*, a lunatic.

S. T., of &c., Clerk to Messrs. *E. & F.* of the same place, solicitors to *A. D.*, wife and committee of the person of the said lunatic, maketh oath and saith, that this deponent did on Monday the 12th day of July, inst., serve *C. C.*, the solicitor to *J. D.*, the committee of the estate of the said lunatic, with a notice in writing, purporting that the Lord Chancellor would be applied to on Wednesday then next, or as soon after as counsel could be heard, that the petition of the said *A. D.*, preferred in this matter and heard before the Right Honourable Henry Lord Brougham and Vaux, on the 10th day of June last, might be again put in the paper of lunatic petitions, for the purpose of having the minutes of the order made upon the said petition rectified, by delivering a true copy of the said notice to a clerk of the said *C. C.* at his office, situate at &c.

S. T.

Sworn at &c.

AFFIDAVITS IN SUPPORT OF PETITIONS TO SUPERSEDE COMMISSIONS OF LUNACY (m).

Affidavit as to the Sanity of a Person late of unsound Mind.

IN the matter of *A. B.*, a person late of unsound mind.

C. B., of &c., Esquire, eldest brother of the above-named *A. B.*, and one of the petitioners for the commission *de lunatico inquirendo* issued in this matter, maketh oath and saith, that, in the months of April and May last, he, this deponent, at the request of the said *A. B.*, and his committees, undertook to instruct a solicitor to take the necessary proceedings for superseding the said commission; and that, under the advice of this deponent, the said *A. B.*, at the end of the month of May last, came up to London from his residence at *S.*, for the purpose of being examined, and was on two several occasions examined as to the state of his mind by *Dr. J. H.*, *Dr. H. L.*, and once by *Dr. W. B.*; and this deponent further saith, that in consequence of his, this deponent's, long and frequent absences from London, and of his having been much engaged since the month of June last, he, this deponent, found himself unable to give the necessary instructions to his solicitor, to commence proceedings for superseding the said commission, and that such inability of this deponent has been the only cause of the delay, since the month of June last, to present a petition for superseding the said commission, and that no relapse nor change in the state of mind of the said *A. B.* has happened between the month of April last and the present time, to this deponent's knowledge and belief. And this deponent lastly saith, that in his judgment and belief the said *A. B.* now is, and has been for the space of two years last past, free from any mental delusion, and of sound mind and understanding, and competent to the management of himself and his property.

C. B.

Sworn &c., 8 December, 1830.

Affidavit by a Physician of having examined a Party, as to certain Delusions formerly entertained by him, and his Recovery.

IN the matter of *A. B.*, a person late of unsound mind.

J. H., of &c., Doctor of Physic, maketh oath and saith, that, in the month of December, 1824, he did several times visit the above-named *A. B.* at *H.* house, and that deponent made an affidavit in support of a petition for a commission *de lunatico inquirendo*, and which commission was subsequently issued against the said *A. B.*, in the month of January, 1825, and under which the said *A. B.* was

(m) See *ante*, Chap. V. s. 11.

then found a person of unsound mind, and incompetent to the management of himself and his property, and to have been in the same state of mind from the 24th day of September, 1824. That this deponent, on the 29th day of May last, visited the said *A. B.*, in consultation with *H. L.* of &c., Doctor of Physic, and that on the 31st day of May last, and also upon the 27th day of November now last, this deponent visited the said *A. B.*, in consultation with the said *H. L.*, and with *W. B.* of &c., Doctor of Physic, and that deponent having previously refreshed his memory, with the particulars of the delusions of mind formerly entertained by the said *A. B.* by reading office copies of the four several affidavits filed in support of the said petition, and made by this deponent, by the said *H. L.*, by Elizabeth the wife of the said *A. B.*, and by *H. P.*, did upon the said 29th and 31st days of May, and also upon the 27th day of November now last past, deliberately and minutely investigate the state of the mind of the said *A. B.*, and more especially with reference to the delusions mentioned in the said four several affidavits, and did question the said *A. B.* particularly upon such delusions, and also upon such other subjects, as in the judgment of this deponent were best suited to the purpose of ascertaining the soundness or unsoundness of the mind of the said *A. B.* And this deponent saith, that from the investigation so made by him upon the three last-mentioned days, and from the answers given by the said *A. B.* to such questions as aforesaid, he this deponent has every reason to believe and doth firmly believe that the delusions which formerly constituted the unsoundness of the mind of the said *A. B.* are now wholly removed, and that the said *A. B.* is conscious that such delusions did formerly exist in his mind, and is now convinced that they were delusions. And this deponent finally saith, that according to the best of his belief, judgment, and professional opinion, the said *A. B.* has recovered the use of his reason and intellectual powers, and may now be safely trusted with the direction of his person, and with the management of his affairs, and that he is now competent to the management of himself and his property.

J. H.

Sworn &c.

Affidavit by another Physician of having examined a Party and found him sane.

IN the matter of *A. B.*, a person late of unsound mind.

W. B., of &c., Doctor of Physic, maketh oath and saith, that, on the 31st day of May last past, and on the 27th day of November last, he this deponent did, in company with Dr. *J. H.* and Dr. *H. L.*, see the said *A. B.*, for the purpose of ascertaining whether the said *A. B.* was or was not of sound mind; and that deponent, previous to his interview with the said *A. B.*, on the 27th day of November last, had read office copies of the affidavit of the said *G. H.*, and &c., which were filed in support of a petition for the commission *de*

lunatico inquirendo, which was sued out against the said *A. B.* And deponent saith that during both such interviews with the said *A. B.* he did very carefully inquire into the state of the mind of the said *A. B.*; and that, on such last-mentioned interview, deponent did examine the said *A. B.*, particularly in regard to the mental delusions mentioned in the said affidavits, and also on other subjects. And deponent saith, that from the result of such his inquiry and examination, he is fully satisfied that the mind of the said *A. B.* is entirely free from such delusions as aforesaid, and from every other delusion. And this deponent further saith, that, according to the best of this deponent's knowledge, judgment, and belief, the said *A. B.* is now of perfectly sound mind and understanding, and ought to have and may safely have free control over his own person and property.

W. B.

Sworn &c.

◆

Affirmation of a Quaker as to the Sanity of a Party.

IN the matter of *A. B.*, a person late of unsound mind.

J. W., of *S.* in &c., grocer, being one of the people called Quakers, upon his solemn affirmation saith, that he hath been informed and believes that a commission *de lunatico inquirendo* was issued against the above-named *A. B.* in the month of January, 1825. And this affirmant further saith, that the said *A. B.* hath resided at *S.* aforesaid, for the space of four years and a half and upwards now last past. And that, during that period, this affirmant hath, at the request of *D. B.*, the brother, and one of the committees of the said *A. B.*, received monthly the sum of 5*l.* for the maintenance of the said *A. B.* And this affirmant further saith, that, during the said period, he hath very frequently seen and conversed with the said *A. B.*, having generally been in the habit of seeing and conversing with the said *A. B.* two or three times in every week, and hath invariably paid over into the hands of the said *A. B.* the sums of money which this affirmant received from the said *D. B.* as aforesaid; and during the said period the said *A. B.* hath had the entire management of himself and of his affairs in *S.* aforesaid. And this affirmant also saith, that since the time at which the said *A. B.* first came to reside at *S.* aforesaid, this affirmant hath observed an improvement in the state of mind of the said *A. B.*, and that the said *A. B.* is now and hath been for the space of two years last past, in the judgment and belief of this affirmant, of perfectly sound mind and understanding; and that the said *A. B.* hath always, during his residence at *S.* aforesaid, conducted himself and managed his affairs, and doth now conduct himself and manage his affairs with remarkable propriety, prudence, and discretion. And this affirmant lastly saith, that, in this affirmant's judgment and opinion, the said *A. B.* is of sound mind and understanding, and

fully competent to have the free management of himself and his property⁽ⁿ⁾.

J. W.

Solemnly affirmed, &c.

Affidavit of the Service of a Petition for superseding a Commission of Lunacy.

IN the matter of *A. B.*, a person late of unsound mind.

J. M., of &c., Gentleman, maketh oath and saith, that he, this deponent, did, on the 3rd day of December instant, serve *Elizabeth*, the wife of the said *A. B.*, and *C. B.*, of &c., Esq., who were the petitioners for the commission *de lunatico inquirendo* issued in this matter, with a petition of the said *A. B.*, presented to the Lord High Chancellor of Great Britain, in this matter, praying that he the said *A. B.* might be at liberty to attend the said Lord Chancellor, if his Lordship should think fit, necessary, or proper so to direct, for the purpose of being examined as to his sanity of mind and competency of understanding, for the management of his person and estate, and that a certain commission *de lunatico inquirendo* and proceedings thereon, in the said petition mentioned, might be superseded forthwith, and that a *supersedeas* might issue for that purpose; or that the said Lord Chancellor would be pleased to make such further or other order in the premises as to his Lordship should seem meet, and the circumstances of the case might require. And this deponent further saith, that he so served the said *E. B.* and *C. B.* with the said petition, by delivering personally to each of them the said *E. B.* and *C. B.* a copy of such petition, and of the said Lord Chancellor's order thereon, whereby all parties concerned were to attend his Lordship on the matter of the said petition, on the next day of petitions, and thereof notice was to be given forthwith, and by shewing to each of them the said *E. B.* and *C. B.*, at the said time of service, the original petition and order with which the said *E. B.* and *C. B.* were so served as aforesaid^(o).

J. M.

Sworn &c.

Affidavit of a Wife as to the Recovery of her Husband, late a Lunatic.

IN the matter of *E. F.*, late a lunatic.

C. F., of &c., wife of the above-named lunatic, maketh oath and saith, that, on or about the 18th day of March, 1820, a commission in the nature of a writ *de lunatico inquirendo* was, on the petition of this deponent, issued, to inquire of the lunacy of the said

(n) Other persons, including the surgeon who attended *A. B.*, and resided in the same place as himself, deposed to his sanity and capacity to manage his

own affairs.

(o) There was a like affidavit of service of the petition and order on the committees of *A. B.*

E. F., who was thereupon on inquisition taken found and declared to be a lunatic. And this deponent further saith, that the said *E. F.* was, at the time of the said inquisition being taken, confined in a house licensed for the reception of insane persons, called ——. And this deponent saith, that, in the month of August, 1823, the said *E. F.* having recovered his senses and become of sound mind, this deponent procured his discharge from the said house, called —, and he has ever since resided with this deponent. And this deponent saith, that the said *E. F.* has at all times since his discharge from the said house called —, conducted himself like a man of sound mind, memory, and understanding. And this deponent saith, that the said *E. F.* has for the last two years conducted the business of a tobacconist; and this deponent believes him to be now perfectly recovered, and fully capable of managing his affairs.

C. F.

Sworn &c.

Affidavit as to the Sanity of a late Lunatic.

IN the matter of *E. F.*, late a lunatic.

C. S., of &c., Chemist and Druggist, maketh oath and saith, that he has known the above-named *E. F.* for the last three years or thereabouts. And this deponent saith, that, during the aforesaid period, he, this deponent, has been in the constant habit of seeing and conversing with the said [*lunatic*] a week not having very frequently elapsed, as this deponent believes, in which he has not conversed with or seen him. And this deponent saith, that, during the period aforesaid, the said [*lunatic*] has at no time appeared or behaved himself in the presence of this deponent as a person of unsound mind; but, on the contrary, the behaviour and conversation of the said [*lunatic*] has at all times during the period aforesaid been that of a man of sound mind and understanding. And this deponent saith, that the last time he saw the said [*lunatic*] was on or about the 12th day of February instant, when he freely conversed with this deponent, and he appeared to be and was, as this deponent verily believes, of sound mind, memory, and understanding, and fully capable of managing himself and his affairs.

C. S.

Sworn &c.

Affidavit in support of a Petition for the Appointment of a Person to convey, on behalf of a Person of unsound Mind (p).

IN the matter of *C. D.*, a person of unsound mind, not found such by inquisition.

J. D., of &c., maketh oath and saith, that, in or about the month of September, 1829, *E. D.*, late of &c., spinster, since deceased, the late sister of this deponent, advanced and lent to *M. F.*, of &c., the sum of 400*l.*; and that thereupon, and in order to

secure the repayment of the said 400*l.*, with interest, to the said *E. D.*, certain indentures of lease and release, bearing date respectively on or about the 27th and 28th days of September, 1829, were made and executed, the said indenture of release being made, or expressed to be made, between &c. [*parties*]; by which said indentures, All that &c. were duly conveyed and assured unto and to the use of the said *E. D.*, her heirs and assigns, for ever, subject, nevertheless, to a proviso in the said indenture of release contained for redemption of the said hereditaments and premises, on payment by the said *M. F.*, her heirs, executors, administrators, or assigns, to the said *E. D.*, her executors, administrators, or assigns, of the sum of 400*l.*, with interest for the same after the rate and at the time therein mentioned. And this deponent further saith, that, on or about the 12th day of July, 1831, the said *E. D.* departed this life intestate, leaving the said *C. D.*, her eldest brother and heir-at-law, and this deponent, her other brother, who, together with the said *C. D.*, are her sole next of kin. And this deponent further saith, that letters of administration of the personal estate and effects of the said *E. D.* deceased, were, on or about the 31st day of August, 1831, granted to this deponent by and out of the Consistory Court of the Lord Bishop of Durham, which this deponent is advised and believes was the proper Ecclesiastical Court for that purpose; and that this deponent thereby became what he now is, the sole legal personal representative of the said *E. D.* And this deponent further saith, that the said sum of 400*l.* is still due and owing on the security of the said mortgaged premises, but that all interest thereon has been duly paid up to the 28th day of March last. And this deponent further saith, that the said *C. D.* has for several years past been under great mental excitement, and at times deprived of his reason and understanding; and that, in or about the month of June, 1831, he became in a worse state of mind, and wholly unable to govern himself, or to manage his affairs; and that, in or about the 18th day of the same month of June, as this deponent has been informed and believes, the said *C. D.* was admitted as a lunatic patient into a private lunatic asylum at Gateshead, in the county of Durham, as a pauper lunatic, under an order of certain magistrates acting for the northern division of the said county of Durham. And this deponent hath been informed, and believes that the said *C. D.* has ever since remained in such asylum, and has from that time continued to be, and still is, in an unsound state of mind, and unable to transact any business; but that no commission has been issued to inquire into the lunacy of the said *C. D.* And this deponent further saith, that the said *M. F.* is entitled to the equity of redemption of and in the said mortgaged premises; and that this deponent, as such personal representative of the said *E. D.*, is entitled to receive the money thereby secured, and that he is desirous of calling in and receiving the same, for the purpose of applying the same in a due course of administration; and that this deponent has been informed and believes, that the said *M. F.* is ready

and willing to pay the said sum of 400*l.*, on having a proper conveyance of the said mortgaged premises, but that the said *C. D.*, on whom the legal estate in the same has descended as the heir-at-law of the said *E. D.*, is, from his state of mind, unable to execute such reconveyance.

J. D.

Sworn &c. (*q*).

Affidavit of a Surgeon as to the Incompetency of a Party.

IN the matter of *N. N.*, Esq., a trustee, of unsound mind, but not found such by inquisition.

W. W., of &c., Surgeon, maketh oath and saith, that he is well acquainted with the above-named *N. N.*, of &c., and that he, this deponent, has been in the habit of visiting the said *N. N.* as his medical attendant, for — years and upwards last past; and that the said *N. N.* is now from his advanced age and infirmity of body, and imbecility of mind, totally incapable of transacting any business. And this deponent further saith, that the said *N. N.* hath been for the space of three years last past, and now is, of unsound mind, wholly deprived of reason, and is not competent to transact any pecuniary or other matter of business, nor to sign or execute with effect any deed or other written instrument. And this deponent further saith, that, as he has been informed and believes, the said *N. N.* is of the age of eighty years and upwards, and, for the space of three years last past, has been and now is labouring under severe bodily infirmity: and that by reason of the great age and infirmity of the said *N. N.*, there is not, in the judgment and opinion of this deponent, any chance of the said *N. N.* ever recovering his faculties.

Sworn &c.

FORMS OF CAVEATS (*r*).

CAVEAT against a commission of lunacy issuing against *A. B.*, of &c. Esq., without notice to Messrs. *C. & D.*, of Lincoln's Inn, &c. Solicitors for the said *A. B.* Dated this 6th day of July, 1832.

C. & D.

IN the matter of *A. B.*, a lunatic.

CAVEAT against any order appointing committees of the person and estate of the above-named *A. B.*, without notice to *E. F.*, of

(*q*) In this case, affidavits of the insanity of *C. D.* were made by a physician and surgeon, by the overseer of the parish where *C. D.* had resided ten

years, and by the keeper of the asylum in which he was confined.

(*r*) See *ante*, pp. 103, 104, 135, 136, 624.

&c. Solicitor for *C. B.*, one of the brothers and next of kin of the said *A. B.* Dated this 18th day of August, 1832.

E. F.

IN the matter of *A. B.*, a person of unsound mind.

CAVEAT against any proceedings or orders in this matter, without notice to *E. F.*, of &c., Solicitor for *H. B.*, the eldest son and heir-at-law of the above-named *A. B.* Dated this 6th day of August, 1832.

FORMS OF PETITIONS IN LUNACY (s), AND ORDERS THEREON.

PETITIONS in Lunacy and Idiocy are intitled "In the matter of [*the person*] a lunatic," or "of unsound mind," or "an idiot," and if connected with a suit pending in Chancery, to which the lunatic or idiot is a party, the title of the cause should be also added.

Petitions in Lunacy should be addressed to the person having the custody of the Great Seal, and being also intrusted by the King's Sign Manual with the care and commitment of the custody of the persons and estates of lunatics. The forms of address vary according to circumstances, and are the following:—"To the Right Honorable the Lord High Chancellor of Great Britain;" "To the Right Honorable —, —, and —, Lords Commissioners for the custody of the Great Seal of Great Britain;" "To the Right Honorable —, Lord Keeper of the Great Seal of Great Britain."

PETITIONS BEFORE THE EXECUTION OF THE COMMISSION OF LUNACY.

Petition for a Commission of Lunacy (s).

IN the matter of *A. A.*, a supposed lunatic.

To the Right Honorable the Lord High Chancellor of Great Britain.

The humble petition of *B. B.*, of &c., Esq., the father of the said *A. A.*

SH EWETH,

THAT the said *A. A.*, of &c., the daughter of your petitioner, now is, and for ten years last past and upwards hath been

(s) See *ante*, p. 623.

(s) See *ante* pp. 93, 623.

so far deprived of her reason and understanding, that she is rendered altogether unfit and unable to govern herself, or to manage her affairs, as by the affidavits (u) hereunto annexed appears.

Your petitioner therefore most humbly prays, that your Lordship will be pleased to order that a commission in the nature of a writ *de lunatico inquirendo* may issue, to inquire of the lunacy of the said *A. A.*, directed to such persons as your Lordship shall think fit.

And your petitioner will ever pray, &c.

Witness,

C. C. Solicitor for the petitioner.

(Signed) *B. B.*

Order thereon.

Filing the affidavits annexed, let a commission in the nature of a writ *de lunatico inquirendo* issue, to inquire of the lunacy of the said *A. A.*, and let the same be directed to [*names of five Commissioners*] or any three of them; and let the same be executed in or near the place of abode of the said supposed lunatic; and let a good jury of the county and of the neighbourhood where the said supposed lunatic resides, be returned, to inquire of her lunacy.



Order made by the Lord Chancellor, on issuing a Commission of Lunacy, which was opposed, for the Production of the supposed Lunatic, and for her Examination by Physicians.

Upon reading and considering the said petition, and the evidence adduced in support thereof, and in opposition thereto, I do think fit, and hereby order, that a commission in the nature of a writ *de lunatico inquirendo* do issue, to inquire of the lunacy of the said *B.* otherwise *N.* And I do hereby further order, that the same be directed to *J. C.*, Esq., one of his Majesty's counsel learned in the law [*and the five regular commissioners*], with power for any three of them to execute the same commission, of whom the said *J. C.* is to be one; and that the same be executed at one of the Courts at Westminster, and that a good jury of the county of Middlesex, and of the neighbourhood where the said supposed lunatic resides, be returned, to inquire of her lunacy. And I do think fit, and hereby further order, that the person or persons in whose custody the said supposed lunatic now is, or may be at the time of the execution of the said commission, do produce her at that time, or at any adjournment thereof, to be inspected and examined as often as there may be occasion, before the said commissioners and jury; and let due notice of the time and place of executing the said commission be given to Messrs. —, solicitors of —, who are to be at liberty to attend the same by counsel, if he shall think fit; but I do

(u) See forms of affidavits in support of commissions of lunacy, *ante*, pp. 638—644.

hereby declare such liberty to be given without prejudice to, and I do hereby reserve the consideration of, the costs of such appearance until after the execution of the said commission. And I do hereby further order, that in the meantime, and until the execution of the said commission, certain physicians, to be named by me, be at liberty to visit the said supposed lunatic, and have free access to her at her present place of abode, or at such other place or places as she may happen to be, either together or separately, and without the presence or interference of any person or persons whomsoever, as they or any or either of them may find necessary, and generally under such regulations, and at such time or times, and as often as they or any or either of them may think proper, for the purpose of examining the said supposed lunatic, and ascertaining the state of her mind, and her competency to manage her affairs. And I do think fit and hereby further order, that all and every person or persons in whose care, custody, or power, the said supposed lunatic may happen to be, do produce her to the said physicians, or to any or either of them, on such their or either of their visits; and that all and every such person or persons aforesaid, and all and every other person or persons whomsoever, be and they are hereby restrained from interfering with, or interrupting or causing to be interfered with or interrupted in any manner whatsoever, the said physicians, or any or either of them, on such their or either of their visits or examinations aforesaid (v).



Petition of the Husband of a supposed Lunatic, that the Counsel retained to oppose the Commission may have Access to her during the Inquiry.

IN the matter of *B.*, otherwise *N.*, an alleged lunatic.

To the Right Honourable, &c.

The humble petition of *N.*, the husband of the supposed lunatic.

SHEWETH,

That the commissioners named in a certain commission, issued to inquire concerning the supposed lunacy of the said *B.*, otherwise *N.*, having met, your petitioner caused application to be made to them, that the counsel named on the part of your petitioner might be at liberty to see and converse with the said supposed lunatic previously to the inquisition being taken, and while the commissioners were waiting for a sufficient number of jurymen.

That the said commissioners refused the application of your petitioner, on the ground that your Lordship had refused the application of your petitioner to be at liberty, by his solicitor, to see the said alleged lunatic.

That your petitioner's counsel are of opinion, that it is quite

(v) *In re Bagster alias Newton*, 16th June, 1832.

essential, in order to regulate them in conducting the case of your petitioner, that they should be at liberty to see and converse with the said supposed lunatic.

Your petitioner, therefore, humbly prays your Lordship, that his counsel may be at liberty forthwith to see and converse with the said supposed lunatic.

Order made on last Petition, which was opposed by the Petitioner for the Commission.

That *A.* and *B.*, the counsel for the said petitioner, or either of them, be at liberty forthwith to see and converse with the supposed lunatic as often during the execution of the commission of lunacy issued in this matter, as they shall think fit, either jointly or separately, and at such times, and in such manner as they shall think proper, without the presence or interference of any person or persons whomsoever (*x*).

Petition of the Daughter of a supposed Lunatic, and her Husband, for Liberty of Access, in order to enable them to oppose a Commission of Lunacy.

IN the matter of *J. F.*, against whom a commission *de lunatico inquirendo* hath been awarded and issued.

To the Right Honourable, &c.

The humble petition of *J. C.*, of &c., and *Mary* his wife, late *Mary F.*, spinster, the daughter of the above-named *J. F.*

SH EWETH,

That your petitioners have been informed, and verily believe, that a commission *de lunatico inquirendo* has been issued, directed to certain commissioners therein named, to inquire of the lunacy of the said *J. F.*, and that the same is to be opened on Monday next, the 25th day of April instant, at ten o'clock in the forenoon, at the Albion Hotel, at *M.*, aforesaid. That your petitioner, the said *Mary C.*, has applied for, and been refused, permission to see the said *J. F.*, who is now in confinement at or near &c.

That your petitioners verily believe that they can produce competent witnesses to prove that the said *J. F.* is of sound mind, and able to manage his own affairs, but that your petitioners had not any funds of the said *J. F.*, to enable them to carry on his defence on the inquiry to be instituted under the said commission; and, not knowing the proper legal course to be adopted on his behalf, your petitioner, the said *Mary C.*, addressed a letter to your Lordship, praying for an order for money, to be allowed out of the estate of the said *J. F.*, and that she received a letter from your Lordship's Secretary, of which the following is a copy [*Letter inserted*].

(*x*) *In re Bagster alias Newton*, 3d July, 1832.

That your petitioners have this day called in the aid of Messrs. *H. and S.*, of &c., solicitors, to act on the behalf of the said *J. F.*, and on the behalf of your petitioners, on the execution of the said commission; but, in consequence of the shortness of the notice, it will be totally impossible to conduct his defence on Monday next.

That the witnesses to be produced on behalf of the said *J. F.* will be numerous, and, as your petitioners believe, to the number of twenty and upwards, and that several of them reside at a distance from *M.* aforesaid.

That your petitioners are advised, that it will be necessary that the several witnesses to be produced should be examined by the solicitors, whom your petitioners have retained, previous to their being produced to give evidence before the commissioners, and that their examinations should be furnished to the counsel, who will attend on the part of the said *J. F.*; and there is not time to do that before the opening of the said commission. That your petitioners verily believe, and have no doubt, that the said *J. F.* would concur in this application, and that he has a very considerable property; but, being kept in confinement, he has not been able to instruct any solicitor on his behalf.

That an application was made to your petitioners, or one of them, by the parties soliciting the said commission, some or one of them, to certify their wish that the said commission should issue, but that such application was rejected, on the ground, that your petitioners considered that the said *J. F.* was not a lunatic, and was competent to act in the management of his affairs.

That your petitioners disapprove of the issuing of the said commission, on the ground that the same is not necessary, and will be injurious and prejudicial to the said *J. F.* and his family and affairs, and that he is competent to manage his own affairs.

That several of the other children of the said *J. F.* have not joined in the application for the said commission.

That your petitioners are informed, and believe, that the rents and profits of the real estate of the said *J. F.* amount to 1,000*l.* and upwards, *per annum*, besides a large capital employed in his trade and business, and several considerable sums of money invested in divers mortgage securities.

That the information which it will be necessary for your petitioners to furnish to the said solicitors, will be of the acts done by the said *J. F.* during several years last past, and of his mental competency; and, that the investigation thereof will necessarily occupy a considerable time; and your petitioners verily believe, that justice cannot be done to the said *J. F.* without such investigation, and a proper time being allowed for the same.

That *E. C.*, *M. D.*, and *M. B. R.*, a member of the Royal College of Surgeons, both of *M.* aforesaid, severally certified in the month of November last, that the said *J. F.* was of sound mind in the months of August and September last, when they visited and examined him, for the purpose of ascertaining the state of his mind.

That your petitioners' solicitors have been refused access to the

said *J. F.*; and that *W. S.*, of &c., surgeon, under whose care the said *J. F.* is placed, has refused to permit any medical man to see the said *J. F.* on behalf of your petitioners.

Your petitioners, therefore, humbly pray your Lordship, that time may be given to conduct the defence of the said *J. F.*, and to substantiate his sanity, and his ability to conduct and manage his own affairs; and, that your Lordship will be pleased, for that purpose, to order and direct that no proceedings be taken under the said commission, until such day as your Lordship shall appoint. And, that your Lordship will be further pleased to order and direct, that your petitioners and each of them, and the said Messrs. *H. and G.*, as such solicitors as aforesaid, and proper medical advisers to be appointed by them, may have access to the said *J. F.*, for the purpose of ascertaining and proving his sanity, under such restrictions as to your Lordship shall seem meet; and that the return of the said commission may be enlarged; and, that your petitioners may be permitted to conduct the defence of the said *J. F.*, at the expense of his estate; and that your Lordship will be pleased to make such further order as to your Lordship shall seem meet.

And your petitioners shall ever pray, &c. (*y*).

Petition that supposed Lunatic may be produced before the Commissioners and Jury, at the Execution of a Commission of Lunacy.

IN the matter of *A. A.*, of &c., a supposed lunatic.

To the Right Honourable, &c.

The humble petition of &c.

SHEWETH,

That in pursuance of an order made by your Lordship, on the 10th day of October, 1827, a commission, in the nature of a writ *de lunatico inquirendo*, was issued, directed to certain commissioners therein named, to inquire of the lunacy of the said *A. A.*, the father of your petitioner.

That an inquisition was taken by virtue thereof; and, that by your Lordship's order, bearing date the 25th day of November, 1827, your Lordship did adjudge the said inquisition to be insufficient, and, therefore, did order, that the same should be quashed, and that a new commission, in the nature of a writ *de lunatico inquirendo*, should issue, to inquire of the lunacy of the said *A. A.*, directed to certain commissioners therein named; and, that the ma-

(*y*) The petition was supported by an affidavit of the daughter, and an affidavit of service of the petition, and notice of motion on the solicitors for the commission, and another affidavit of one of the

solicitors for the petitioners. The substance of the order made on the hearing of the petition is stated *ante*, pp. 98, 99, *In re Fletcher*. The party was not found to be a lunatic.

for part of the said commissioners in the said new commission named have appointed Thursday, the 27th day of December instant, for opening the said commission; due notice whereof has been given to Messrs. C. and D., solicitors, as agents for the said A.A., and Mary, his wife; and the said commissioners have also issued their summons, directing the said A.A. to be produced before them on the execution of the said commission, a copy whereof has been served on the said Messrs. C. and D.

That your petitioner is apprehensive that the persons who have the custody of the said A.A., will not produce him to the commissioners and jury on the execution of the said commission, unless directed so to do by your Lordship's order.

Your petitioner, therefore, most humbly prays your Lordship, that any person or persons in whose custody or power the said A.A. may then happen to be, may be ordered to produce him at the execution of the commission of lunacy issued in this matter, or on any adjournment thereof, to be inspected and examined as often as there shall be occasion, before the commissioners and jury, at such seasonable times as they may require.

And your petitioner will ever pray, &c. (z).

Petition of the Father of a supposed Lunatic, that Affidavits filed may be produced on the Execution of Commission.

IN the matter &c.

To the Right Honourable &c.

The humble petition &c.

SH EWETH,

[*Statement of the order to issue commission of lunacy*].

That your petitioner is advised that it will be material to produce in evidence on the execution of the said commission, the several affidavits made in this matter, and which are now filed of record with your Lordship's Secretary of Lunatics.

Your petitioner, therefore, humbly prays your Lordship, that the proper officer, or his deputy, may be ordered to attend with the said affidavits, and to produce the same on the execution of the said commission, or any adjournment thereof.

And your petitioner shall ever pray, &c.

Order thereon.

Let the proper officer, or his deputy, attend with the said original affidavits, and produce the same at the execution of the said commission, as in the said petition mentioned.

(z) The Lord Chancellor made an order. *In re Holmes*, 13th December, 1827.
der in the words of the prayer of the pe-

PETITIONS AFTER THE RETURN OF THE
INQUISITION.

Petition of the Sister and one of the Next of Kin of a Lunatic, for the Delivery of her Person to the Petitioner, until the Appointment of a Committee.

IN the matter of *Catharine D.*, a lunatic.

To the Right Honourable, &c.

The humble petition, &c.

SH EWETH,

That in pursuance of an order of your Lordship, made on the — day of —, 1829, a commission in the nature of a writ *de lunatico inquirendo*, was awarded and issued, directed to certain commissioners therein named, to inquire of the lunacy of the above-named *Catherine D.*, of &c.

That the said commission was duly executed on the — day of —, before the major part of the commissioners in the said commission named; and, by an inquisition thereupon taken it was found, that the said *Catherine D.* was then a lunatic, and that she did not enjoy any lucid intervals, and that she had been in the same state of lunacy from the — day of —.

That upon taking the said inquisition it appeared in evidence that *G. D.*, of &c., abstracted the said [*lunatic*], on the 28th day of June last, from the care and custody of —, with whom she had been placed by your petitioner for safe custody; and on the following day, being the 25th day of June last, they, the said *G. D.* and [*lunatic*], were married at —, by banns, since which they have lived together, and cohabited as man and wife.

That after the finding of the said inquisition, your petitioner caused an application to be made to the said *G. D.* through her solicitor, to deliver up the person of the said [*lunatic*] into the custody, and to be placed under the care of your petitioner, until your Lordship's pleasure should be known, but which application has not been complied with.

Your petitioner, therefore, most humbly prays your Lordship, that the care and custody of the said [*lunatic*] may be granted to your petitioner, until a committee of her person shall be appointed by your Lordship for that purpose, and that the said *G. D.* and *E. D.*, his daughter, and all and every other the children of the said *G. D.*, and all other person or persons in whose custody the said lunatic may be, be ordered to deliver up the person of the said [*lunatic*] to your petitioner, and to such person or persons as she may appoint to receive her; and that the said *G. D.* and *E. D.*, and all and every

other the children of the said *G. D.*, be restrained from visiting or interfering with the person of the said [*lunatic*] without the order of your Lordship first had and obtained for that purpose; or, that your Lordship will be pleased to make such further or other order, as to your Lordship shall seem meet.

And your petitioner shall ever pray, &c. (a).



Petition of Person found to be of unsound Mind, to be allowed to traverse the Inquisition (b).

IN the matter of *A. A.*, a person found to be of unsound mind.

To the Right Honourable, &c.

The humble petition of the said *A. A.*

SHEWETH,

That by an order made in this matter, on the 19th day of November last, it was ordered, that a commission in the nature of a writ *de lunatico inquirendo* should issue, to inquire of the lunacy of your petitioner, the said *A. A.*

That by the inquisition taken on the execution of the said commission on the 3rd day of December instant, it was found, that your petitioner, the said *A. A.*, was a person of unsound mind; and that he had been in a state of unsoundness of mind from the 25th day of September, in the year of our Lord, 1820.

That your petitioner is advised that the said finding under the commission was contrary to the evidence adduced on the part of your petitioner.—*Instead of the last allegation may be inserted,* "That your petitioner is greatly aggrieved and prejudiced by the issuing of the said commission and the return of the said inquisition, and that your petitioner is of sound mind, and perfectly competent and sufficient for the government of himself and his property."

Your petitioner, therefore, most humbly prays your Lordship, that he may be at liberty to traverse the aforesaid inquisition; or, that your Lordship will be pleased to make such further or other order in the premises, as to your Lordship shall seem just.

And your petitioner shall ever pray, &c.

(a) An order was made according to the prayer of the petition. *In re Chapman* alias *Dunn*, 1st Aug. 1829. Where a party had been taken out of the jurisdiction of the Court, before the commission issued under which she was found

to be of unsound mind, an order was made that she should be brought back to England, if it could be done without danger or injury to her health. *In re Wykeham*, 1 Turn. & Russ. 537.

(b) See *ante*, pp. 112—119, 626.

Order thereon.

7th Dec. 1830.—Let all parties concerned attend me in the matter of this petition on the next day of petitions, hereof give notice forthwith; and a *caveat* having been entered by *C. D.*, let notice hereof be forthwith given to the said *C. D.*

◆

Petition of the Husband of a Lunatic, for Liberty to traverse an Inquisition.

IN the matter of *R. B.*, otherwise *R. N.*, an alleged lunatic.

To the Right Honourable, &c.

The humble petition of *R. N.*, the husband of the said alleged lunatic.

SH EWETH,

[*The issuing of commission*].

That the said commission was executed before three of the commissioners therein named, and that by the inquisition taken under the same, on the 14th day of July last, it was (amongst other things) found, &c. [*verdict of the jury*].

That your petitioner is not aware whether any further or other proceedings have been taken since the return of the said inquisition, your petitioner not having been served with notice thereof.

That your petitioner is advised that the finding of the jury upon such inquisition was against evidence, and contrary to law; and your petitioner is aggrieved by such finding, and is, therefore, desirous of traversing such inquisition.

Your petitioner, therefore, prays your Lordship, that he may be at liberty to traverse the said inquisition, and that such traverse may be tried in the Court of *K. B.*, and in the county of Middlesex; or, that your Lordship will be pleased to make such further or other order herein, as to your Lordship may seem meet.

And your petitioner, &c.

PLEADINGS IN A TRAVERSE OF AN INQUISITION
OF LUNACY (c).

—◆—
Traverse of an Inquisition.

In the Petty Bag Office. In Chancery.

Middlesex, (to wit),

Michaelmas Term, — Will. Fourth.

By a certain inquisition indented, taken at the house of —, situate in the parish of St. Andrew, Holborn, in the said county, the — day of —, in the — year of the reign &c., and in the year of our Lord, 18—, before [*the names of the three Commissioners*] Esquires, Commissioners in his Majesty's commission in the nature of a writ *de lunatico inquirendo*, under the Great Seal of Great Britain, bearing date at Westminster, the — day of — then last past, to them the said Commissioners and others in the said commission named, directed to inquire, (amongst other things), of the lunacy of [*the supposed lunatic*], of &c., Esq., on the oaths of [*names of the jurors*], good and lawful men of the said county. It was found, that the said [*lunatic*] was, at the time of taking the said inquisition, a person of unsound mind, so that he was not sufficient for the government, &c., [*the words of the verdict*], as by the said inquisition, together with the said commission thereunto annexed, returned into the Chancery of our said Lord the King, at Westminster, and there now remaining filed amongst the records of the said court, may more fully appear.

And now at this day, that is to say, on the — day of November, in this same term, before our said Lord the King, in his Chancery at Westminster, in the said county of Middlesex, cometh the said [*lunatic*] by *C. D.*, his attorney, and prays oyer of the said commission, the return thereof and the inquisition thereupon taken, and the same being read and heard, the said [*lunatic*] complains, that, by colour of the premises, he is greatly vexed and disturbed, and that unjustly, because, protesting that the said commission and the return thereof, and inquisition thereupon taken, are insufficient in law, and unto which he need not, neither is he bound by the law of the land, to answer: For plea, nevertheless, in this behalf, the said [*lunatic*] saith, that he, the said [*lunatic*], at the time of taking the said inquisition, and always before, was, and from thence hitherto hath been, and now is, of sound mind and understanding, and sufficient for the government of himself, his manors, messuages, lands, tenements, goods, and chattels. Without this, that he, the said [*lunatic*], at the time of taking the said inquisition, or at any time before or after, was or now is a person of unsound mind, and not sufficient for the government of himself, his manors,

messuages, lands, tenements, goods, and chattels, in manner and form as by the said inquisition is above found; and this the said [lunatic] is ready to verify; wherefore he prays judgment, and that the said commission, return and inquisition thereupon taken, may be vacated and discharged; and that the hands of our said Lord the King may be amoved, and that the said [lunatic] may be restored to the government of himself, and to the possession of all his manors, messuages, lands, tenements, goods, and chattels, and that he, under colour of the said inquisition, may be no further molested, but from the premises may be wholly discharged by this Court; and so forth.

—

Replication of the Attorney-General.

In the Petty Bag Office. In Chancery.

Michaelmas Term, in the — year of the reign
of King William the Fourth.

The King
against
[The lunatic] } And —, Attorney-General of our said Lord the
King, who prosecutes for our said Lord the King in
this behalf, being present here in Court, in his own proper person,
for our said Lord the King, says, that by reason of any thing by the
said [lunatic] above in pleading alleged, the said commission, return
and inquisition thereupon taken, ought not to be vacated or dis-
charged, nor the hands of our said Lord the King amoved, nor the
said [lunatic] restored to the government of himself, or to the pos-
session of his manors, messuages, lands, tenements, goods, and chat-
tels; Because, he says, that the said [lunatic], at the time of taking
the said inquisition and before, was, and now is, of unsound mind,
so as not to be sufficient for the government of himself, his manors,
messuages, lands, tenements, goods, and chattels, in manner and
form as by the said inquisition above is laid. And this the said
Attorney-General, who prosecutes as aforesaid, prays may be in-
quired of by the country, &c. And the said [lunatic] doth the like.
Therefore, a day is given as well to the said Attorney-General of
our said Lord the King, who prosecutes in this behalf for our said
Lord the King as aforesaid, as to the said [lunatic] before our said
Lord the King, in eight days of the Purification, wheresoever he
shall then be in England, to do and receive what shall be just in the
premises. And the sheriff of the county of Middlesex is command-
ed, that he cause to come before our said Lord the King at that day,
twelve good and lawful men of the body of his county, each of whom
shall have ten pounds at least of lands, tenements, or rents by the
year, by whom the truth of the matter in the premises may be bet-
ter known and inquired into, and who to the said [lunatic] are in
no ways related, to recognise upon their oaths the full truth of and
concerning the premises aforesaid.

PETITIONS AS TO THE APPOINTMENT OF COMMITTEES AND RECEIVERS.

Petition for a Reference to the Master for the Appointment of Committees (d).

IN the matter of *A. A.*, a person of unsound mind.
To the Right Honourable, &c.

The humble petition of &c.

SHEWETH,

That, in pursuance of your Lordship's order, bearing date the 24th day of November last, made upon the petition of your petitioner, a commission in the nature of a writ *de lunatico inquirendo* was awarded and issued, directed to certain commissioners therein named, to inquire (amongst other things) of the lunacy of the said *A. A.*

That the said commission was duly executed on the 4th day of December instant, before the major part of the commissioners therein named; and by an inquisition thereupon taken, it was found that the said *A. A.* is a person of unsound mind, so that she is not sufficient for the government of herself, her manors, messuages, lands, tenements, goods and chattels, and that she had been in the same state of unsoundness of mind from the 20th day of November, 1826.

That your petitioner is desirous that a proper person should be appointed under the order and authority of your Lordship, to take care of the person and estate of the said *A. A.*

Your petitioner, therefore, humbly prays your Lordship, that it may be referred to one of the Masters of the High Court of Chancery, to inquire and certify who is or are the most fit and proper person or persons to be appointed committee or committees of the person and estate of the said *A. A.*, or that your Lordship will be pleased to make such further or other order in the premises as shall seem meet.

And your petitioner shall ever pray, &c.

Order thereon.

Let it be referred to the Master in rotation of the High Court of Chancery, to inquire and certify who is or are the most fit and proper person or persons to be appointed the committee or committees of the person and estate of the said *A. A.*, and let the said Master also inquire and certify who is or are the heir or heirs-at-law and next of kin of the said lunatic; to whom let due notice

of attending the said Master be given. And after the said Master shall have made his report, such further order shall be made as shall be just.

Petition of the Heir-at-Law and one of the next of Kin of a Lunatic, for the Appointment of Committees and of a Receiver in the mean time.

IN the matter, &c.

To the Right Honourable, &c.

The humble petition of &c.

SHEWETH,

[*Statements—The order for issuing a commission, and the inquiry thereupon taken, as in last petition.*]

That the said lunatic is possessed of considerable landed property, the rents in respect of which are in arrear, and the houses and buildings upon the said property are very much out of repair; and your petitioner is very desirous that the person and estate of the said lunatic may be taken care of in such manner as is necessary and usual in cases of this nature.

Your petitioner, therefore, most humbly prays your Lordship, that it may be referred to one of the Masters of the High Court of Chancery, to appoint a proper person or persons to be committee or committees of the person and estates of the said lunatic, he or they giving such security as is usual in such cases; and that pending the reference before the said Master, and until the appointment of a committee of the estate, your Lordship will be pleased to appoint a fit and proper person to be receiver, with the usual directions of the rents and profits of the said lunatic's estate, and to make such repairs as may be necessary to part thereof with the sanction of the said Master. And that the said Master may make such allowance to him as he shall think fit, or that your Lordship will be pleased to make such further or other order in the premises as to your Lordship shall seem meet.

And your petitioner shall ever pray, &c.

Order thereon (e).

That it be referred to the Master in rotation of the High Court of Chancery, to inquire and certify who is or are the most fit and proper person or persons to be appointed the committee or committees of the person and estates of the said lunatic, and also who is or are the heir or heirs-at-law and next of kin of the lunatic; and after the said Master shall have made his report, such further order shall be made as shall be just. And I do think fit and hereby further order, that it be also

(e) The formal introduction of an order, after reciting the petition, is stated *post.*
p. 714.

referred to the said Master to appoint a fit and proper person to be the receiver of the rents, profits, and produce of the said lunatic's estate, until a committee or committees thereof be appointed; and to allow him a reasonable and proper salary for his care and pains therein, such receiver so to be appointed first giving security, to be allowed of by the said Master, and taken before a Master extraordinary in the country, if there shall be occasion, duly and annually to account for what he shall receive. And I do hereby further order, that the tenants of the said lunatic's estate do attorn and pay their rents in arrear, and growing rents, to such receiver, who is to be at liberty to set, let, and manage the said estates from time to time, with the approbation of the said Master, as there shall be occasion. And I do hereby further order, that any balances which may from time to time be reported due from such receiver, be by him paid into the Bank of England, in the name and with the privity of the Accountant-General of the Court of Chancery, in trust in this matter; and he is to declare the trust thereof accordingly. And I do hereby further order, that such balances, when so paid into the Bank, be from time to time laid out by the said Accountant-General in the purchase of Bank 3l. per cent. Consolidated Annuities, in trust in this matter; and the said Accountant-General is to declare the trust thereof accordingly, subject to further order. And I do hereby further order, that the receiver, when so appointed, be at liberty to do such repairs to the estate of the said lunatic or any part or parts thereof respectively, as the said Master may consider absolutely necessary for the benefit of the said estate; and the said Master is to make unto the said receiver all just allowances in respect thereof, on passing his account before him, as hereinbefore directed. And let &c., [notice to next of kin, the Accountant-General to draw, &c.] (f).

Petition to confirm Master's Report as to Appointment of a Committee of the Person and Estates, for a Reference to Master as to Maintenance, and for Taxation of Costs.

IN the matter of *A. A.*, a person of unsound mind.

To the Right Honourable, &c.

The humble petition of &c.

SHEWETH,

That, pursuant to your Lordship's order, bearing date the 16th day of March last, made upon the petition of your petitioner, a commission in the nature of a writ *de lunatico inquirendo* was awarded and issued, directed to certain commissioners therein named, to inquire of the lunacy of the above-named [*lunatic*], who is the son of your petitioner.

(f) *In re Green*, 2nd July, 1831.

That the said commission was duly executed on the — day of — now last past, before the major part of the commissioners in the said commision named; and by an inquisition thereupon taken, it was found that the said [*lunatic*] was of unsound mind, so that he was not sufficient for the government of himself, his manors, messuages, lands, tenements, goods, and chattels; and that he had been in the same state of unsoundness of mind from the — day of —, 1806, but how and by what means the said [*lunatic*] so became of unsound mind, the same jurors knew not, unless by the visitation of God.

That by another order, bearing date the — day of — last, made by your Lordship in this matter, on the petition of the said —, it was ordered that it should be referred to —, Esquire, one of the Masters of the High Court of Chancery, to inquire and certify who was or were the most fit and proper person or persons to be appointed the committee or committees of the person and estate of the said [*lunatic*]; and it was also referred to the said Master to inquire and certify who was or were the heir or heirs-at-law and next of kin of the said [*lunatic*].

That the said Master by his report, bearing date the — day of —, made in pursuance of the said last-mentioned order, certified that he had been attended by the solicitor of the said petitioner, and of —, the paternal uncle and heir-at-law of the said lunatic as hereinafter mentioned; and a state of facts and proposals having been laid before him by or on behalf of the said petitioner, together with an affidavit in support thereof as hereinafter mentioned, whereby, after stating, that, pursuant to an order made by your Lordship, &c. [*the commission and inquisition*]. And, in support of the said state of facts and proposal, an affidavit of the said —, made in this matter, sworn the — day of —, —, had been laid before him, whereby the said [*deponent*] stated, that &c. [*the affidavit*]. And the said Master, having considered the said state of facts and proposal, and the said affidavit, and the said [*heir-at-law*] consenting thereto, by his same report certified that he was of opinion that the said petitioner —, the mother of the said lunatic, was the most fit and proper person to be appointed the committee of the person and estate of the said lunatic; And he found that the said — was the heir-at-law, and that the said — was the only next of kin of the said lunatic; All which he humbly certified and submitted to your Lordship's judgment.

That your petitioner is desirous that the said report should be absolutely confirmed.

Your petitioner, therefore, humbly prays your Lordship, that the Master's said report, of the — day of —, —, may be absolutely confirmed, and that the custody of the person and the care and management of the estate of the said [*lunatic*] may be granted to your petitioner, she giving such security as is usual in like cases; and that it may be referred back to the said Master to inquire and

certify what is the situation of the said [*lunatic*], and of what the fortune of the said lunatic did at the time of issuing the commission of lunacy in this matter consist, and of what it doth now consist; and that the said Master may also approve of and settle a proper sum to be allowed for the maintenance and support of the said lunatic for the time past and to come; and that what the said Master shall report to be a proper sum to be allowed to the committee of the person of the said lunatic, may be paid to her accordingly out of the annual produce of his estate; and that she may be allowed the same in passing her accounts before the said Master; and that it may be referred to the said Master to tax the costs of your petitioner and the heir-at-law of the said lunatic, of and incident to the said commission and all other proceedings thereon, and that such costs when taxed may be also paid by the committee of the said lunatic's estate, and allowed to her in passing her said accounts before the said Master; or that your Lordship will make such further or other order in the premises, as to your Lordship shall seem meet.

And your petitioner will ever pray, &c.

Order thereon.

The order made on this petition was the same as that next stated, except that it applied to one committee.

Prayer of Petition, to confirm Master's Report of appointing several Committees, and for Reference as to Maintenance and Taxation of Costs.

Your petitioners, therefore, most humbly pray your Lordship that the Master's said report of the — day of —, —, may be confirmed; and that your petitioners *A.*, *B.*, *C.*, and *D.* may be appointed joint committees of the estate of the said lunatic, upon their giving such securities as is usual in the like cases. And that it may be referred back to the said Master to inquire into the nature and amount of the property of the said lunatic, and to approve of a proper annual sum to be allowed thereout for the maintenance and support of the said lunatic; and that the committees of the said lunatic's estate may be at liberty, out of the said lunatic's property, or the income thereof, to pay or retain the costs of your petitioners, to be taxed on the said inquiry before the Master, and incident thereto; and also their costs of this application, and of their former applications hereinbefore referred to. And that the said payments when so made may be allowed to the committees in passing their accounts before the said Master, or that your Lordship will be pleased to make such further or other order in the premises as to your Lordship shall seem meet.

And your petitioners will ever pray, &c.

Order made on last Petition.

I do think fit, and hereby order, that the Master's said report be confirmed: And I do hereby further order, that the custody of the person of the said lunatic and the care and management of his estate be granted to the said [committees], they first giving such security as his Majesty's Attorney-General shall approve of for answering the said estate, and accounting for the rents, profits, and produce thereof once in every year, or oftener if thereunto required, before —, Esq., the Master to whom this matter stands referred, such security to be perfected on or before the — day of — now next ensuing; and in the mean time, and until such security shall have been so perfected, the said [committees] are not to interfere in any manner in the affairs and concerns of the said lunatic as the committees of his estate or otherwise. And in default of such security being perfected within the time aforesaid, then I do hereby further order, that it be referred back to the said Master to approve of some other fit and proper person or persons to be appointed the committee or committees of the estate of the said lunatic in the stead of the said petitioners; and after the said Master in that case shall have made his report, such further order shall be made as shall be just. And I do think fit, and hereby further order, that it be referred to the said Master to inquire and certify what is the situation of the said lunatic, and the nature of his lunacy; and of what the fortune of the said lunatic did, at the time of issuing the commission of lunacy in this matter consist, and of what it doth now consist; and in what manner, at what expense, and by whom the said lunatic hath hitherto been maintained; and also what will be fit and proper to be allowed for his maintenance and support for the time to come, regard being had to his circumstances and estate. And after the said Master shall have made his report, such further order shall be made as shall be just. And I do think fit, and hereby order, that it be also referred to the said Master to tax the petitioners [committees] and the other next of kin of the said lunatic, their reasonable and proper costs, charges, and expenses incurred in and about the order made in this matter, bearing date the — day of —, —, and the proceedings consequent thereon, and of this application, and incident thereto. And let due notice of attending the said Master be given to such person or persons as would be entitled to a distributive share or distributive shares of the said lunatic's estate in case he were now dead intestate.

◆

Prayer of a Petition against the Confirmation of Master's Report.

[*The objections to be stated*].—Your petitioners, therefore, humbly pray that the said report of the — may not be confirmed; and that it may be referred to the said Master to review his

said reports; and that such directions may be given as to the person or persons to be appointed committee or committees of the person of the said lunatic, and in regard to the care and management of the said lunatic, as, under the circumstances hereinbefore mentioned, may seem just and proper, having regard to the comfort and happiness of the said lunatic; or that such further or other order may be made in respect of the matters aforesaid as shall be just and proper.

And your petitioners shall ever pray, &c.

Prayer of a Petition for reviewing the Master's Report.

[*The particular reasons to be stated.*]

Your petitioner therefore humbly prays your Lordship, that the said Master's report of the day of last may not be confirmed; and that your petitioner, or one other of the lunatic's nephews, may be appointed one of the committees of the person of the said lunatic, with power to nominate, under the sanction of your Lordship, proper medical advisers in the neighbourhood of the lunatic; and that it may be referred back to the said Master to review his said report, and also his former report of —, in respect of the several matters in your petitioner's former petition objected to; And that your Lordship will be pleased, in the mean time, to give such orders and directions as may secure the health and comfort of the said lunatic, and the protection of his property.

And your petitioner shall ever pray, &c.

Petition of the Co-heiresses-at-law of a Lunatic for Leave to carry in Proposals for the Appointment of Committees, and to have Notice of Proceedings, before the Master (g).

IN the matter, &c.

To the Right Honourable &c.

The humble petition &c.

SH EWETH,

[*Statements—The commission of lunacy and inquisition thereupon taken, and that a petition for appointment of committee of lunatic had been presented by another person.*]

That the said petition is set down to be heard before your Lordship on the next day of petitions.

(g) The heir and next of kin of a person found a lunatic are entitled of right to propose themselves to the Master for the charge of committee of the person; a friend, or any other person seeking the appointment, must obtain an order to be at liberty to do so; and his petition must be without delay, and state the objections to the heir and next of kin, and set out particularly the facts on which he grounds his claims to be preferred. *In re Persse*, 1 Molloy, 440.

Order made on last Petition.

I do think fit, and hereby order, that the Master's said report be confirmed: And I do hereby further order, that the custody of the person of the said lunatic and the care and management of his estate be granted to the said [committees], they first giving such security as his Majesty's Attorney-General shall approve of for answering the said estate, and accounting for the rents, profits, and produce thereof once in every year, or oftener if thereunto required, before —, Esq., the Master to whom this matter stands referred, such security to be perfected on or before the — day of — now next ensuing; and in the mean time, and until such security shall have been so perfected, the said [committees] are not to interfere in any manner in the affairs and concerns of the said lunatic as the committees of his estate or otherwise. And in default of such security being perfected within the time aforesaid, then I do hereby further order, that it be referred back to the said Master to approve of some other fit and proper person or persons to be appointed the committee or committees of the estate of the said lunatic in the stead of the said petitioners; and after the said Master in that case shall have made his report, such further order shall be made as shall be just. And I do think fit, and hereby further order, that it be referred to the said Master to inquire and certify what is the situation of the said lunatic, and the nature of his lunacy; and of what the fortune of the said lunatic did, at the time of issuing the commission of lunacy in this matter consist, and of what it doth now consist; and in what manner, at what expense, and by whom the said lunatic hath hitherto been maintained; and also what will be fit and proper to be allowed for his maintenance and support for the time to come, regard being had to his circumstances and estate. And after the said Master shall have made his report, such further order shall be made as shall be just. And I do think fit, and hereby order, that it be also referred to the said Master to tax the petitioners [committees] and the other next of kin of the said lunatic, their reasonable and proper costs, charges, and expenses incurred in and about the order made in this matter, bearing date the — day of —, —, and the proceedings consequent thereon, and of this application, and incident thereto. And let due notice of attending the said Master be given to such person or persons as would be entitled to a distributive share or distributive shares of the said lunatic's estate in case he were now dead intestate.

Prayer of a Petition against the Confirmation of Master's Report.

[*The objections to be stated.*].—Your petitioners, therefore, humbly pray that the said report of the — may not be confirmed; and that it may be referred to the said Master to review his

said reports; and that such directions may be given as to the person or persons to be appointed committee or committees of the person of the said lunatic, and in regard to the care and management of the said lunatic, as, under the circumstances hereinbefore mentioned, may seem just and proper, having regard to the comfort and happiness of the said lunatic; or that such further or other order may be made in respect of the matters aforesaid as shall be just and proper.

And your petitioners shall ever pray, &c.

◆

Prayer of a Petition for reviewing the Master's Report.

[*The particular reasons to be stated.*]

Your petitioner therefore humbly prays your Lordship, that the said Master's report of the day of last may not be confirmed; and that your petitioner, or one other of the lunatic's nephews, may be appointed one of the committees of the person of the said lunatic, with power to nominate, under the sanction of your Lordship, proper medical advisers in the neighbourhood of the lunatic; and that it may be referred back to the said Master to review his said report, and also his former report of —, in respect of the several matters in your petitioner's former petition objected to; And that your Lordship will be pleased, in the mean time, to give such orders and directions as may secure the health and comfort of the said lunatic, and the protection of his property.

And your petitioner shall ever pray, &c.

◆

Petition of the Co-heiresses-at-law of a Lunatic for Leave to carry in Proposals for the Appointment of Committees, and to have Notice of Proceedings, before the Master (g).

IN the matter, &c.

To the Right Honourable &c.

The humble petition &c.

SHEWETH,

[*Statements—The commission of lunacy and inquisition thereupon taken, and that a petition for appointment of committee of lunatic had been presented by another person.*]

That the said petition is set down to be heard before your Lordship on the next day of petitions.

(g) The heir and next of kin of a person found a lunatic are entitled of right to propose themselves to the Master for the charge of committee of the person; a friend, or any other person seeking the appointment, must obtain an order to be at liberty to do so; and his petition must be without delay, and state the objections to the heir and next of kin, and set out particularly the facts on which he grounds his claims to be preferred. *In re Perse*, 1 Molloy, 440.

That your petitioners *A.*, *B.*, and *C.*, are the three daughters and only children of —; and as such your petitioners are, as they conceive and verily believe, the co-heiresses-at-law and three of the next of kin of the said lunatic.

That your petitioners are desirous to propose committees of the said lunatic's person and estate, and to have notice of all other proposals and proceedings which may take place before the said Master in the said matter.

Your petitioners, therefore, humbly pray your Lordship, that they may be allowed to carry in before the said Master proposals for the committees of the person and estate of the said lunatic, and that your petitioners may have notice of all other proposals and proceedings in this matter which may be taken in and carried on before and by the said Master; or that your Lordship will be pleased to make such further or other order in the premises as to your Lordship shall seem meet.

And your petitioners will ever pray, &c.

Order thereon.

That the petitioners be at liberty to carry in proposals before the Master, to whom this matter stands referred, for the appointment of committees of the person and estate of the said lunatic, and to have notice of all other proposals to be carried into the said Master's office, and the proceedings to be had thereon for that purpose (*h*).

Petition of the Committee of the Estate to reduce the Security required of him on Part of the Lunatic's Estate being invested in the Name of the Accountant-General.

IN the matter &c.

To the Right Honourable &c.

The humble petition &c.

SH EWETH,

[*Statement of the inquisition*].

That your petitioner was appointed committee of the estate of the said lunatic, and, having given the usual security, obtained a grant of the custody of such estate.

That the sum for which security was required to be given amounted to the sum of £—, but inasmuch as a very considerable portion of the then outstanding estate and effects of the said lunatic has been got in, and the proceeds thereof invested in the name of the Accountant-General of the High Court of Chancery to the credit of this matter, your petitioner and his sureties are anxious to have the security reduced to a sum that will correspond with the present outstanding estate and effects, and to have their bond delivered up to be cancelled, upon their entering into a fresh security.

Your petitioner, therefore, most humbly prays your Lordship

that the security of your petitioner and his sureties may be reduced to an amount corresponding with the present condition of the estate and effects of the lunatic, and that his Majesty's Attorney-General may settle the amount in the usual way. And that after fresh security shall have been given by your petitioner, the bond of your petitioner and his present sureties may be delivered up to be cancelled; or that your Lordship would be pleased to make such further or other order in the premises as to your Lordship shall seem meet.

And your petitioner shall ever pray, &c.

Order thereon.

That the security entered into by the petitioner and his sureties, bearing date —, be reduced to an amount corresponding with the present condition of the estate and effects of the said lunatic. And further order that the said petitioner be at liberty to enter into fresh security to the approbation of his Majesty's Attorney-General for answering the estate of the said lunatic, and accounting for the rents, issues, and profits thereof once in every year, or oftener if thereunto required, before —, Esq., the Master to whom this matter stands referred; and thereupon I do hereby further order, that the present recognizances entered into by the said petitioner, and — and —, his sureties, bearing date, &c., be delivered up by the Clerk of the Custodies to be vacated and cancelled (i).

Petition for Leave to deposit Securities in the Master's Office, for the Purpose of reducing the Amount of the Security required of the Committees.

IN the matter &c.

To the Right Honourable &c.

The humble petition &c.

SHewETH,

[*Statements—The inquisition—The reference to the Master to appoint committees—The confirmation of the Master's report appointing committees—And an order for enlarging time for perfecting security.*]

That the said lunatic is possessed of or entitled to the sum of £—, due from *A. B.*, part thereof being secured by a mortgage and mortgage bond hereinafter referred to, and the residue thereof by the promissory note of the said *A. B.* hereinafter mentioned.

That your petitioners find it impossible to procure sureties for the full amount required by the usual practice, and in order that the amount of such security may be lessened, your petitioners are desirous of depositing with —, Esq., the Master to whom this

(i) *In re Craven*, 29th June, 1827.

matter stands referred, a certain indenture [*the securities are set forth generally*].

Your petitioners, therefore, most humbly pray your Lordship, that they may be at liberty to deposit with —, Esq., the Master to whom this matter stands referred, the indenture of mortgage before mentioned, [*a bond and note of hand*]; And that thereupon the several sums of money respectively secured thereby may be deducted by the proper officer from the amount for which your petitioners would otherwise have been required to give security; And that such security be reduced accordingly; And that your Lordship will be pleased to make such further or other order in the premises as to your Lordship shall seem meet.

Order thereon.

That the petitioners be at liberty to deposit in the office of —, Esq., the Master to whom this matter stands referred, the indenture of mortgage, &c., [*dates mentioned*], for the purpose of reducing the security required to be given by the petitioners, as committees of the lunatic's estate (*j*).

Petition of the Committee, that the Time limited for perfecting his Security may be enlarged.

IN the matter of *A. A.*, a lunatic.

To the Right Honourable &c.

The humble petition &c.

SHewETH,

That by your Lordship's order in this matter, bearing date the 12th day of May, 1832, made upon the petition of your petitioner, it was (amongst other things) ordered, that the custody of the person of the said lunatic, and the care and management of his estate, be granted to your petitioner, he first giving such security as his Majesty's Attorney-General should approve of, for answering the said estate, and accounting for the rents, profits, and produce thereof, once in every year, or oftener, if thereunto required, before —, Esq., the Master to whom this matter stands referred, such security to be perfected on or before the 12th day of July next ensuing; and in the mean time, and until such security shall have been perfected, your petitioner was not to interfere in any manner in the affairs and concerns of the said lunatic, as the committee of his said estate, or otherwise; and in default of such security being perfected within the time aforesaid, it was ordered, that it be referred back to the said Master, to approve of some other fit and proper person or persons to be appointed the committees of the estate of the said lunatic.

(*j*) *In re De Lisle*, 19th November, 1828.

That the said lunatic is possessed of, or entitled to, or interested in the following stocks, namely, &c. [*the amount and description*].

That, for the safety of the estate of the said lunatic, your petitioner preferred his petition to your Lordship, praying that your Lordship would be pleased to order the said sums to be transferred into the name, and with the privity, of the Accountant-General of the Court of Chancery, in trust in this matter, which your Lordship has been pleased to direct; but that, owing to some of the said stocks being now closed, the same cannot be transferred by the time limited in your Lordship's order for completing the security; and the amount of such security cannot therefore be ascertained.

Your petitioner, therefore, humbly prays, that your Lordship will be pleased to extend the time so allowed for completing the said security so to be given by your petitioner as aforesaid, until the 10th day of August next, or until such other time as your Lordship will please to direct; or to make such other order herein as to your Lordship shall seem meet.

And your petitioner will ever pray, &c.

Order thereon.

That the time limited by the order made in this matter, bearing date the 12th day of May, 1832, for perfecting the security thereby required to be given by the petitioner, be enlarged to the 10th day of August now next ensuing.

Petition of the Committee of the Estate of a Lunatic, for the Appointment of a Receiver.

IN the matter &c.

To the Right Honourable &c.

The humble petition &c.

SHEWETH,

[*Statements—Reference to the Master to approve of Committees—the Report of the Master appointing a Committee, and of what Estates the Lunatic was seised, and the Grant to the Committee.*]

That your petitioner resides at —, a distance of many miles from any part of the said estates of the said lunatic, and the said estates lying in three different counties, he had been under the necessity of employing *G. W.*, of —, as his solicitor, in collecting the rents, and in the general management of the estates of the said lunatic from the date of the grant of the committeeship to the present time.

That your petitioner has, in consequence of being so under the necessity of employing his solicitor to collect the rents and manage the estates as aforesaid, incurred, since the 6th day of May, 1828, considerable costs, charges, and expenses, but the amount of which is much less than the salary that would have been allowed to a receiver.

That, should your Lordship consider that the costs, charges, and expenses so incurred by your petitioner as aforesaid cannot be allowed to him as committee, then your petitioner submits, that your petitioner's solicitor, the said *G. W.*, is a fit and proper person to be appointed receiver of the rents of the said lunatic's estates, he having, under the authority of your petitioner, received such rents from the month of May, 1828, to the present time, and having otherwise acted in the general management of the said estates.

That your petitioner hath duly passed his accounts from time to time as such committee, but that no allowance hath been made to your petitioner for his expenses so incurred as aforesaid.

Your petitioner, therefore, humbly prays your Lordship, that it may be referred to the said Master, to tax the bill of costs, charges, and expenses of the said *G. W.*, against your petitioner, in respect of collecting the rents, and otherwise in the general management of the estates of the said [*lunatic*]; And that the amount of such costs, charges, and expenses, when so taxed, may be allowed to your petitioner in his next account as committee; or that the said *G. W.* may be appointed receiver of the said lunatic's estates, with the usual salary, from the time your petitioner was so appointed committee as aforesaid; And that the amount of such salary, when ascertained by the Master, may be allowed to your petitioner in his next account.

Order thereon.

That it be referred to —, the Master to whom this matter stands transferred, to inquire and certify whether it is necessary and proper, and for the benefit and advantage of the said [*lunatic*] and his estates, that a receiver thereof should be appointed; and if so, then the said Master is to appoint a fit and proper person to be such receiver, and allow him a reasonable salary for his care and pains in the management of the said [*lunatic's*] estate, such receiver first giving security to be allowed by the said Master, and taken before a Master Extraordinary in the country if there shall be occasion, duly and annually to account for what he shall so receive, and pay the same as I shall direct. And I do hereby further order, that the tenants of the said [*lunatic's*] estates do attend and pay their rents in arrear, and growing rents, to such receiver; who is to be at liberty to let and set the said estates from time to time with the approbation of the said Master, as there may be occasion. And after the said Master shall have made his report, such further order shall be made as shall be just; and let due notice of attending the said Master be given to the heir-at-law of the said lunatic, and to such other person &c., [*next of kin*] (*k*).

Prayer of Petition of One of the Committees of Person, to confirm Master's Report as to Appointment of Receiver and Committee of the Lunatic's Estate—for the Transfer of Stock into the Name of the Accountant-General—to inquire into the Circumstances respecting an Annuity—to publish Advertisements for Creditors of Lunatic to prove their Debts—to inquire who is a fit Person to administer the Effects of Lunatic's deceased Daughter—and whether it is proper to take a Lease of House in the Lunatic's Occupation, and to provide Furniture—and to tax the Costs of the Commission of Lunacy.

Your petitioner, therefore, humbly prays your Lordship, that the said Master's report of the 28th day of February, 1831, as to the appointment of the said *G. W.* to be the receiver of the said [*lunatic's*] estate may be confirmed; and also that the said Master's said report of the 8th day of June, 1831, approving your petitioner as a proper person to be the committee of the estate of the said [*lunatic*], may also be confirmed; and that the care and management of the estate of the said lunatic may be granted to your petitioner, but without prejudice to the appointment of the said *G. W.* as receiver of the rents, issues, and profits thereof; and that some proper person may be directed to transfer and pay into the name of the Accountant-General of the Court of Chancery, in trust in this matter, the several Bank and other annuities hereinafter mentioned, and the dividends or other payments due or to accrue due thereon, (that is to say,) [*the sums of stock are here set forth*]. And that it may be referred to the said Master to whom this matter stands referred, to inquire into and state the circumstances under which the said annuity of £— is payable, as hereinbefore is mentioned; and whether, since the said 13th day of October, 1830, any payment hath been made to her on account thereof, and by whom. And that the said Master may also be directed to publish advertisements in the London Gazette, or such other papers as he may think fit, for the creditors, if any, of the said lunatic, to come and substantiate their claims before him; and that the usual directions for that purpose may also be given. And that it may also be referred to the said Master, to approve of one or more fit and proper person or persons, to whom letters of administration of the goods, chattels, rights, and credits of the said —, [*the daughter of the lunatic*], may be granted by the proper Ecclesiastical Court, in order that the same may be collected and got in. And that it may also be referred to the said Master, to inquire and certify whether it will be fit and proper that a lease should be taken of the house and premises now occupied by the said [*lunatic*], on the terms of the agreement hereinbefore mentioned or referred to, or on any and what other terms. And if the said Master shall be of opinion that such lease should be accepted, then that he may be directed, regard being had to the situation and fortune of the said [*lunatic*], to inquire and certify what sum or sums of money it will be fit and proper to allow, in respect of the repairs of the said house and pre-

mises, and of providing suitable and necessary furniture, and other articles of domestic use, requisite for the establishment of the said [lunatic]. And that it may also be referred to the said Master to tax the costs, charges, and expenses of all parties, incurred on suing out and prosecuting the said commission, or in any way incidental thereto, or to the proceedings under the same; or, that your Lordship will be pleased to make such further or other order as to your Lordship shall seem just.

And your petitioner shall ever pray, &c.

Order thereon.

That the said Master's said report be confirmed. And I do hereby further order that the care and management of the estate of the said [lunatic] be granted to the said petitioner *B. B.* until further order, but without prejudice to the appointment of the said *G. W.* as receiver of the rents, issues, and profits thereof, he, the said *B. B.*, first giving such security as his Majesty's Attorney-General shall approve of for answering the said estate (other than and except the estate over which the said *G. W.* has been appointed such receiver as aforesaid) once in every year, or oftener if thereunto required, before &c. [*in the usual form, with directions for Master to appoint another person to be committee in case security was not perfected as in the Order, ante, p. 672*]. And I do think fit, and hereby further order, that the Secretary, or Deputy Secretary, or Accountant-General, or Deputy Accountant-General for the time being of the Governor and Company of the Bank of England do forthwith transfer into the name and with the privity of the Accountant-General of the Court of Chancery, in trust in this matter, £—, Bank *3l. per cent.* Annuities, standing in the books of that fund at the said Bank in the name of the said [lunatic], by her description of —, also £— Bank Long Annuities standing in the books of that fund at the said Bank in the name of the said [lunatic], as the survivor in a joint account with —, of —, and also [*another sum of stock*]; and the said Accountant-General is to declare the trust thereof respectively, subject to further order. And I do hereby further order, that the said Secretary or Deputy Secretary, or Accountant-General, or Deputy Accountant-General for the time being, of the Governor and Company of the said Bank, do forthwith transfer into the name and with the privity of the said Accountant-General of the Court of Chancery, in trust in this matter, to an account to be intitled "The Account of [*the lunatic*], the Executrix of [*testator*], deceased, subject to the payment of an annuity of *30l.* to —, for her life." *2000l.* Bank *3l. per cent.* annuities standing in the books of that fund at the said Bank in the name of the said [*testator*], by his description of —, and the said Accountant General is to declare the trust thereof accordingly, subject to further order. And I do think fit, and hereby further order, that the said Secretary, or Deputy Secretary, or Accountant-General, or Deputy Ac-

accountant General, or one of the cashiers for the time being of the said Governor and Company of the said Bank, do receive the dividends (if any) now due and to accrue due on the said 2000*l.* Bank 3*l.* per cent. Annuities previous to the transfer thereof as aforesaid, and pay the same into the said Bank in the name and with the privity of the said Accountant-General of the Court of Chancery, on the credit of this matter, the account aforesaid; and the said Accountant General is to declare the trust thereof accordingly, subject to further order. And I do think fit, and hereby further order, that the said Secretary, or Accountant-General, or Deputy Accountant-General, or one of the cashiers for the time being of the said Governor and Company of the said Bank, do receive the dividends (if any) now due and to accrue due on the said [other sums of stock] previous to the transfers thereof respectively, as hereinbefore directed, and pay the same into the said Bank in the name and with the privity of the said Accountant-General of the Court of Chancery, on the credit of this matter; and he is to declare the trust thereof accordingly, subject to further order. And I do think fit, and hereby further order, that it be referred to the said Master to inquire into and state the circumstances under which the said annuity of 30*l.* is payable to the said ———; and whether any and what payments have been made to her on account thereof subsequent to the 13th day of October, 1830, and by whom. And I do hereby further order, that it be also referred to the said Master to take an account of the debts due and owing by the said [lunatic], and to certify to whom and out of what fund such debts (if any) ought to be paid; and for the better taking the said account the said Master is to cause advertisements to be inserted in the London Gazette, and such other public papers as he may think fit, for the creditors of the said lunatic to come in before him and prove their debts by a time to be limited in the latter of the said advertisements for that purpose; and in default thereof they are to be excluded the benefit of this my order. And I do think fit, and hereby further order, that it be also referred to the said Master to approve of one or more fit and proper person or persons to whom letters of administration of the goods and chattels, rights and credits, of the said ———, deceased, the daughter of the said lunatic, may be granted by the proper Ecclesiastical Court, in order that the same may be collected, got in, and received. And I do hereby further order, that the said Master do also inquire and certify whether it will be fit and proper that a lease should be taken of the house and premises now in the occupation of the said [lunatic], upon the terms and conditions of the agreement mentioned or referred to in the said petition, or upon any and what other terms and conditions. And if the said Master shall be of opinion that a lease of the said house and premises should be taken or accepted, then he is to inquire and certify whether (regard being had to the circumstances and estate of the said lunatic), it is fit and proper that any and what sum or sums of

money should be expended in repairing the said house and premises, and in providing suitable and necessary furniture and other articles of domestic use, requisite for the establishment of the said [lunatic]. And I do think fit, and hereby further order, that it be also referred to the said Master, to tax all proper parties their reasonable and proper costs, charges, and expenses, incurred in and about the suing out and prosecuting the commission of lunacy in this matter, or in any way incidental thereto, or to the proceedings under the same; and the said Master is to be at liberty to make a separate report, or separate reports, of any or either of the inquiries hereinbefore directed, and to state any special circumstances relating thereto he may think fit; and, after the said Master shall have made his report or reports, such further order shall be made as shall be just. And let due notice of attending the said Master be given to such person, &c. [*entitled to distributive shares, &c.*]; and let this order be drawn up and entered by the Registrar of the Court of Chancery (1).

Petition of the Heir-at-Law, and sole Next of Kin of the Lunatic, that a Committee of the Estate may be appointed, without a Reference to the Master—for Payment of a Sum of Money into the Name of the Accountant-General—and for Taxation of the Costs of the Commission of Lunacy, and of the subsequent proceedings.

IN the matter &c.

To the Right Honourable &c.

The humble petition &c.

SH EWETH,

[*Statements—The order for a commission of lunacy, and the inquisition thereupon taken—The Master's report, approving of A. A. as committee of the estate, and B. B., the petitioner, as committee of the person of the lunatic.*]

That *A. A.* has now in his hands, as committee of the estate of the said lunatic, a further sum of £700, which he is desirous of paying into the hands of the Accountant-General of the High Court of Chancery.

That the said *A. A.* resides at a distance of upwards of 170 miles from the estate of the said lunatic, and cannot, therefore, without great personal inconvenience and considerable expense, attend to the proper management thereof, and is desirous and willing, at the request of your petitioner, of resigning the committee'ship of the estate of the said lunatic.

That your petitioner, *B. B.*, resides at a distance of 22 miles, or thereabouts, from the estate of the said lunatic, and is desirous of being appointed committee of the estate of the said lunatic, in the room of the said *A. A.*

(1) *In re Treacher*, 16th June, 1831.

That the property of the lunatic is of small amount, and not well able to bear the expense of a reference to the Master, to approve of a proper person to be committee of the estate of the said lunatic, in the room of the said *A. A.*

That the expenses of suing out the said commission, and the proceedings consequent thereon, and the costs of your petitioner and of the said *A. A.*, as such committee as aforesaid, have not yet been taxed or paid.

Your petitioner, therefore, humbly prays your Lordship, that the said *A. A.* may be at liberty to pay into the name of the Accountant-General of the High Court of Chancery, the said sum of £700, and that your Lordship will be pleased to appoint your petitioner, *B. B.*, the committee of the estate of the said lunatic in the room of the said *A. A.*, your petitioner entering into the usual security for the due and proper management thereof; and that it may be referred to the Master to tax the costs, charges, and expenses, of your petitioner, *B. B.*, in suing out the said commission, and taking the proceedings consequent thereon or relating thereto respectively; and likewise the costs of your petitioner, and of the said *A. A.*, incurred as such committees as aforesaid, and otherwise on account or in respect of the said lunatic and his estate; and that your petitioner, *B. B.*, may be at liberty to pay the said costs, charges, and expenses, when so taxed, out of the first monies which may come to his hands as committee of the estate of the said lunatic; and that your petitioner may have such other and further relief in the premises as to your Lordship shall seem meet, and the circumstances of the case appear to require.

And your petitioner will ever pray, &c.

Order thereon.

That the said *A. A.* do forthwith pay the sum of £700, (now in his hands belonging to the said lunatic), into the Bank of England, in the name and with the privity of the Accountant-General of the Court of Chancery, in trust in this matter, and he is to declare the trust thereof accordingly, subject to further order. And I do hereby further order, that the said *A. A.* be at liberty to withdraw from the committee'ship of the estate of the said lunatic. And I do hereby further order, having regard to the lunatic's estate, and the circumstances stated in the said petition, that the care and management of the estate of the said lunatic be granted to the petitioner, *B. B.*, he first giving such security as his Majesty's Attorney-General shall approve of, for answering the said estate, and accounting for the rents, profits, and produce thereof, once in every year, or oftener if thereunto required, before — Esqr., the Master to whom this matter stands referred, such security to be perfected on or before the 15th day of November next ensuing; and in the mean time, and until such security shall have been so perfected, the said petitioner is not to interfere in any

manner in the affairs and concerns of the said lunatic, as committee of his estate or otherwise; and in default of such security being perfected within the time aforesaid, then I do hereby further order, that it be referred back to the said Master to approve of some other fit and proper person or persons to be appointed committee or committees of the estate of the said lunatic, in the stead of the said *B. B.*; and, after the said Master in that case shall have made his report, such further order shall be made as shall be just. And I do hereby further order, that it be also referred to the said Master to tax the petitioner, and the said *A. A.*, their reasonable and proper costs, charges, and expenses, incurred in and about the suing out and prosecuting the commission of lunacy in this matter, and of the proceedings had subsequently thereto, and of this application and the proceedings consequent thereon; and after the said Master shall have made his report, such further order shall be made as shall be just. And let, &c. [*notice to next of kin of lunatic*] (*m*).

◆

Petition of the Wife of a Lunatic, for an increased Sum to be allowed for the Maintenance of the Lunatic's Family (*n*).

IN the matter, &c.

To the Right Honourable &c.

The humble petition of *C. A.*, the wife of the said lunatic.

SHEWETH,

[*Statements—The reference to the Master as to maintenance and the amount of the fortune of the lunatic, and the Master's report thereon—And that, since the date of the report, certain additions therein mentioned had been made to the personal estate of the lunatic*].

That, since the date of the said Master's report, your petitioner has been put to very heavy expenses in maintaining and finishing the education of her two younger daughters, both of whom are now grown up, and that circumstances have changed in regard to the state of the said lunatic's family, so that the present allowance is not adequate to their comfortable maintenance and support.

Your petitioner, therefore, humbly prays your Lordship, that it may be referred to —, the Master to whom this matter stands transferred, to inquire and state to your Lordship, whether any and what addition should be made to the 500*l. per annum* already allowed to your petitioner for the maintenance and support of the said lunatic's family, regard being had to the increase of the property of the said lunatic since that period, and to the present state and situation of his family.

And your petitioner will ever pray, &c. (*o*).

(*m*) *In re Raybould*, 18th August, 1830.

(*n*) See *ante*, p. 154.

(*o*) An order was made according to the prayer of the petition.

Petition of the Heir at Law and next of Kin of a Lunatic, for an Increase in the Sums allowed for keeping up the Lunatic's Establishment, and for his Maintenance.

IN the matter of *A. A.*, a lunatic.

To the Right Honourable, &c.

The humble petition of *N. A.*, the only brother, and one of the next of kin of the said lunatic, and also his heir-at-law, and *H. A.*, and *Charlotte* his wife, the only sister and the other next of kin of the said lunatic.

SH EWETH,

[*The preliminary proceedings were here set forth, including the former order for maintenance, &c.*]

That your petitioners are sole next of kin of the said lunatic, and will be entitled to the whole of his personal estate and savings, in case he shall not become of sound mind. And that your petitioner, *N. A.*, on the death and failure of issue of his brother, will become entitled to all the estates now possessed by the lunatic, in the same manner as the said lunatic is now entitled thereto.

That your petitioner, *N. A.*, was married on the 26th day of February, 1827, and had a son born on the 10th day of January last.

That your petitioner, *N. A.*, has been subjected to much heavier expenses in the care and maintenance of the house at *H.*, and in the care of the furniture and other valuable property therein, than were contemplated at the date of the said order of the 17th day of August, 1822, particularly in the number of menial servants necessary to keep so large a house in a proper state; in fuel, owing to the extent and dampness of the house; in maintaining the gardens and pleasure grounds; in the increase of poor rates and other parochial taxes; and in the continuance of servants who had been in the family many years, who could not with propriety be discharged, though their services were not efficient; and that the general expenses of supporting the house have considerably exceeded the calculations of your petitioner.

That your petitioner *H. A.*, and his wife, have also been subjected to heavier expenses in providing what appeared requisite for the comfort and happiness of the lunatic, than were contemplated at the date of the said order of the 17th of August, 1822, in providing a commodious house for him in a retired healthy situation, with extensive gardens and pleasure grounds attached thereto; in medical attendance; in giving high wages to confidential servants; in the keeping of a carriage and horses for the use of the lunatic; in procuring what might tend to his amusement, and generally in his establishment, the lunatic being capable of many enjoyments and comforts, and his mind being irritable and very much disturbed if his present mode of living do not in some degree accord with what he was accustomed to prior to his affliction, and when residing with his deceased brother in the family house at *H.*

That the private fortunes of your petitioners are small, and such as do not permit them, unaided, to live in the manner in which they have been brought up, and as according to their situation in society they are entitled to do.

Your petitioners, therefore, humbly pray your Lordship, that it may be referred to the Master to whom this matter stands transferred, to inquire and certify whether it would be fit and proper, having regard to the comfort of the said lunatic, and the circumstances of your petitioners, that the allowance of £ *per annum*, now made to the said *N. A.*, out of the income of the said estate of the said lunatic, for the purpose of keeping up the family residence, should be increased, and the allowance of £ *per annum* now made to the said *H. A.* and his wife, out of the same income, for the charge and care of the said lunatic, and maintaining his establishment, should also be increased; and that, upon the Master's report being made, such order may be made in regard to an increased allowance to your petitioners as may be just and proper.

And your petitioners will ever pray, &c.

Order thereon.

That it be referred to the Master to inquire and certify whether it will be fit and proper, having regard to the comfort of the said lunatic, and to his circumstances and estate, and to the circumstances of the petitioners, that the allowance of £— *per annum*, already made to the petitioner, *N. A.*, out of the income of the said lunatic's estates, for the purpose of keeping up the family residence at *H.*, should be increased to any and what amount, and from what period the same should commence; and also having a like regard to the said lunatic's comfort and circumstances, that the said Master do inquire and certify whether the allowance of £— already made to the petitioner, *H. A.*, and *C.* his wife, the committees of the person of the said lunatic, for their charge and care of the said lunatic, and maintaining his establishment, should also be increased to any and what amount, and from what time the same should commence. And after the said Master shall have made his report, such further order shall be made as shall be just. And let due notice of attending the said Master be given to the committee of the estate of the said lunatic.

Petition to confirm the Master's Report, made in pursuance of the last Order, which stated the preliminary Proceedings and his Report.

Your petitioners, therefore, humbly pray your Lordship, that the said Master's said report may be absolutely confirmed, and that the receiver of the rents and profits of the estates of the said lunatic may be ordered to pay to your petitioner, *N. A.*, out of the said

rents and profits, the sum of £— *per annum*, from the 28th day of February last, and for the time to come, in lieu of the said sum of £— *per annum*, for the purposes of residing in and keeping up the family mansion-house of the said lunatic, at *H.*, in the county of *L.*, by equal quarterly payments. And that the said receiver may likewise be ordered to pay to your petitioner, *H. A.*, and *C.* his wife, out of the said rents and profits, the sum of £— *per annum*, from the said 28th day of February last, and for the time to come, in lieu of the said sum of £— *per annum*, for the maintenance of the said lunatic, by equal quarterly payments; and that what the said receiver shall so pay as aforesaid may be allowed to him in passing his accounts before the said Master. And that it may be referred to the said Master to tax the costs, charges, and expenses of your petitioners, and the committee of the estate of the said lunatic, of and relating to the application for the said order of the 3rd day of April last, and consequent thereon, and of this application, and incident thereto; and that what the said Master shall certify to be due for such costs, may be paid to the solicitors for the respective parties, by sale of a competent part of the Bank *3l. per cent.* Annuities, standing to the credit of this matter; and that the dividends on the residue of the said Bank Annuities, may be from time to time laid out in the purchase of like Bank Annuities; and that the dividends to arise on the residue of the said £— Bank *3l. per cent.* Annuities, standing to the credit of this matter, "The timber account," after the sale aforesaid, directed by the said order of the 1st of August instant, may in like manner be laid out to the credit of that account; or that your Lordship will be pleased to make such further or other order as to your Lordship may seem meet.

Order thereon.

That the Master's said report be confirmed. *Further order*—That the receiver of the rents and profits of the estates of the said lunatic do pay to the petitioner *N. A.*, out of the rents and profits of the said lunatic's estates, the sum of £— *per annum*, by equal quarterly payments, to commence from the 28th day of February last, and for the time to come until further order, in lieu of the sum of £— *per annum* heretofore allowed to him, for the purpose of residing in, and keeping up, the family mansion-house of the said lunatic, at *H.*, in the county of *L.*, mentioned in the said report. *Further order*—That the said receiver do pay to the petitioner, *H. A.*, and *C.* his wife, also named in the said report, out of the said rents and profits, the sum of £— *per annum*, by equal quarterly payments, from the 28th day of February last past, and for the time to come, until further order, in lieu of the sum of £— *per annum*, for the maintenance and support of the said lunatic and his establishment; and the said receiver is to be allowed the said sums of £— and £—, [*the increased allowance*] *per annum*, in passing his accounts from time to time before —, Esq., the Master to whom this matter stands transferred. *Further order*—That it be

referred to the said Master to tax the petitioner and the committee of the said lunatic's estate their reasonable and proper costs, charges, and expenses incurred in and about the order made in this matter, bearing date the 3rd day of April, 1828, and consequent thereon, and of this application and incident thereto; that the Accountant-General of the Court of Chancery do sell so much of the £—, Bank 3*l.* per cent. Annuities, standing in his name in trust in this matter, as will be sufficient to raise what the said Master shall certify to be due for such respective costs, charges, and expenses; and one of the cashiers of the Bank of England is to have notice to attend the said sale, and receive the money to arise thereby; who, upon receipt thereof, is to pay the same into the Bank, in the name and with the privity of the said Accountant-General, in trust in this matter; and the said Accountant-General is to declare the trust thereof accordingly. *And further order*—That the money to arise by the said sale be paid by the said Accountant-General in manner following, (that is to say), what the said Master shall certify to be due for the costs, charges, and expenses of the petitioners, to Mr. G. P., their solicitor, and the costs, charges, and expenses of the said committee of the said lunatic's estate to Mr. G. W., his solicitor. [*Further order as to dividends of stock, and for Accountant-General to draw, &c., and notice to be given to the committees of estate, and to persons entitled to distributive shares, in the usual way* (p).

◆

Petition that Stock and Money belonging to a Lunatic may be transferred, and paid into the Name of the Accountant-General of the Court of Chancery.

IN the matter of —, a person of unsound mind.

To the Right Honourable &c.

The humble petition of —, [*Residuary legatees named in a will*].

SHEWETH,

[*Statements—The Commission of Lunacy and the Inquisition—The reference to the Master to appoint Committees—The Master's Report, and the confirmation of it—And a Will under which the Lunatic was entitled to a share of the residue of personal estate.*]

That the said —, as such executors and trustees of the will of the said [*testator*], are desirous for their indemnity, and your petitioners, as well for the security of the estate of the said [*lunatic*], as to lessen the security to be given by the said — as such committee of the estate of the said [*lunatic*], are also desirous, that the said sum of £—, 3*l.* per cent. Reduced Bank Annuities, and

the said sum of £——, Bank Stock, should respectively be transferred by the said [executors] into the name of the Accountant-General of the Court of Chancery, in trust in this matter; and that the several sums of £—— and £——, making together the sum of £——, should be paid by them into the Bank, in the name of the said Accountant-General, in trust in this matter.

That your petitioners are satisfied that the several sums above-mentioned are the correct and proper sums to which the said [lunatic] is entitled under the will of ——, all your petitioners (except your petitioner ——, to whom the sum of £—— was by the said will given), having had similar sums transferred to and for the benefit of your same petitioners.

Your petitioners, therefore, humbly pray your Lordship, that the said [executors] may be directed forthwith to transfer into the name of the Accountant-General of the Court of Chancery, in trust in this matter, the said sum of £——, *3l. per cent.* Reduced Annuities, and the said sum of £——, Bank Stock; and that the said [executors] may also be directed to pay into the Bank, in the name of the said Accountant-General, in trust in this matter, the sum of £——, cash in their hands belonging to the said [lunatic]. And that it may be referred to the Master to tax your petitioners and the said [committee] their costs, charges, and expenses, incident and relating to this application, and consequent thereon, and to include the same in the costs directed to be taxed under the before stated order of ——; and, that he may also tax the costs, charges, and expenses of the said [executors] of this application, and of the transfers and payment hereby prayed to be made; and that such last-mentioned costs, when taxed, be paid out of the cash which shall be then standing in the name of the said Accountant-General, in trust in this matter, to ——, the solicitor for the said [executors]; or, that your Lordship will be pleased to make such further or other order in the premises, as to your Lordship shall seem meet.

And your petitioners will ever pray, &c.

Order thereon.

That the said [executors and trustees] do forthwith transfer into the name and with the privity of the Accountant-General of the Court of Chancery, in trust in this matter, £——, Bank *3l. per cent.* Reduced Annuities, and £——, Bank Stock, respectively standing in their names, in the books of those funds, at the Bank of England, to which the said [lunatic] is entitled, as mentioned in the said petition; and the Accountant-General is to declare the trust thereof accordingly, subject to further order. And I do think fit, and hereby further order, that the said [executors] do forthwith pay into the said Bank, in the name and with the privity of the said Accountant-General, in trust in this matter, the sum of £—— cash, remaining in their hands, belonging to the said [lunatic], as in the said

petition also mentioned; and the said Accountant-General is to declare the trust thereof accordingly. And I do think fit, and hereby further order, that it be referred to —, Esq., the Master to whom this matter stands referred, to tax the reasonable and proper costs, charges, and expenses of the said petitioners, and of the said [committee], incurred in and about this application, and incident thereto and consequent thereon; and, that he do include the same in the costs, charges, and expenses, directed to be taxed by the order made in this matter, bearing date the 9th day of May, 1831. And I do hereby further order, that the said Master do also tax the reasonable and proper costs, charges, and expenses, of the said [executors] incurred in and about this application, and consequent thereon. And I do hereby further order, that the amount which the said Master shall certify to be due for such last-mentioned costs, charges, and expenses, when taxed, be paid by the said Accountant-General out of any cash which may be remaining on the credit of this matter at the date of the said Master's certificate of such respective costs, charges, and expenses, to —, the solicitor of the said [executors]; and let due notice &c. [to next of kin]. And for the purposes aforesaid, the said Accountant-General is to draw on the Bank according to the form prescribed by the Act of Parliament, made for the relief of the suitors of the Court of Chancery, and the general rules and orders of the said Court in that case made and provided; and let this order be drawn up and entered by the Registrar of the said Court (g).

◆

Petition of the Committee of the Estate of a Lunatic, for a Reference to the Master, to inquire as to the Application of certain Sums of Money by the Committees of the Person.

IN the matter &c.

To the Right Honourable &c.

The humble petition &c.

SH EWETH,

That *A.* and *B.*, two of the younger children of the said lunatic, have been duly appointed committees of the person of the said lunatic, and your petitioner committee of his estates.

[*The order of reference as to maintenance, the Master's report and orders, and other circumstances, shewing that sums had been advanced for maintenance and other purposes, were stated.*]

That in or about the month of June or July, 1828, or sometime within or about twelve months from the time the said *A.* and *B.* were appointed such committees of the person of the said lunatic as aforesaid, the said *A.* at one time, and in one sum, received and retained (out of the said sum allowed for the annual maintenance and support of the said lunatic as aforesaid), for her, the said *A.*'s, own exclusive and private use, a sum of 500*l.*, or thereabouts; and that the said *A.* has also, from time to time (out of the said sum so allowed for the maintenance and support of the said lunatic), received

and retained for her own exclusive and private use, several other sums of 50*l.* each, and upwards.

Your petitioner, therefore, humbly prays your Lordship, that it may be referred to —, the Master to whom this matter stands referred, to inquire and report to this honourable Court, at what periods, and in what manner and amounts, the said sum of 500*l.*, so allowed as an outfit, has been expended; and, whether the same has been applied in accordance with, and for the purposes specified in the said proposal and statement of the said [*committees of the person*], for which the same was allowed as aforesaid, or how otherwise.

And whether any and which of the said charges and items, delivered in by the said [*committees of the person*] in support of their said statement or particular of such expenditure, ought to be allowed as coming out of the said sum of 500*l.* allowed as an outfit for the purposes aforesaid; and, whether all, or any, and which of such charges and items, ought not to be considered as forming part of the current annual expenses, for which the said sum of £— was allowed for the maintenance and support of the said lunatic as aforesaid. And that it may also be referred to the said Master to inquire and report to this honourable Court, whether the said [*committees of the person*], or one and which of them, have or has not received and retained, at some and what period or periods, for his, her, or their own private and exclusive use, the said sums of £— and £—, or how much or what part thereof, or any other and what sums, out of the sums so allowed for the maintenance and support of the said lunatic; and that the costs, charges, and expenses of your petitioner in this petition, and incident thereto and to the said inquiry, may be taxed by the said Master; and that the same, when so taxed, may be retained by your petitioner out of the said lunatic's estate; or, that your Lordship will be pleased to make such further or other order in the premises, as to your Lordship shall seem meet.

And your petitioner shall ever pray, &c. (r).

Petition of the Committees for confirming the Master's Report, stating his Opinion, that a Bill filed against the Lunatic for compelling the Renewal of a Lease should be resisted.

IN the matter &c., a lunatic.

To the Right Honourable &c.

The humble petition of &c., the committees of the estate of the above-named lunatic.

SHEWETH,

That by an order made in this matter on the petition of your

(r) The substance of the order made on the last petition, is stated *ante*, p. 144. In *re* *Jodrell*, 13th Aug. 1829.

petitioners, bearing date the 3rd day of April, 1828, it was (amongst other things), &c.

[*Recital of reference to the Master, to inquire what proceedings should be taken for obtaining possession of property comprised in a lease, and for resisting a suit which had been instituted for compelling a renewal.*]

That, in pursuance of the said order, the said Master made his report, &c.

[*There was a statement of the lease, of a bill filed for compelling a renewal of it, and a state of facts, shewing upon what grounds it was resisted by the committees, and the Master's opinion that it ought so to be.*]

Your petitioners, therefore, humbly pray your Lordship, that the Master's said report, dated &c., may be confirmed; and that your petitioners, as the committees of the estate of the said lunatic, may be permitted to resist the claim of the said [plaintiff] for a renewal of the said lease, as stated in the said report; and that your petitioners may be permitted to file their answer to the said bill of the said [plaintiff], and to defend the said suit, in order that the opinion of the Court may be taken upon the rights and obligations of all parties interested in the matters stated and set forth in the said bill of complaint of the said [plaintiff]; and that it may referred to the said Master to tax your petitioners, and the next of kin of the said lunatic, their costs, charges, and expenses not already taxed and allowed in this matter, and of the proceedings in resisting the claim of the said [plaintiff], and of this application, and consequent thereon; and that what the said Master shall certify to be the amount thereof respectively, may be raised by the Accountant-General of the Court of Chancery, by a sale of a sufficient part of the £——, *3l. per cent.* Consolidated Annuities, standing in his name, on the credit of this matter, and paid to the solicitors of the respective parties; or that your Lordship will be pleased to make such further or other order in the premises, as to your Lordship shall seem meet.

And your petitioners will ever pray, &c. (s).

Prayer of Petition of Committee for Reference to inquire as to the Expediency of instituting Proceedings in Equity.

IN the matter &c.

To the Right Honourable &c.

The humble petition &c.

SH EWETH,

That,—[*Statement of the facts, shewing how the claim arose.*]

(s) An order was made according to the prayer of the petition. *In re Harris*, 20th March, 1832.

Your petitioner, therefore, humbly prays your Lordship, that it may be referred to the Master to whom this matter stands referred, to inquire and certify, whether it will be fit and proper, and for the benefit of the said lunatic and his estate, that any and what proceedings should be instituted to ascertain the rights of the said lunatic, and of all other the parties interested in the premises; and that it may be ordered at whose expense such proceedings, if any, shall be carried on, and out of what fund the costs to be occasioned thereby shall be paid; or &c. (t).

Petition of the Committees of the Estate of the Lunatic, and of the Committees of the Person, for a Reference to the Master to inquire, if for the Benefit of Lunatic's Estate that Terms of Compromise should be accepted.

IN the matter &c.

To the Right Honourable &c.

The humble petition &c.

SHEWETH,

That [*statements of the inquisition under a commission of lunacy, and the circumstances respecting a debt due to the lunatic's estate.*]

That your petitioners have caused inquiries to be made as to the circumstances of the said [*debtor*], for the purpose of ascertaining if any sum of money could be obtained from him, in addition to the sum offered by —; but it turns out that the said [*debtor*] is not, and has not for several years been in a situation to contribute any thing for that purpose; and that, in the year 1829, he became insolvent, and then compounded with such of his creditors as would accept composition, and still continues in an insolvent state, having lost a situation which he had held in the house of Messrs. —, and being now supported, together with other members of his family, almost entirely by the charity of his friends.

That the said — have received some sums of money on account of the said lunatic's property in —.

That your petitioners are of opinion, that the same, together with any sums of money which may be recovered from the said —, by way of compromise or otherwise, would be employed most for the benefit of the said lunatic, if the same were invested in the purchase of Government life annuities.

Your petitioners, therefore, most humbly pray your Lordship, that it may be referred to —, Esq., the Master to whom this matter stands transferred, to inquire and state to the Court, whether it will be fit and proper and for the benefit of the said lunatic's estate, that the terms of compromise mentioned and contained in the said agreement of the 5th of March, 1831, should be accepted in full satisfaction of all

(t) Order made according to the prayer of the petition.

claims and demands against the said [debtor and surety in bond] in respect of the said bond to your petitioners, and of the dealings of the said —, in relation to the affairs of the said lunatic; and that the said Master may inquire into the circumstances of the said [debtor], and whether, if the said compromise be accepted, the said [debtor and surety] ought to be released from all claims on them respectively in relation to the affairs of the said lunatic's estate, and the said bond to be cancelled.

And your petitioners will ever pray, &c.

Order thereon.

That it be referred to —, Esq., the Master to whom this matter stands transferred, to inquire and certify whether it will be fit and proper, and for the benefit of the said lunatic's estate, that the terms of compromise mentioned and contained in the agreement of the 5th day of March, 1831, stated in the said petition, should be accepted in full satisfaction of all claims and demands of the said lunatic, or of the petitioners, as the committees of his estate, in respect of the bond entered into by [the debtor and surety], with the said committees, as mentioned in the said petition, and of the dealings of the said —, in relation to the affairs of the said lunatic. And I do hereby further order, that the said Master do inquire into the circumstances of the said [debtor], and certify whether he and the said [surety] ought to be released from all claims on them respectively, in relation to the affairs of the said lunatic, and the aforesaid bond cancelled; and after the said Master shall have made his report, such further order shall be made as shall be just. And let due notice, &c. [persons entitled to distributive shares] (u).

Petition of Committees that a Transcript of an Inquisition of Lunacy may be transmitted to the Chancery in Ireland, in pursuance of the Statute of 11 Geo. 4 & 1 Will. 4, c. 65, s. 41 (v).

IN the matter of —, a lunatic.

To the Right Honourable &c.

The humble petition &c., the joint committees of the estate of the said lunatic.

SHEWETH,

[Statements—of the inquisition of lunacy taken in England, and the appointment of committees.]

That the said lunatic hath, by the decease of his father —, become entitled in possession to estates in the counties of Wicklow and Dublin, in the kingdom of Ireland, referred to in the said Master's report of &c.: And it is therefore necessary that a committee or

(u) *In re Campbell*, 9th July, 1831. See *ante*, pp. 203, 204.

(v) See *ante*, p. 515.

committees should be appointed by the said Lord Chancellor of Ireland for the care and management of the said estates.

Your petitioners, therefore, humbly pray, that your Lordship will be pleased to order the proper officer for that purpose at the Petty Bag Office to transmit a transcript of the record of the said inquisition, taken on the — day of —, (under which the said [*lunatic*] was found a lunatic), to the Chancery in Ireland, to be thereupon entered of record, and be as of record there in the manner and for the purposes mentioned in an act of Parliament made and passed in the first year of the reign of his present Majesty, intituled *An act, &c.* [*Title, ante, p. 802.*]

And your petitioners, &c. (w).



Petition of the Committee of the Estate of a Lunatic to refer Matter to Master for Scandal and Impertinence.

IN the matter, &c.

To the Right Honourable &c.

The humble petition &c.

SHEWETH,

That *W. B.*, by means of *J. C.*, his attorney, on the 19th day of January, 1830, presented his petition to your Lordship in this matter, thereby praying (amongst other things) that your petitioner, as the committee of the estate of the said [*lunatic*], might pay the said *W. B.* the sum of £—, and that certain costs therein mentioned might be taxed and paid to *J. C.* as solicitor of the said *W. B.* out of the said lunatic's estates.

That the said *J. C.*, as the solicitor of the said *W. B.*, did, on the 20th March instant, make and file an affidavit in support of the said petition.

That the said affidavit is, as your petitioner is advised and believes, impertinent, and, in many parts thereof, scandalous as well as impertinent.

Your petitioner, therefore, humbly prays your Lordship, that it may be referred to —, Esq., one of the Masters of the High Court of Chancery, to whom this matter is referred, to look into the said affidavit, and to certify whether the same be altogether or in any and what particulars impertinent, and in any and what particulars scandalous and impertinent; or that your Lordship will be pleased to make such order therein as may be just.

And your petitioner shall ever pray, &c. (x).

(w) See *ante*, pp. 21, 22.

the prayer of the petition. *In re Frank*,
(x) An order was made according to 24th March, 1831. See *ante*, p. 423.

Petition of the Committee of the Estate for a Reference to the Master to inquire as to the Propriety of advancing a Sum of Money belonging to a Lunatic on Mortgage of real Estates (y).

IN the matter of —, Esq., a lunatic.

To the Right Honourable &c.

The humble petition of —, Esq., the committee of the estate of the above-named [lunatic].

SHEWETH,

That there is now standing in the name of the Accountant-General of the High Court of Chancery, to the credit of this matter, the several sums of stock and cash following, (that is to say), in Bank *3l. per cent. Consolidated Annuities* £—, &c., &c.

That the lunatic is possessed of other personal estate to a considerable amount, and entitled to several freehold estates in the counties of — and —.

That [mortgagor] has applied to and requested your petitioner to lend him the sum of £— out of the personal estate of the said [lunatic] on a mortgage of certain freehold estates, situate in several parishes in the county of —, of the clear annual value of £— at the least, whereof the said [mortgagor] is seised in fee simple, free from incumbrances, and has proposed to pay to your petitioner *4l. per cent. per annum* for the same, so long as the said sum of £— shall remain on such security as aforesaid, and provided the general rate of interest shall be considered as *4l. per cent.* And in case the general rate of legal interest shall be increased to, and considered as more than *4l. per cent.*, then and in such case the said [mortgagor] proposed to pay to your petitioner interest for the said sum of £— according to such increased rate. And the said [mortgagor] has also proposed, in addition to discharging the usual costs of your petitioner as mortgagee, agreeably to the accustomed practice in such cases, to pay the sum of *150l.* on account of and towards the costs of your petitioner of this application and consequent thereon in relation to the aforesaid mortgage.

That £— and £— were, on the 28th day of February, 1823, laid out by the then Accountant-General of the Court of Chancery, pursuant to orders made in this matter for that purpose, in the purchase of £— Bank *3l. per cent. Annuities*, and such sum forms part of the said sum of £— like Annuities, now standing to the credit of this matter as hereinbefore is mentioned.

That Bank *3l. per cent. Annuities* were, at the time of such purchase, at *73½l.*, and are now at *85½l.*

That the sum of £— Bank *3l. per cent. Annuities*, part of the said sum of £— like Annuities, would, if now sold and converted into cash, and calculating the price of the funds at *85½l.*, produce the sum of £— cash, being the sum of £— more than the said

(y) See ante, p. 199—201.

sum of £——, which was originally invested in the purchase of the said £—— Bank 3*l. per cent.* Annuities.

That the said sum of £—— Bank 3*l. per cent.* Annuities now yields the annual income of 2,106*l.*, and if the same were converted into cash, and such cash placed out at interest at 4*l. per cent.*, the annual income thereof would be full 2,400*l.*, being an annual increase of 294*l.* beyond the present income.

That your petitioner is of opinion that it is beneficial to the lunatic and his estate, that the said sum of £—— should be advanced on mortgage in manner aforesaid, provided the title to the estates proposed to be mortgaged is perfect, and the estates themselves a sufficient security for the sum proposed to be advanced upon them.

That the two sons of the lunatic approve of the proposal of the said [*mortgagor*], subject to an investigation as to the goodness of the title, and the sufficiency of the security.

That it has been represented to your petitioner, who has confidence in the representation, that the interest on the said [*loan*] will be regularly and punctually paid.

Your petitioner, therefore, most humbly prays your Lordship, that it may be referred to ——, Esq., the Master to whom this matter stands referred, to inquire and certify whether it will be fit and proper, and for the benefit of the lunatic and his estate, that the sum of [*loan*], or any other and what sum should be advanced out of the personal estate of the lunatic to the [*mortgagor*], upon mortgage of certain estates belonging to the said [*mortgagor*], situate in the county of ——, or of any other and what estates in any other and what county, and at what rate of interest, and upon what other terms; and that in making the said inquiry, the said Master may have regard to the titles and value of the said estates, and may certify to your Lordship whether good titles can be made thereto. And in case the said Master shall be of opinion that the said sum of £—— [*loan*] should be advanced on mortgage as aforesaid, then your petitioner most humbly prays your Lordship, that the said Master may state out of what fund belonging to the lunatic the said sum of £—— [*loan*] should be raised; and that the said Master may approve and settle the proper securities from the said [*mortgagor*] to your petitioners, for securing the repayment thereof with interest; or that your Lordship will be pleased to make such further or other order, as to your Lordship may seem meet.

And your petitioner will ever pray, &c.

Order thereon.

[*Upon hearing Counsel for the petitioner and the lunatic's next of kin, who consented.*] That it be referred to the Master to whom this matter stands referred, to inquire and certify whether it will be fit and proper and for the benefit of the said lunatic and his es-

tate, that £ — [proposed loan], in one or more sum or sums or any other and what sum or sums of money, should be advanced out of the personal estate of the said lunatic to [mortgagor], upon a mortgage or mortgages of certain estates belonging to the said [mortgagor], situate in the county of —, or of any other and what estates belonging to the said [mortgagor] in any other and what county, and if so, at what rate of interest, and upon what other terms and conditions; and in making the said inquiry, the said Master is to have due regard to the titles and value of the said estates, which he is to inquire into and certify. And I do hereby further order, that in case the said Master shall be of opinion that the said [loan], in one or more sum or sums or any other sum or sums of money as aforesaid, should be advanced on mortgage to the said [mortgagor] as aforesaid, then he is to inquire and certify out of what fund or funds belonging to the said lunatic the said sum [loan], or any other sum or sums as aforesaid, should be raised. And I do hereby further order, that the said Master be at liberty to state any special circumstances relative to the aforesaid inquiries he may think fit; and after the said Master shall have made his report, such further order shall be made as shall be just. [Notice to next of kin] (z).

◆

*Petition of the Committee for Confirmation of the Master's Report
as to the Loan, in pursuance of the last stated Order.*

IN the matter of —, Esq., a lunatic.

To the Right Honourable &c.

The humble petition &c.

SH EWETH,

That, by an order made in this matter, upon the petition of your petitioner, and bearing date the 6th day of June, 1832, your Lordship was pleased to order that it should be referred &c. [*the last order is stated.*]

That the said Master, in pursuance of the said order, made his report, bearing date the 12th day of July, 1832; and thereby certified, that he had been attended by the solicitor for the petitioner and for —, being the only four children of the said lunatic, and the only persons who would be entitled to distributive shares of the lunatic's estate in case he was then dead intestate, and had proceeded on the said reference; for which purpose proposals had been laid before him, on behalf of the said petitioner, whereby &c. [*Affidavits of land surveyors as to the value of the property proposed as a security were stated; and the Master reported that a good title could be made to such estates, and in favour of the proposed loan.*]

Your petitioner, therefore, most humbly prays your Lordship, that the said Master's said report may be absolutely con-

(z) *In re Craven*, 6th June, 1832.

firmed, and that it may be referred back to the said Master to settle and approve of proper mortgages, assignments, and other assurances or securities, for securing to your petitioner, as committee of the estate of the said [lunatic], the repayment of the said several sums of £—— and £—— [the loan], with interest thereon respectively, at *5l. per cent. per annum*, reducible to *4l. per cent. per annum*, on punctual payment. And that your Lordship will be pleased to order the Accountant-General of the Court of Chancery to sell so much of the £—— Bank *3l. per cent.* Annuities, now standing in his name in trust in this matter, as will be sufficient to raise the sum of £—— [loan]; and upon the due execution of the said mortgages, assignments, and other assurances and securities by all proper parties, such execution to be certified by the said Master, your petitioner most humbly prays, that your Lordship will be pleased to order the said Accountant-General to pay the said several sums of £—— and £——, [the loan], to the [mortgagor]. And that your Lordship will be pleased to order, that, in lieu of the present arrangement for payment of the annual allowance for the maintenance of the said lunatic and his family, [direction as to payment of maintenance, &c.] And that your Lordship will be pleased to refer it to the said Master to ascertain and settle the costs, charges, and expenses of your petitioner, and of the heir-at-law and next of kin of the said lunatic, in and about the loan to the said [mortgagor], and the proceedings in the said report mentioned and preparatory thereto, and of this application and consequent thereon, and in reference thereto, and that the said Master may certify what proportion of the said costs, charges, and expenses, ought to be borne by the said [mortgagor] as mortgagor; and that your petitioner may be at liberty to pay the remainder of such costs, charges, and expenses, after deducting the sum of 150*l.*, being the sum agreed to be paid by the said [mortgagor], on account of the application to your Lordship, and the proceedings consequent thereon, over and above the mortgagor's usual costs, to —— the solicitor of your petitioner, and be allowed the amount in his next account; or, that your Lordship will be pleased to make such further or other order in the premises as to your Lordship may seem meet.

And your petitioner will ever pray, &c.

An order was made upon the last petition, upon hearing Counsel for the petitioner and the next of kin of the lunatic, to confirm the Master's report, to refer it to the Master to settle and approve the proper securities for securing to the committee of the estate the repayment of the [loan], with interest thereon, at and after the rate of *5l. per cent. per annum*; but so long as the general rate of interest payable upon money advanced upon mort-

gage, should continue to be less than *5l. per cent. per annum*, the committee was to be at liberty to receive such rate of interest as should be payable for the time being on money secured on mortgage, provided such interest so to be received should not be at any time less than *4l. per cent. per annum*, and should be punctually paid by half-yearly instalments. On the execution of the securities for the loan, which was to be certified by the Master, the Accountant-General was ordered to sell sufficient stock for raising the loan; and directions were given as to the future payment of maintenance-money, and the taxation of the costs of the mortgage, as prayed by the petition (a).

PETITIONS AS TO PASSING THE ACCOUNTS OF
COMMITTEES (b).

Petition of Committees to pass Accounts for one Year.

IN the matter of *A. A.*, a lunatic.

To the Right Honourable &c.

The humble petition of *B. B.* and *C. C.*, committees of the estate of the said lunatic.

SH EWETH,

That a commission having issued to inquire of the lunacy of the said *A. A.*, he was, by inquisition duly taken thereon, the 24th day of March, 1825, found to be a lunatic.

That, in pursuance of your Lordship's order, made in this matter for that purpose, a grant of the custody of the said lunatic's estate was made to your petitioners on the 12th day of August, 1825.

That your petitioners, as committees of the said lunatic's estate, have received and paid divers sums of money on account of the said lunatic, from the said 12th day of August, 1825, to the 12th day of August, 1826, and they are desirous to pass their accounts thereof (c).

Your petitioners, therefore, humbly pray your Lordship, that it may be referred to —, the Master to whom this matter stands referred, to take and pass your petitioners' accounts of receipts and payments, in respect of the said lunatic's estate, from the said 12th day of August, 1825, to the 12th day of August, 1826, and therein to make unto your petitioners all just allowances, and particularly an allowance for their costs, and for the costs of the next of kin, of passing the said accounts.

And your petitioners shall ever pray, &c.

(a) *In re Craven*, 13th July, 1832.

(b) See *ante*, p. 628.

(c) See *ante*, Chap. V. s. 9, and p. 628.

Order thereon.

Be it so, and let due notice of attending the said Master be given to such person or persons as would be entitled to a distributive share or distributive shares of the said lunatic's estate, in case he were now dead intestate.

Petition of Committees to pass further Accounts.

That your petitioners have, in pursuance of certain orders made by your Lordship, duly passed their accounts as such committees as aforesaid, before the Master, to whom this matter now stands referred, from the time of their appointment up to Michaelmas ———.

That your petitioners are desirous of passing the accounts of their receipts and payments of the said lunatic's estate, from Michaelmas ———, to Michaelmas ———.

The prayer of the petition, and the order made thereon, the same as the last.

Petition of Committees for Payment into Court of the Balance found due on passing their Accounts.

IN the matter &c.

To the Right Honourable &c.

The humble petition of ———, and ———, joint committees of the person and estate of the said lunatic.

SHEWETH,

That your petitioners have, in pursuance of an order made by your Lordship, on the ——— day of ———, duly passed before ———, the Master to whom this matter stands referred, their fifth account of receipts and payments, for and on account of the said lunatic's estate, from Michaelmas ——— to Michaelmas ———, and the said Master has made his report, bearing date the 27th day of November last, whereby he hath certified that there now remains due from your petitioners, on the balance of their said account, the sum of £——, which your petitioners are desirous of paying into the Bank in trust in this matter.

Your petitioners, therefore, humbly pray your Lordship, that they may be at liberty to pay into the Bank, in the name and with the privity of the Accountant-General of the Court of Chancery in trust in this matter, the sum of £——, being the balance of the said fifth account; and that the same, when so paid in, may be laid out in the purchase of Bank *3l. per cent.* Annuities, to be placed to the credit of this matter;

and that the dividends to accrue thereon may be laid out in like manner.

And your petitioners will ever pray, &c.

Order thereon.

Be it so, and for the purposes aforesaid, the said Accountant-General is to draw on the Bank according to the form prescribed by the act of Parliament for the relief of suitors of the Court of Chancery, and the general rules and orders of the said Court in that case made and provided; and let this order be drawn up and entered by the Registrar of the said Court.

Petition of the Committee of the Person and Estate, that the Order for passing the Accounts of Lunatic's Estate annually may be dispensed with, and that the whole of the Dividends of Stock belonging to the Lunatic may be applied for Maintenance—for Payment of a Sum reported due to Committee—and for Taxation and Payment of Costs (d).

IN the matter, &c.

To the Right Honourable &c.

The humble petition &c.

SHEWETH,

That [*Statements—Order for transfer of funds into Accountant-General's name—for payment of the sum of £45 per annum out of dividends, for maintenance of lunatic—and surplus to be invested in Accountant-General's name.*]

That there is now standing in the name of the said Accountant-General on the credit of this matter, the said sum of £— Bank *3l. per cent.* Annuities, and £— in *3l. 10s. per cent.* Reduced Annuities, and in cash £—. That your petitioner hath, from time to time, duly received the yearly sum of *45l.* in the said order mentioned, and hath applied the same towards the maintenance of the said lunatic.

That your petitioner hath passed her several annual accounts before the Master to whom this matter is referred, up to the 21st day of December, 1828; and, by the Master's report made thereon, bearing date the 1st day of March, 1830, there is now due to your petitioner a balance or sum of *46l.*, which hath principally, or altogether, arisen from the expense of passing her annual accounts before the Master.

That the said lunatic hath no other property than the before-mentioned sums of stock standing in the name of the said Accountant-General on the credit of this matter.

That the expense of passing each annual account of your petitioner before the Master amounts to the sum of *16l.*, or thereabouts.

That the annual dividends of the said sums of [*stock*] amount to the sum of 54*l.* 5*s.* 1*d.*, which is inadequate to pay the said allowance or sum of 45*l.*, and the costs of passing the said annual accounts before the Master.

That there is now standing in the name of the said Accountant-General the sum of 55*l.* cash, on the credit of this matter.

That it would be greatly for the benefit of the said lunatic's estate, if the passing your petitioner's annual account were dispensed with.

That the said allowance or sum of 45*l.* is barely sufficient for the maintenance of the said lunatic, and that he is now in want of clothes and other necessaries; and that it would tend greatly to the comfort of the said lunatic if the whole of the annual dividends on the said sums of [*stock*] were allowed to your petitioner for the maintenance of the said lunatic.

Your petitioner, therefore, most humbly prays your Lordship, that the order directing your petitioner to pass her accounts annually before the Master, may be dispensed with, and that the Accountant-General of the Court of Chancery, out of the said sum of 55*l.* cash, now standing in his name, on the credit of this matter, may be directed to pay to your petitioner the sum of 46*l.*, reported due to her as aforesaid. And that the said Accountant-General may be directed to pay to your petitioner the whole of the annual dividends on the said sums of [*stock*] standing in his name on the credit of this matter, as and when the same shall from time to time become due and payable; and that your petitioner may be at liberty to apply the whole of the said dividends in and about the maintenance and support of the said lunatic; and that it may be referred to —, Esq., the Master to whom this matter stands referred, to tax your petitioner and the next of kin their costs of and occasioned by this application, as between solicitor and client; and that the said Accountant-General may be directed to pay such costs when taxed to —, their solicitor, out of the residue of the said sum of 55*l.* cash, standing in the name of the said Accountant-General, on the credit of this matter, after paying thereout the said sum of 46*l.*, if the same shall be sufficient to pay such costs; but if the residue of the said sum of 55*l.*, after paying thereout the said sum of 46*l.*, shall not be sufficient to pay such costs, then, that the said Accountant-General may be directed to sell so much of the said sum of £—— [*stock*], standing in his name, on the credit of this matter, as with the residue of the said sum of 55*l.*, after paying thereout the said sum of 46*l.*, will be sufficient to pay such costs. And if any such sale shall be made, then, that the said Accountant-General may be directed to pay the dividends of the residue of the said sum of £—— [*stock*], after such sale, in the same manner as hereinbefore directed concerning the dividends of the whole of the said sum of £—— [*stock*].

And your petitioner will ever pray, &c.

Order thereon.

Under the circumstances stated in the said petition, that so much of the order made in this matter, bearing date the — day of April, —, as directs the petitioner to pass the accounts annually of her receipts and payments, before —, Esq., the Master to whom this matter stands referred, be dispensed with; and I do hereby further order, that the Accountant-General of the Court of Chancery do, out of the sum of 55*l.* cash, standing in his name, on the credit of this matter, pay to the petitioner —, the committee of the estate of the said lunatic, the sum of 46*l.* stated in the said Master's report of the 1st day of March last to be due to her for costs incurred in passing her annual accounts, as such committee as aforesaid, before the said Master, up to the 21st day of December, 1828; and I do hereby further order, that the said Accountant-General do pay to the said petitioner, the whole of the annual dividends on the sum of £—, Bank 3*l.* per cent. Annuities, or on the residue thereof, after the sale thereof hereinafter directed, provided such sale should be found necessary; and also on the sum of £—, 3*l.* 10*s.* per cent. Reduced Annuities, respectively standing in his name on the credit of this matter, as and when the same shall from time to time become due and payable, to be by her applied in and about the maintenance and support of the said lunatic, until further order. And I do think fit, and hereby further order, that it be referred to the said Master, to tax the petitioner and the next of kin of the said lunatic, their reasonable and proper costs, charges, and expenses, incurred in and about this application, and incident thereto; and I do hereby further order, that what the said Master shall certify to be due for such respective costs, charges, and expenses, be paid by the said Accountant-General out of the residue of the said sum of 55*l.* cash, after the payment thereof of the said sum of 46*l.*, as hereinbefore directed, if the same shall be sufficient for that purpose; but in case the residue of the said sum of 55*l.*, shall not be sufficient for that purpose, then I do hereby further order, that the said Accountant-General do sell so much of the said sum of £—, Bank 3*l.* per cent. Annuities, standing in his name on the credit of this matter, as will be sufficient, together with the said residue of the said sum of 55*l.*, after payment thereof as aforesaid, for payment of the said costs, charges, and expenses; and one of the cashiers of the Bank of England is to have notice to attend the said sale, and receive the money to arise thereby, who, upon receipt thereof, is to pay the same into the Bank, in the name and with the privity of the said Accountant-General, in trust in this matter, who is to declare the trust thereof accordingly. And I do hereby further order, that such costs, charges, and expenses, when so taxed as aforesaid, be paid by the said Accountant-General to —, the solicitor of the said petitioner, and next of kin; and, for the purposes aforesaid, the said Accountant-General is to draw on the Bank according to the form prescribed by the act of Parliament, made for

the relief of the suitors of the Court of Chancery, and the general rules and orders of the said Court in that case made and provided; and let this order be drawn up and entered by the Registrar of the said Court; and let due notice of attending the said Master on such taxation be given to such person or persons as would be entitled to a distributive share or distributive shares of the said lunatic's estates, in case he were now dead intestate (e).

Petition to pass the Accounts of an Idiot's Estate for several Years.

IN the matter of —, an idiot,
To the Right Honourable &c.

The humble petition of —, the committee of the person and estate of the above-named [idiot].

SHEWETH,

That a commission in the nature of a writ *de idiotiâ inquirendo* having, on the petition of your petitioner, issued to inquire of the idiotism of the above-named [idiot], by an inquisition taken thereon, on the 7th day of June, in the year 1800, the said [idiot] was found to be an idiot, and that he had been so from his birth, and was not sufficient for the government of himself and his estate.

[Statement of the order of reference for appointment of committee, the Master's report thereon, and grant of the custody.]

That the annual income of the said idiot's property received by your petitioner amounts to the sum of 93*l.* 10*s.* only; and the sum of 84*l.* per annum was allowed for the maintenance and clothing of the said idiot, which, with the sums expended in repairs, nearly exhausts the whole of the said income.

That your petitioner has passed his accounts before —, late one of the Masters of the Court of Chancery, as committee of the said idiot's estate, up to Michaelmas-day, 1821, at which time there was a balance due from your petitioner of 7*l.*

That, since passing the said accounts, your petitioner has expended several sums of money in repairs and draining on the said idiot's estate; and, the surplus income thereof being insufficient to pay the expense of passing an annual account, your petitioner has forborne to pass any account since that time, and there is now in the hands of your petitioner, as such committee as aforesaid, (including the said sum of 7*l.*), on the balance of his accounts to Michaelmas-day last, the sum of 35*l.*, or thereabouts; and your petitioner is desirous of passing his accounts as such committee as aforesaid, up to Michaelmas last.

Your petitioner, therefore, humbly prays your Lordship, that it may be referred to —, the Master to whom this matter stands transferred, to take your petitioner's accounts of his receipts and payments, as committee of the said idiot's estate, from Michaelmas-day, 1821, to Michaelmas-day, 1830,

(e) *In re Scarpelain*, 22nd May, 1830.

in one account, or in such other manner as your Lordship shall think proper; and therein to make to your petitioner all just allowances, and particularly in respect of monies expended by him in repairs and draining on the said idiot's estate, and an allowance of the costs of your said petitioner, as well as the costs of the solicitors of his Majesty's Treasury, of this application, and of taking the said account, and incidental thereto, such costs to be taxed by the said Master; or &c. And your petitioner will ever pray, &c.

The order made was nearly in the words of the prayer of the petition, upon hearing the counsel for the petitioner, and for the solicitors of his Majesty's Treasury, to whom notice of attending the Master was directed to be given (*f*).

◆

Petition of Committee of the Estate, to be discharged from the Committee, and to pass his final Account.

IN the matter of &c.

To the Right Honourable &c.

The humble petition &c.

SHewETH,

That—[*statement of the inquisition, appointment of the committee, and grant of the custody.*]

That your petitioner is now desirous, on account of his advanced age and bodily infirmities [*or any other reason*], of being discharged from being such committee.

That, since the passing of your petitioner's last account, he has received and paid divers sums of money on account of the said lunatic and his estate.

Your petitioner, therefore, most humbly prays your Lordship, that it may be referred to —, Esq., the Master to whom this matter stands transferred, to take and pass your petitioner's accounts of receipts and payments in respect of the said lunatic's estate, from the foot of your petitioner's last account, and therein to make unto your petitioner all just allowances, and particularly an allowance of the costs of your petitioner, and of the next of kin and heir-at-law of the said lunatic, of this application and incident thereto, and of passing the said accounts; and that, upon paying into Court the balance (if any), which may be then found due from your petitioner, he may be discharged from being such committee, and that the recognizance entered into by your petitioner and his sureties may be vacated, and all other proper and necessary directions given. And also, that your Lordship will be pleased to order that it may be referred to the said Master, to approve of and appoint another fit and proper person to be commit-

(*f*) *In re Pegler*, 20th August, 1831. See *ante*, p. 623.

tee of the said lunatic's estate, in the room and stead of your petitioner; and that the costs, charges, and expenses of all necessary parties incidental thereto may be allowed to such person so to be appointed, in passing his accounts before the said Master; or &c.

And your petitioner will ever pray, &c.

Order thereon.

That it be referred to the Master to take and pass the petitioner's accounts of his receipts and payments for and on account of the said lunatic and his estate, from the foot of his last account passed in this matter; and therein the said Master is to make unto the petitioner all just allowances, and particularly an allowance of his reasonable and proper costs, charges, and expenses; and also the reasonable and proper costs, charges, and expenses of the next of kin and heir-at-law of the said lunatic, of this application, and consequent thereon, and of passing the said accounts, such costs, charges, and expenses, to be taxed by the said Master. And I do hereby further order, that the balance (if any) which the said Master shall certify to be due from the petitioner, on passing the said account, be by him paid into the Bank, with the privity of the Accountant-General of the Court of Chancery, in trust in this matter; and the said Accountant-General is to declare the trust thereof accordingly, subject to further order. And upon payment of the said balance (if any) into the Bank as aforesaid, I do hereby further order, that the petitioner be discharged from the committeeeship of the said lunatic's estate, and that the recognizance entered into by the petitioner and —, his sureties, bearing date &c., be delivered up by the Clerk of the Custodies to the petitioner, to be vacated and cancelled.—[*There was also the usual reference to the Master, to appoint another committee in the place of the petitioner; notice to be given to the next of kin of lunatic, and Accountant-General to draw &c.*]

Petition of Executor of Lunatic, that Receiver's Accounts may be passed up to the Lunatic's Death; that his Bond, and that of the Committee and Sureties, may be vacated; and that Stock standing in the Name of the Accountant-General may be transferred to the Executor.

IN the matter &c.

To the Right Honourable &c.

The humble petition &c.

SHewETH,

That [*statement of the preliminary proceedings.*]

That the said [*lunatic*] departed this life on or about the — day of —, having first duly made and published his last will and testament in writing, bearing date the — day of —, and thereof appointed your petitioner, jointly with —, Esq., executor.

That your petitioner duly proved the same will on the — day of —, in the Prerogative Court of the Archbishop of Canterbury.

That your petitioner, as the acting executor under the said will, is desirous that the receiver's accounts should be passed before the said Master, and the balance duly accounted for; and that his recognizance should be thereupon discharged.

That your petitioner is also desirous that the bond entered into by the said —, as such committee as aforesaid, dated the — day of —, should be also delivered up by the Clerk of the Custodies, to be vacated and cancelled.

That there are now standing in the name of the Accountant-General of the Court of Chancery, in trust in this matter, [*sums of stock*], and in cash, the sum of £—, which your petitioner is desirous should be transferred and paid to him, as such executor as aforesaid, to be applied in due course of administration.

Your petitioner, therefore, most humbly prays your Lordship, that it may be referred to —, the Master to whom this matter stands referred, to take and pass the account of —, the receiver of the said lunatic's estate, of his receipts and payments for and on account thereof, from the foot of his last account passed in this matter, to the day of the death of the said lunatic; and that therein the said Master may make unto the said — all just allowances, and also an allowance of his costs, and of the costs of your petitioner and the next of kin of the said late lunatic, of passing the said account; and that the balance which may be found due from the said —, on the passing of such account, may be paid by him to your petitioner, as such executor as aforesaid, to be applied in due course of administration; and that thereupon the recognizance entered into by the said —, as such receiver, and his sureties, may be vacated and discharged; and that for that purpose the proper officer may be directed to attend his Honor the Master of the Rolls with the record of the said recognizance; and that the bond, so as aforesaid entered into by said [*committee*], and — and —, his sureties, may be delivered up by the Clerk of the Custodies to be vacated and cancelled. And that it may be referred to the said Master to tax your petitioner, and the heir-at-law and next of kin of the said late lunatic, their reasonable and proper costs, charges, and expenses incurred in and about this matter not already taxed, and of this application, and incidental thereto: and that what the said Master shall tax for such costs, charges, and expenses, may be paid by the said —, the receiver, out of any monies in his hands belonging to the said lunatic's estate, and allowed to him on passing his aforesaid account. And that the aforesaid [*stock*] respectively standing in the name of the Accountant-General of the Court of Chancery, in trust in this matter, may be transferred into the name of your petitioner

—, as executor of the said late lunatic, to be by him applied in due course of administration; and that the said Accountant-General may also pay to your petitioner the said sum of £— cash, in the Bank, in trust in this matter, to be by him applied in like manner; or that your Lordship will be pleased to make such further or other order in the premises, as to your Lordship shall seem meet.

And your petitioner shall ever pray, &c.

The order made on this petition was nearly in the words of the prayer of the petition (g).

PETITIONS RESPECTING THE WILLS OF
LUNATICS (h).

Petition of the Heir-at-Law and Next of Kin of a Lunatic, that the Will and the Title-Deeds of the Estate of the latter may be deposited in the Master's Office, and that Service on one of the Next of Kin, who was Insane, may be dispensed with.

IN the matter &c.

To the Right Honourable &c.

The humble petition of *A.*, an infant, heir-at-law, and one of the next of kin of the above-named [*lunatic*], and of *B.*, *C.*, and *D.*, infants, three other of the next of kin of the said lunatic, by *E.*, their father and guardian.

SH EWETH,

That—[*The commission of lunacy and inquisition; the reference to the Master to appoint committees; his report as to the lunatic's property, and the confirmation thereof, were stated.*]

That it is supposed the lunatic has made a will, and that such will, and also the title-deeds and writings relating to the lunatic's estates, are in the hands, custody, possession, power, or control, of the said [*committees*], or one of them.

That your petitioners are desirous that such will (if any there be), title-deeds, and writings, should be deposited in the office of the said Master, for safe custody.

That the said —, the mother of the lunatic, is still of unsound mind, and notice of this application to her will be attended with expense, and cannot be productive of any benefit; but your Lordship's Secretary will not draw up any order your Lordship may think proper to make, without proof of service on all parties interested.

That the said [*mother*] is in very poor circumstances, and has no

(g) *In re Yorke*, 11th February, 1831.

(h) See *ante*, pp. 334—336.

funds belonging to her out of which the expense of issuing a commission in the nature of a writ *de lunatico inquirendo* could be defrayed.

Your petitioners, therefore, most humbly pray, that your Lordship would be pleased to direct, that —, the committee of the estate, and —, the committee of the person of the said lunatic, and each of them, and all other persons whomsoever, do deposit upon oath, in the office of —, Esq., the Master to whom this matter stands transferred, the will of the said lunatic (if any there be); and also, all title-deeds, writings, papers, and documents of title, relating to the estate and property of the said lunatic, wheresoever situate, in the hands, custody, possession, power, or control of the said [committee], or either of them, or of any other person, for safe custody. And your petitioners further pray, that your Lordship would be pleased to direct, that in consequence of the unsoundness of mind of the said —, the lunatic's mother, notice of this application to her, and of any proceedings consequent thereon, or arising thereout, may be dispensed with on account of the expense attending the same; or that your Lordship would be pleased to make such further or other order in the premises, as to your Lordship may seem meet.

And your petitioners will ever pray, &c.

Order thereon.

That the committee of the estate of the said lunatic, and —, the committee of the person of the said lunatic, and all and every other person or persons (in whose custody, possession, power, or control, the same may be), do forthwith deposit any will, codicil, or testamentary paper of the said —, the lunatic; and also all title-deeds, writings, papers, and documents of title relating to the estates and property of the said lunatic, wheresoever situate, in their, or any, or either of their hands, custody, possession, power, or control, in the office of —, Esq., the Master to whom this matter stands referred, upon oath, as he shall direct, there to remain for safe custody, until further order. And I do think fit, and hereby further order, that, under the circumstances mentioned in the said petition, notice of this application, or of any proceedings arising thereout, to —, the mother of the said lunatic, and one of the next of kin, be dispensed with; and let due notice of attending the said Master be given to such person or persons (excepting the said —, mother of lunatic), as would be entitled to a distributive share or distributive shares of the said lunatic's estate, in case he were now dead intestate (i).

(i) *In re Ralphs*, 24th June, 1831.

Petition of the Younger Children of the Lunatic, that his Will may be deposited in the Master's Office, and that Parties may be examined on Interrogatories.

IN the matter &c.

To the Right Honourable &c.

The humble petition of &c.

SHEWETH,

That—[*Statement of the inquisition; the reference to the Master to appoint committees; the Master's report; and that the committee of the estate had examined the lunatic's papers in the absence of the other parties.*]

That your petitioners have heard, and believe, that the said lunatic has executed numerous wills or testamentary papers, but your petitioners know not where the same are, but are desirous that they should be discovered, and lodged in safe custody.

That the said lunatic is seised of large landed property, the greater portion of which he has the power of disposing of by will or otherwise.

Your petitioners, therefore, most humbly pray your Lordship, that the said [*committee of the estate*] may be ordered, within a week, to deposit, on oath, in the office of ———, the Master to whom this matter stands referred, all wills and other testamentary papers of the said lunatic, there to remain for safe custody, subject to the further order of your Lordship. And that it may be referred to the said Master to inquire and certify what will or wills and other testamentary papers of the said lunatic doth or do exist, or hath or have existed, and where the same now are or is, or what has become thereof; and with liberty to examine any person or persons he may think fit, upon interrogatories or otherwise, for the better discovery of the matters aforesaid; or that your Lordship will be pleased to make such further or other order in the premises as to your Lordship shall seem just.

And your petitioner shall ever pray, &c.

An order was made according to the prayer of the petition (*k*).

Petition of the Heir-at-Law and Next of Kin of a Lunatic, after his Death, that his Will may be delivered to a Proctor, to be proved.

IN the matter &c.

To the Right Honourable &c.

The humble petition &c.

SHEWETH,

That—[*Statement of the order directing the lunatic's will to be deposited in the Master's office.*]

(*k*) *In re Jodrell*, 17th August, 1831.]

That the said Master, by his report bearing date the 28th day of July, 1829, certified, that, pursuant to the said order, the wills and codicils of the said lunatic had been deposited in his office by —, in a tin box sealed up, and the same still remain in the said office so sealed up.

That the said [lunatic] died on the 13th day of June, 1831, leaving your petitioner, *A. B.*, his eldest son and heir-at-law, and your said last-named petitioner, and your petitioners *C.* and *D.*, his only children and next of kin, him surviving.

Your petitioners, therefore, most humbly pray your Lordship that —, the Master to whom this matter stands transferred, may be ordered to open the box containing the wills and codicils of the said [lunatic], and to deliver his last will, with all codicils (if any) thereto, to Mr. —, of Doctors' Commons, Proctor, for the purpose of being proved; or that your Lordship will make such further or other order in the premises, as to your Lordship shall seem meet.

And your petitioners will ever pray, &c.

An order was made according to the prayer of the petition, for delivery of the will, for the purpose of being exhibited and proved in the proper Ecclesiastical Court (*l*).

◆

Petition of the Executor of a Lunatic (deceased), for Transfer of Funds and Payment of Money standing in the Name of the Accountant-General in trust in the Matter of a Lunacy.

IN the matter of —, Esq. (deceased), a person of unsound mind.

To the Right Honourable &c.

The humble petition of —, Esq., the committee of the estate of the said [lunatic].

SHEWETH,

That, by an order, bearing date the 31st day of July, 1827, in this matter, it was ordered that it should be referred to —, one of the Masters of the High Court of Chancery, to inquire and certify who was or were the most fit and proper person or persons to be appointed the committee or committees of the person and estate of the said [lunatic].

That, the said Master, by his report bearing date the 4th day of August, was of opinion that your petitioner was a fit and proper person to be appointed committee of the estate of the said [lunatic], and that — and —, two of the younger children of the said [lunatic], were fit and proper persons to be appointed committees of the person of the said [lunatic].

That, by another order, bearing date the 8th day of August, 1827, made in this matter, the said Master's report was confirmed, and

(*l*) *In re Humpleby*, 16th June, 1831.

the care and custody of the person of the said [*lunatic*] were granted to the said [*committees*], and the care and management of his estate to your petitioner, the said —.

That, by another order, bearing date the 16th day of June, 1829, made in this matter, it was ordered (amongst other things) that the Secretary or Accountant-General of the Governor and Company of the Bank of England for the time being, should forthwith transfer into the name and with the privity of the Accountant-General of the Court of Chancery, in trust in this matter, the sum of £—— Bank *3l. per cent.* Annuities, and £—— [*other stock*], respectively standing in the books of those funds at the said Bank of England, in the name of [*lunatic*], by the description of "A person of unsound mind, of ——, Esq.;" and the said Accountant-General of the Court of Chancery was to declare the trust thereof accordingly, subject to further order.

That, on or about the 29th day of July, 1829, in pursuance of the said last-mentioned order, the sums of £—— and £—— [*stock*] were severally transferred into the name of the Accountant-General of the Court of Chancery, in trust to attend the orders of the said court in this matter.

That, by another order, bearing date the 26th day of July, 1828, it was (amongst other things) ordered, that it should be referred to the said Master to take and pass the said [*committee's*] account of his receipts and payments for and on account of the said [*lunatic*] and his estate, from the —— day of July, ——, to the —— day of July, ——. And it was further ordered, that the balance (if any) which the said Master should certify to be due from the said [*committee*] on passing the said account, should be by him paid into the Bank, with the privity of the Accountant-General of the Court of Chancery, on the credit of this matter; and it was further ordered, that the said balance, when so paid into the Bank as aforesaid, should be laid out in the purchase of Bank *3l. per cent.* Annuities, in the name and with the privity of the said Accountant-General, in trust in this matter; and he was to declare the trust thereof accordingly, subject to further order.

That the said Master, by his report bearing date the 12th day of August, 1829, on passing the account of the said ——, under the said last-mentioned order, certified (amongst other things) that he found to be due from the said [*committee*], on passing his account as committee as aforesaid, a balance of £——.

That, on or about the 8th day of February, 1830, in pursuance of the said last-mentioned order and report, the said sum of £—— was paid into the Bank of England, and placed to the account of the Accountant-General of the Court of Chancery, and to the credit of this matter.

That, on or about the —— day of August, ——, in pursuance of the said last-mentioned order and report, the said sum of £—— was laid out in the purchase of £—— Bank *3l. per cent.* Annuities, and transferred to the account of the Accountant-General of the Court

of Chancery, and accepted by him in trust to attend the orders of the said Court in this matter.

That the said [committee] is appointed the sole executor and residuary legatee of the will and testamentary papers of the said [lunatic].

That the said [lunatic] departed this life on the — day of January, —, and that your petitioner has duly proved his said will, and two codicils thereto, in the Prerogative Court of the Archbishop of Canterbury.

That there now remain in Court, in the matter of the said [lunatic] the sum of £— cash, and the several sums of £— and £— [the stock] invested in the name of the Accountant-General; and your petitioner is desirous of having the same respectively paid and transferred to him, as such executor as aforesaid.

Your petitioner, therefore, humbly prays your Lordship, that the sum of £— cash, and the several sums of £— and £—, [the stock], invested in the name of the said Accountant-General in trust in this matter, and all dividends thereon, may be paid and transferred to your petitioner, as the sole executor of the will and testamentary papers of the said [lunatic], (deceased), or that your Lordship will make such further or other order therein as to your Lordship shall seem meet.

And your petitioner will ever pray, &c.

Order thereon.

Whereupon I ordered all parties concerned to attend me, on the matter of the said petition, on the then next day of petitions, whereof notice was to be given forthwith; and the matter of the said petition coming on to be heard before me on this day, in the presence of Mr. —, of counsel for the petitioner, and of Mr. —, of counsel for the next of kin of the said [lunatic], deceased, who consented thereto, on having their costs of the said petition (m)—Now, upon hearing the said petition, the Accountant-General's certificate, and the probate of the will of the said [lunatic], deceased, read, and what was alleged by the counsel aforesaid, and upon filing an affidavit verifying the death and certificate of the burial of the said late [lunatic], I do think fit, and hereby order, that it be referred to —, the Master to whom this matter stands referred, to tax the next of kin of the said late [lunatic], their reasonable and proper costs, charges and expenses incurred in and about this application, and incident thereto, and consequent thereon, in case the parties differ about the same. And I do hereby further order, that the amount of the said costs, charges, and expenses, when taxed and certified by the Master, or otherwise settled, be paid by the petitioner [committee] to Mr. W. W., the solicitor for the said next of kin. And I do hereby further order, that the said Accountant-General of the Court

(m) This is the usual introduction to orders, after a statement of the petition.

of Chancery do transfer the £—— and £—— [*the stock*], respectively, standing in his name in the books of the Governor and Company of the Bank of England, in trust in this matter, into the name of the petitioner, ——, as the sole executor named in and appointed by the last will and testament of the said [*lunatic*], deceased, to be by him held and applied upon the trusts of and according to the said will. And I do hereby further order, that the said Accountant-General do pay to the said [*committee*], as such executor as aforesaid, the whole of the cash now remaining on the credit of this matter, and also any dividends which may accrue on the said [*stock*] previous to the transfer thereof, hereinbefore directed to be by him also held and applied, as such executor as aforesaid, upon the trusts of and according to the said will. And let due notice of attending the said Master, upon the taxation of costs hereby directed, be given to the said [*committee*]. And, for the purposes aforesaid, the said Accountant-General is to draw on the Bank, according to the form prescribed by the act of Parliament made for the relief of the suitors of the Court of Chancery, and the general rules and orders of the said Court in that case made and provided. And let this order be drawn up and entered by the Registrar of the said Court (n).

PETITIONS TO SUPERSEDE A COMMISSION, TO AVOID A MARRIAGE, AND OF APPEAL.

Petition of a Lunatic who had recovered, that the Commission of Lunacy issued against him might be superseded (o).

IN the matter of ——, late a lunatic.

To the Right Honourable &c.

The humble petition of —— [*the late lunatic*].

SHewETH,

That—[*Statements—of the issuing of the commission, the inquiry thereupon taken, and the report of the Master as to certain funds and orders.*]

That your petitioner, having perfectly recovered his sound state of mind and understanding, for four years last past and upwards, is desirous that the said commission of lunacy should be now superseded, and that the costs of all parties may be taxed and paid.

That there is now standing in the name of the Accountant-General of the High Court of Chancery, in trust in this matter, the sum of £——, Reduced *3l. per cent.* Annuities [*the amount and description of the funds*].

(n) *In re Jodrell*, 26th June, 1831. forms of affidavits in support of a petition of this kind, *ante*, pp. 648—652.
(o) *See ante*, Chap. V. s. 11, and see

Your petitioner, therefore, humbly prays your Lordship, that he may be at liberty to attend in open Court, for the purpose of being examined as to his sanity of mind and competency of understanding for the management of his person and estate, and that the said commission, inquisition, and proceedings therein, may be superseded forthwith, and that a *supersedeas* may issue for that purpose. And that it may be referred to —, Esq., the Master to whom this matter stands referred, to tax all parties their costs of this application, and that the same, when taxed, may be paid to their respective solicitors, by sale of a competent part of the said sum of £—; and that so much of the said sum of £— Bank *3l. per cent.* Annuities, as shall remain after such sale, may be transferred into the joint names of your petitioner and his said wife. And that, upon payment thereof, the recognizance entered into by the said [committee] and his sureties may be delivered up by the Clerk of the Custodies, to be vacated and cancelled, or that your Lordship will be pleased to make such further or other order in the premises as to your Lordship shall seem meet.

And your petitioner will ever pray, &c.

Order thereon.

That the commission of lunacy issued in the matter of [lunatic], and the inquisition taken thereon, and the grant, and all proceedings relating thereto, be superseded and determined (p).

A reference was directed to the Master to tax the costs of the petitioner and of his committees and next of kin; and, upon payment of a sum mentioned in a former order, it was further ordered, that the recognizance entered into by [the committee and his sureties], bearing date &c., be delivered up by the Clerk of the Custodies to the said [committee], to be vacated and cancelled. [Notice of attending the Master to be given to the petitioner and the next of kin and committees of the person and estate of the late lunatic].

Petition of the only Sister and Heiress-at-Law of a Lunatic, for a Reference to the Master to inquire as to Proceedings for declaring a Lunatic's Marriage to be void (q).

IN the matter &c.,

-To the Right Honourable &c.

The humble petition &c.

SHEWETH,

That—[Statement of the preliminary proceedings in the lunacy, and the lunatic's marriage, of proof that at that time she was a luna-

(p) See the form of *supersedeas*, *ante*, p. 638.

(q) See *ante*, p. 449.

tic, and of its being known to the husband, whose sole object in marrying was to obtain the lunatic's property, which was considerable.]

That your petitioner is advised that the marriage, had and solemnized between the said — and the said [*lunatic*], is, under the circumstances attending the same, utterly invalid and null; but, for the purpose of having the same so declared, it will be necessary to institute certain proceedings in the proper Ecclesiastical Court, in the name and on the behalf of the said [*lunatic*].

Your petitioner, therefore, most humbly prays your Lordship, that it may be referred to the Master to whom this matter stands referred, to inquire and certify whether it will be fit and proper, under all the circumstances of this case, that any and what proceedings should be taken, for the purpose of having the said marriage, so had between the said — and the said [*lunatic*], judicially declared to be null and void; or that, &c.

And your petitioner will ever pray, &c.

Order according to the prayer.

◆

Petition of Appeal to the King in Council, against an Order in Lunacy (r).

IN the matter of [*lunatic*], Esq., a lunatic lately deceased.

Unto the King's Most Excellent Majesty, in Council.

The petition and appeal of [*the committees*], committees of the person and estate of the said lunatic.

HUMBLY SHEWETH,

That some time in or about the month of —, *A. B.* and *C.* his wife, sister and only next of kin and heiress-at-law and administratrix of the goods and chattels, rights and credits, of the said [*lunatic*], presented their petition to the Lord High Chancellor of Great Britain, stating (amongst other things) that &c. [*several facts as to the misapplication of the maintenance by the committees were alleged*](s).

And that, by an order made in this matter on the petition of the said [*committees*], bearing date the 13th March, 1830, it was ordered, that [*order to pass the accounts of the committees, without prejudice to any proceedings on the part of the next of kin of the lunatic relating thereto.*]

And that the said committees' accounts, subsequently to the 10th October, 1827, had not been laid before the said Master; and the said petitioner submitted, that an inquiry ought to be directed as to the expenditure of the said committees upon the maintenance &c.

And that the said petition prayed that it might be referred to the said Master, to inquire what &c. [*the prayer of the petition is here stated.*]

(r) See *ante*, p. 19.

(s) The leading facts of this case are stated *ante*, pp. 215—219.

That divers affidavits were filed on behalf of the said [*respondents*], in support of the allegations contained in their said petition; and that affidavits by divers persons of the highest character and respectability were also filed on behalf of your petitioners, in opposition thereto; and that by such last-mentioned affidavits it appeared (amongst other things) that your petitioners, during the whole time of their acting as such committees as aforesaid, evinced an anxious desire to maintain for the said lunatic a handsome establishment, suitable to his rank and fortune, and to afford him every comfort consistent with his situation, without sparing trouble or expense for that purpose; and that the establishment of the said lunatic was, during the whole time from the appointment of your petitioners as committees, to the death of the said lunatic, maintained and kept up in a style suitable to his rank, fortune, and situation, and in a manner likely to conduce, as far as possible, to the comfort of the said lunatic, and that no expense was spared by your petitioners in respect of his comfort and amusement, and that the food and raiment of the said lunatic, and the medical and other attendance upon him, were in every respect the best that your petitioners could procure.

That it also appeared that the said order [*the original order for maintenance*], of the — day of —, which is imperfectly and inaccurately stated in the said petition, is partly in the words and figures or to the purport and effect following, (that is to say), [*the words of the order were stated*].

That the said petition of the said [*respondents*] came on to be heard before the Lord High Chancellor, on the 26th day of March, 1831; and that, by an order bearing date on that day, his Lordship was pleased to order that it should be referred &c. — [*The order appealed against was here set forth*] (*t*).

That your petitioners conceive themselves greatly aggrieved by the said last-mentioned order, and have therefore appealed therefrom to your Majesty in Council.

Your petitioners, therefore, most humbly pray, that your Majesty will be most graciously pleased to appoint a day for hearing this your petitioners' appeal, with summons for the said [*respondents*] to appear thereto; and that thereupon the said order, made by the Lord High Chancellor on the — day of —, may be reversed, altered, or amended; and that your petitioners may have such further and other relief in the premises, as to your Majesty, in your great wisdom and justice, shall seem meet.

And your petitioners shall ever pray, &c.

(*t*) See *ante*, pp. 218, 219.

PETITIONS RELATING TO LEASES, AND THE MANAGEMENT OF LUNATICS' ESTATES (u).

Petition of Committees for a Reference to the Master as to granting a Lease.

IN the matter of &c.

To the Right Honourable &c.

The humble petition of — and —, the committees of the person and estate of the said lunatic.

SHewETH,

That, pursuant to an order made by your Lordship in this matter, bearing date the — day of —, a commission in the nature of a writ *de lunatico inquirendo* was awarded and issued, directed to certain commissioners therein named, to inquire of the lunacy of the said [*lunatic*]; and that, upon an inquisition taken by virtue of the said writ, on the — day of —, it was thereby found, that the said [*lunatic*] was then a lunatic, and did not enjoy lucid intervals, so that he was not sufficient for the government of himself, his manors, messuages, lands, tenements, goods, and chattels, and that he had been in the same state of lunacy from the — day of —; and that, by letters patent under the Great Seal of Great Britain, bearing date the — day of —, the care and management of the said lunatic's estate were granted to your petitioners.

That a certain messuage or tenement, erections, buildings, and land, containing together — acres or thereabouts, situate at —, and to which the said lunatic is entitled, as tenant-in-tail in possession, are at present out of lease.

That —, [*lessee*], has offered to take the said premises on lease for the term of twenty-one years, at an improved yearly rent.

Your petitioners, therefore, humbly pray your Lordship, that it may be referred to the said Master, to inquire and certify whether it will be fit and proper, and for the benefit of the said lunatic's estate, that a lease of the said messuage or tenement and premises should be granted by your petitioners to the said [*lessee*], and for what term, and at what rent, having regard to the lunatic's interest therein. And that the said Master may be at liberty to state any special circumstances, with his opinion thereon, to the Court; or that your Lordship will be pleased to make such further or other order in the premises as to your Lordship shall seem meet.

And your petitioners will ever pray, &c. (v).

(u) See *ante*, Chap. VIII. s. 1.

ly made on a petition of this kind is stated

(v) The substance of the order usual — *ante*, p. 342.

Petition of Committees to confirm the Master's Report for granting a Lease.

IN the matter &c.

To the Right Honourable &c.

The humble petition &c.

SH EWETH,

That—[*The reference was set out.*]

That the said Master made his report, bearing date the 4th day of August, 1824, in pursuance of the said last-mentioned order, and thereby certified, that he had been attended by the solicitor for all persons interested, and in his presence had proceeded to make the said inquiry, and a state of facts and proposals had been laid before the said Master, on behalf of your petitioners, stating—[*The report, and upon what it was founded.*]

That the said [*lessee*] has agreed to bear a moiety of the expense of preparing the said intended lease, and the counterpart thereof.

Your petitioners, therefore, humbly pray your Lordship, that the said Master's report may be confirmed, and that your petitioners may be at liberty to grant a lease of the said messuage or tenement, erections, buildings, and land, to the said [*lessee*], at the rents, and subject to the covenants and conditions in the said report particularly mentioned or referred to, (except as therein mentioned), such lease to be settled and approved by the said Master. And that it may be referred to the said Master to tax your petitioners and the next of kin of the said lunatic, their costs, charges, and expenses incurred in and about the said application and reference, and incidental thereto; and also the costs of preparing the said lease, and a counterpart thereof, as between solicitor and client, and that such costs (save and except a moiety of the expense of preparing the said intended lease and counterpart), may be retained and paid by your petitioners out of the rents and profits of the said lunatic's estates; or that your Lordship will be pleased to make such further or other order in the premises, as to your Lordship shall seem meet.

And your petitioners will ever pray, &c. (x).

(x) The substance of the order usually *ante*, p. 342; and see the forms of leases made on a petition of this kind is stated, in which the orders are recited, *post*.

Petition of the Committee for a Reference, as to a Renewal of Leases for Lives, for the Lunatic.

IN the matter of —, a lunatic.

To the Right Honourable &c.

The humble petition &c.

SHEWETH,

That—[*Statement of the commission of lunacy; the appointment of a committee; the subsisting leases for lives, with a covenant on the part of the lessees to renew on the dropping of a life; and other deeds, shewing in whom the interest in the leases was vested.*]

That in the opinion of your petitioner it will be for the benefit of the said lunatic's estate, that the said leases should be renewed; and your petitioner is also advised, that, for the purpose of such renewal, and in compliance with the covenant contained in the said indenture of —, as hereinbefore mentioned, it is necessary that the said — [an under-lessee of part], his heirs or assigns, should release and surrender his or their estate or interest in the premises, granted and conveyed to him by the said last-mentioned indenture; and that upon the renewal of the lease, comprising the premises so granted to the said [under-lessee], he, the said [under-lessee], his heirs, or assigns, will be entitled to have a new grant and release made to him or them of the premises conveyed to him by the said indentures of &c. [date].

Your petitioner, therefore, most humbly prays your Lordship, that it may be referred to —, the Master to whom this matter stands referred, to inquire and certify, whether it will be for the benefit and advantage of the said lunatic's estate, or is otherwise necessary and expedient, that the said leases should be renewed, upon payment by your petitioner to the said [lessor] of the respective fines of £— and £—, with interest thereon, as stipulated in the said respective indentures of lease, and the stamp duties, fees, and expenses incident to such renewal; and that it may also be referred to the Master to inquire and certify who is a proper person to be nominated as a *cestui que vie* in such renewed leases, in the place and stead of the said —, deceased; and whether it is proper that the said [under-lessee], his heirs, or assigns, should be required to surrender his or their estate, term, and interest under the said indentures of [date], in the premises thereby conveyed to him, and that a new grant and lease of the same premises should be made to him or them for and during the lives now in being, and the life of such person as shall be named in such renewed lease or leases, at and under the like yearly rent and reservation, and with, under, and subject to the like covenants, conditions, and

agreements, *mutatis mutandis*, as were reserved and contained in the said indenture of [date]; or that &c.

And your petitioner &c.

An order of reference was made nearly in the words of the petition, with a direction for the Master, in case he approved of the renewal, to inquire out of what fund, or by what means the expenses of renewal ought to be paid.

◆

Petition to confirm Master's Report as to the Renewal of a College Lease for the Benefit of the Lunatic.

IN the matter of —, a lunatic.

To the Right Honourable &c.

The humble petition of —, committee of the estate of the said lunatic, and also his sole next of kin.

SHEWETH,

That, by an order made in this matter, on the petition of your petitioner, and bearing date —, it was referred, &c. [*Reference to inquire as to terms of renewal, and the report thereon, were set forth.*]

Your petitioner, therefore, most humbly prays your Lordship, that the Master's said report may be confirmed, and that your petitioner may be at liberty to renew the said lease accordingly, upon the terms and conditions set forth in the said report, namely, the payment of the sum of £— for the fine, and £— for fees of renewal, including the *ad valorem* duty on such renewal, with the reservation of the annual and accustomed fees, rents, and payments, and the reservation also of the annual payment to the vicar of 600*l.*, with the customary allowances as hereinbefore set forth. And that the said fine and fees, amounting together to the sum of £—, may be raised and paid out of the cash in the Bank, standing to the credit of this matter at the date of your Lordship's order on this petition, including the January dividends, so far as the same will extend to pay the same, and the residue thereof by sale of such part of the said £—, Bank Annuities, standing in the name of the Accountant-General in trust in this matter, as with the said cash in the Bank will raise the said fine and fees; and that the Accountant-General may be ordered to proceed to such sale accordingly; and that the proceeds thereof, together with the said cash in the Bank, may be paid to your petitioner, to be applied by him in payment of the said fine and fees. And that it may be referred to the said Master to tax your petitioner, as committee and next of kin, his costs, charges, and expenses of negotiating, applying for, and obtaining the said renewal, and all the expenses of and occasioned by the said reference and incidental thereto; and that the same, when so taxed, may be

retained and paid by your petitioner out of the lunatic's estate, and be allowed him on passing his accounts.

And your petitioner will ever pray, &c.

The order was made according to the prayer of the petition.

Petition of the Committee of the Estate for a Reference to the Master to inquire as to making an Allowance to Tenants of a Farm, for Losses they had sustained, and an Abatement of Rent (y).

IN the matter of —, a lunatic.

To the Right Honourable &c.

The humble petition of &c.

SHREWETH,

That—[*Statement of the commission of lunacy; the appointment of a committee of the estate; the letting of the farm, &c.; and that the tenants had sustained losses in consequence of wet seasons.*]

That besides the losses which have already fallen on the present tenants as above detailed, your petitioner is informed by persons competent to form a judgment in such matters, that the said farm and lands are much reduced and lessened in value, since the same were let to the present tenants, by the great depreciation in value of every description of farming stock and produce, and the increase of poor and other rates, and on account of the additional sum which it has lately become necessary to pay for labour.

That one of the present tenants, and some other members of his family, have been in the occupation of the said farm for many years past, and have, as your petitioner hath been informed and believes, used their best endeavours in the good conduct and management of the said farm.

That the said [*tenants*], the present tenants of the said farm, have applied to and requested your petitioner to make them some allowance in respect of the very serious losses which they have sustained in manner hereinbefore set forth, and to make some reduction in their rent for the time to come.

Your petitioner, therefore, most humbly prays your Lordship, that it may be referred to —, Esq., the Master to whom this matter stands transferred, to inquire and certify to your Lordship, whether it will be fit and proper, or for the benefit of the said lunatic or his estate, that any and what allowance should be made to [*tenants*], the present tenants of — farm, for or in respect of the losses which, under the circumstances hereinbefore detailed and set forth, they have sustained in and during the years —, —, and —; and whether it will be fit and proper, and for the benefit of the said lunatic and his estate, that any, and if any, what reduction or abatement should be made to the said [*tenants*] out of

(y) See *ante*, pp. 180—181.

the rent now due, and henceforth to accrue due from the said [*tenants*] for rent of the said farm called — farm; and from what time such reduction or abatement should commence, and up to what time the same should continue; or that your Lordship will be pleased to make such further or other order in the premises as to your Lordship shall seem meet.

And your petitioner will ever pray, &c.

An order was made nearly in the words of the prayer of the petition, notice of attending before the Master to be given to the next of kin.



Petition of the Committees of the Person and Estate, for a Reference to the Master to inquire as to Repairs on the Lunatic's Estate (z).

IN the matter of —, a lunatic.

To the Right Honourable &c.

The humble petition &c.

SHWETH,

That—[*Statements of the commission and inquisition, and of the appointment of committees, and the grant of the custody.*]

That the said lunatic is entitled, as tenant in tail in possession, to a messuage or dwelling-house, farm, lands, and hereditaments, situate in —, &c., now in the occupation of —.

That the said messuage or dwelling-house, and the farm-buildings, and also the fences of the said farm, require considerable repairs, the expense of which repairs has been estimated at the sum of 500*l.*, or thereabouts.

Your petitioners, therefore, most humbly pray your Lordship, that it may be referred to the said Master to inquire and certify whether it will be fit and proper and for the benefit of the said lunatic and his estate, having regard to the lunatic's interest therein, that the said messuage or dwelling-house, and the farm-buildings and fences, should be repaired; and that the said Master may inquire and certify what sum will be reasonable and proper to be allowed for such repairs; and that he may be at liberty to state any special circumstances; or that your Lordship will be pleased to make such further or other order in the premises as to your Lordship shall seem meet.

And your petitioners will ever pray, &c.

Order according to the prayer of the petition.

(z) See *ante*, p. 202.

Petition of Committees to confirm the Master's Report, made in pursuance of the Reference under last Petition.

IN the matter of —, a lunatic.

To the Right Honourable &c.

The humble petition &c.

SHEWETH,

That—[*Statement of the order of reference to the Master made on the last petition, and his report.*]

Your petitioners, therefore, humbly pray your Lordship, that the Master's said report may be confirmed; and that they may be allowed to pay the said sum of 500*l.* for the said repairs out of the rents and profits of the said lunatic's estates, and be allowed the same on passing their accounts before the said Master. And that it may be referred back to the said Master to tax your petitioners and the next of kin of the said lunatic their costs, charges, and expenses of the said petition and reference, and incident thereto, as between solicitor and client. And that your petitioners may be at liberty to retain and pay what the said Master shall certify to be proper to be allowed for such costs, charges, and expenses, and that they may be allowed the same on passing their accounts before the said Master. And that it may be referred to the Master from time to time to inquire and certify whether any and what repairs or improvements are necessary to be done on the estates of the said lunatic, or any of them, and out of what fund the expenses of such repairs and new buildings ought to be paid; or that your Lordship will be pleased to make such further or other order in the premises as to your Lordship shall seem meet.

And your petitioners will ever pray, &c.

*Petition to confirm Master's Report, and for Order to cut Timber on Lunatic's Estate (a).*

IN the matter of —, a lunatic.

To the Right Honourable &c.

The humble petition &c., the committees of the estate of the above-named lunatic.

SHEWETH,

That by an order made in this matter, upon the petition of the said [*committees*], bearing date the 9th day of March, 1832, it was ordered, that it should be referred to the Master to whom this

(a) See *ante*, pp. 181—182.

And let due notice of attending the said Master be given to [the committee of the estate, the heir-at-law, and next of kin of the lunatic.]

Petition of Committee of the Person and Estate for a Reference as to Sale of part of Lunatic's Estate for Payment of Incumbrances and Debts.

IN the matter of —, a lunatic.

To the Right Honourable &c.

The humble petition of &c.

SH EWETH,

That—[An order of reference to Master to take an account of incumbrances on the lunatic's estate, and to certify out of what fund the same ought to be paid was stated; and that it appeared from proceedings before Master that the lunatic's property consisted only of real estates, of which he was seised in fee].

Your petitioner, therefore, most humbly prays your Lordship, that it may be referred to the said Master to whom this matter is referred, to inquire, in addition to the inquiries already directed in this matter, whether it is necessary and fit and proper, and for the benefit of the said lunatic and his estate, that any and what part or parts of the estates of the said lunatic, should be sold for the discharge of the incumbrances upon the same, and for payment of the debts and charges otherwise due from the said lunatic's estate, and what sum will be required to be raised for that purpose, and that he may be at liberty to make a separate report thereof, and if the said Master shall be of opinion that any such sale is necessary and proper, that he may be at liberty forthwith to issue advertisements, and settle and approve of particulars and conditions for the sale of such part of the estates of the said lunatic, as he may think fit; or that your Lordship will be pleased to make such further or other order in the premises as to your Lordship shall seem meet.

And your petitioner shall ever pray, &c.

An order was made thereon according to the prayer of the petition, notice to be given to the heir-at-law and next of kin of the lunatic.

Petition of the Committee of the Person and Estate of a Lunatic for confirming the Master's Report approving a Sale of the Lunatic's real Estates for Payment of the Costs in the Lunacy.

IN the matter of —, a person of unsound mind.

To the Right Honourable &c.

The humble petition &c.

SHEWETH,

[*Statement of the order for the commission, the inquisition, the order appointing the committee, and an order of reference to the Master to tax further costs, and to certify out of what fund such costs, and those which had been before taxed, should be paid*].

That —, Esq., the Master to whom this matter, by a general order of transfer, stands transferred, by his report made in this matter, bearing date the 22nd day of March, 1831, in pursuance of the said order of —, certified that he had been attended by the solicitors of your petitioner and of the several next of kin of the said [lunatic], and he found that a state of facts and proposal were laid before —, Esq., his predecessor, by or on behalf of your petitioner the committee aforesaid (supported by the evidence herein-after mentioned). Whereby [*the proceedings on the taxation of costs are set forth, and the particulars of the property proposed to be sold*]. And the said Master further found, that, in support of the said state of facts and proposal, three several affidavits made in this matter hereinafter mentioned were laid before his said predecessor (that is to say), an affidavit of &c. [*The affidavits of surveyors, who stated their opinions as to the value of the property proposed to be sold were set forth.*]

And the said Master found that his said predecessor allowed the said state of facts and proposal; and he certified that having considered the same, and the several affidavits therein and before stated, he was of opinion that the several costs, charges, and expenses incurred in and about this matter, and so taxed respectively, and amounting to the sum of £—, as thereinbefore mentioned, ought to be raised and paid respectively by sale of the several freehold and leasehold estates, and other property belonging to the said [lunatic], and comprised in the several valuations thereof respectively, as aforesaid, and also out of any balance that may hereafter be in the hands of the said committee of the said lunatic's estate on passing his account thereof.

Your petitioner, therefore, most humbly prays your Lordship, that the Master's said report, bearing date the — day of —, may be confirmed; and that it may be referred to the Master to whom this matter stands transferred, to tax the reasonable and proper costs, charges, and expenses of your petitioner and of the several next of kin of the said [lunatic] of and incident to this application, and of the pro-

ceedings consequent thereon; and that the several costs, charges, and expenses incurred in and about this matter, and so taxed respectively, and amounting to the sum of £—, as aforesaid, and also the costs, charges, and expenses of this application and the proceedings consequent thereon, may be raised and paid respectively by sale of the several freehold and leasehold estates and other property belonging to the said [*lunatic*], and comprised in the several valuations made thereof respectively, as aforesaid; and also out of any balance that may hereafter be in the hands of the committee of the said lunatic's estate on passing his account thereof. And that the said freehold and leasehold estates and other property belonging to the said [*lunatic*], and comprised in the said valuations respectively, may be sold with the approbation of the said Master to the best purchaser or purchasers that can be got for the same, to be allowed by the said Master, wherein all proper parties are to join, as the Master may direct; and if the leasehold piece or parcel of ground with the said messuages erected thereon, situate &c., valued at the sum of £—, as hereinbefore stated, being part of the premises hereinbefore directed to be sold, should be disposed of with the approbation of the said Master, then that the sum of 600*l*. may be paid out of the purchase-money for the same to the before-named [*mortgagee*] in part discharge of the principal money due to him on his aforesaid mortgage; or that your Lordship will be pleased to make such further or other order in the premises, as to your Lordship shall seem meet.

And your petitioner will ever pray, &c.

Order thereon.

That the Master's said report be confirmed. And I do hereby further order, that it be referred to —, the Master to whom this matter stands transferred, to tax the reasonable and proper costs, charges, and expenses of the petitioner, and of the several next of kin of the said lunatic, of and incident to this application, and the proceedings consequent thereon. And I do hereby further order, that the amount of the said costs, charges, and expenses, when so taxed, and also the sum of £—, the amount of the costs, charges, and expenses already taxed, as in the said report mentioned, be raised and paid by, with, and out of the monies to arise from the sale of the several freehold and leasehold estates and other property belonging to the said lunatic, directed to be made as hereinafter mentioned; and also out of any balance which may hereafter be remaining in the hands of the said petitioner, as the committee of the said lunatic's estate, on passing his accounts before the said Master. And I do think fit, and hereby further order, that the several freehold and leasehold estates, and other property belonging to the said lunatic, comprised in the several valuations made thereof respectively, as stated in the said report,

be sold, either by public auction or private contract, with the approbation of the said Master (subject to any mortgage or mortgages thereon, or on any part thereof, in case the mortgagee or mortgagees shall not concur in such sale), to the best purchaser or purchasers that can be gotten for the same, to be allowed of by the said Master, wherein all proper parties are to join as the said Master shall direct; and that the committee may be at liberty out of the purchase money for the leasehold premises in — aforesaid, in the said petition mentioned, to pay off and discharge the sum of 600*l.*, part of the principal money due to the said [*mortgagee*] on his mortgage in the said petition mentioned, upon his joining in the assignment or conveyance of the said premises to the purchaser or purchasers thereof. And in order to such sale, all deeds and writings relating to the said estates and property, in the custody, possession, or power of the committee of the estate, or of any other person or persons, are to be produced before the said Master upon oath, or as he shall direct. And I do hereby further order, that it be referred to the said Master to settle and approve of a proper sum to be bid up to, for the said several freehold and leasehold estates and other property, in order to prevent the same being sold under the real value thereof, and to appoint one or more person or persons to bid for the same accordingly. And I do reserve the consideration of all further directions until after the said Master shall have made his report, when such further order shall be made as shall be just. And let due notice of attending the said Master be given to the heir-at-law of the said lunatic, and to such person or persons as would be entitled to a distributive share or distributive shares of the said lunatic's estate, in case he were now dead intestate.



Petition of the Committees of the Estate, for confirming Reports of the Master approving of the Sale of Three Lots of a Lunatic's Estate to a Purchaser.

IN the matter of —, a lunatic.

To the Right Honourable &c.

The humble petition &c.

SHEWETH,

That by an order made in this matter, bearing date the 6th day of August, 1825, it was (amongst other things), ordered, that the real estates of the said lunatic [*except &c.*], and the whole of the leasehold estates of the said lunatic, should be sold by public auction, at one or more sale or sales, with the approbation of —, Esq., the Master to whom this matter stood referred, to the best purchaser or purchasers that could be got for the same.

That, in pursuance of the said order, the said Master, by his report bearing date the 25th day of May, 1826, certified, that he had proceeded to sell certain freehold estates in the county of Kent, and

certain leasehold houses in the county of Middlesex, belonging to the said [lunatic], and for that purpose he caused advertisements to be published in the London Gazette, and in other public newspapers, for the peremptory sale thereof on that day, at the public sale-room of the Court of Chancery, in thirteen lots; and that [the purchaser], having bid for the premises comprised in Lot 10, the sum of 245*l.*, and no person having bid more for the same, he did approve and allow of the said [purchaser] as the best bidder for and the purchaser of the said Lot 10, at the said price or sum of 245*l.* And the said Master further certified, that he had in his schedule to that his report set forth the particulars of the premises comprised in the said lot, and also a copy of the conditions of sale, so far as the same relate to the said lot.

That by another order made in this matter, upon the petition of your petitioners, bearing date the 28th day of July, 1827, your Lordship was pleased to order that it should be referred &c. [*A reference to the Master as to the propriety of completing an agreement for sale to the purchaser of other parts of an undivided moiety of other property of the lunatic.*]

That the said Master, in pursuance of the said last-mentioned order, made his report, bearing date the — day of November —, and thereby certified that he had been attended by the solicitor for your petitioners, and for the wife and children of the said lunatic, and had proceeded to make the said inquiry; and he found that, pursuant [*the proceedings on the order for sale are mentioned; the contract for sale and other evidence, including the affidavit of a surveyor, are referred to, and the Master's report in favour of the proposed sale.*].

That the said [purchaser] is satisfied with the title of the said lunatic to one undivided moiety of the said several leasehold messuages.

Your petitioners, therefore, humbly pray your Lordship, that the Master's said reports [*approving sales*], bearing date, &c., may be absolutely confirmed (*d*); and that the said [purchaser] may be ordered to pay, on or before the — day of

(*d*) On a petition for an order, under the statute 11 *Geo.* 4 & 1 *Will.* 4, c. 65, for a conveyance of certain estates which, with the 'approbation of the Master, had been sold by the committee of the lunatic, and of which the lunatic was tenant in tail, Lord Chancellor Brougham said, "that the case was one of extreme difficulty: the act of Parliament clearly gave the power of passing estates in fee, but made no mention whatever of estates in tail, and in which other parties must of necessity have some contingent interest. He, therefore, did not feel himself authorized to order the conveyance; which he the more regretted, as it applied to only a very small part of the property, and he

understood would endanger the sale of the whole. The better plan would be, to procure an act of parliament to legalize the sale, a thing that he understood might be done with very little difficulty, the standing orders of the House of Lords, which heretofore impeded the passing of such bills, having, on one or two recent occasions, been suspended. It was quite clear, that in this case no recovery could be suffered, for the lunatic could not appear at the bar of the Common Pleas, nor could his committee appear there for him." The case stands over for argument. *In re Brand*, 15th August, 1832.

—, into the Bank of England, in the name and with the privity of the Accountant-General of the Court of Chancery, in trust in this matter, to an account to be intitled, "The Produce of the Lunatic's Interest in the Leasehold Property sold," the said sum of £— being the purchase-money for the premises comprised in the said Lot 10, and the said sum of £— being the purchase-money for the premises comprised in the said Lots 9 and 11, in the said Master's said reports respectively mentioned, making together the sum of £—. And that your petitioners, as the committees of the said lunatic's estates, may thereupon be directed to execute in the name and on the behalf of the said lunatic, a proper assignment or assignments, or other assurance, of all the estate and interest of the said [*lunatic*], of and in the said premises comprised in the said Lots 9, 10, and 11, respectively, unto the said [*purchaser*], his executors, administrators, and assigns, or as he or they shall direct, such assignments and other assurances to be prepared by and at the expense of the said [*purchaser*], his executors, administrators, or assigns, wherein all proper parties may be directed to join; and that thereupon the said [*purchaser*] may be let into the possession of the said premises, and into the receipt of the rents and profits thereof, from the — day of —. And that your petitioners may be allowed their reasonable and proper costs and charges incurred in and about the said agreement, and the reference relating thereto, directed to be made as aforesaid, and of this application, and consequent thereon; or that your Lordship will be pleased to make such further or other order in the premises as to your Lordship shall seem meet.

And your petitioners will ever pray, &c.

Order thereon upon hearing counsel for the petitioners, for the next of kin of the lunatic, and for the purchaser.

That the said Master's said respective reports [*approving sales*], bearing date respectively the — day of —, and the — day of —, be severally confirmed, to be observed and performed by all parties thereto, according to the tenor and true meaning thereof. And I do think fit, and hereby further order, that the said [*purchaser*], named in the said petition, do, on or before the — day of —, pay the sum of £—, (being the amount of the purchase money for the premises comprised in Lot 10), and the sum of £—, (being the amount of the purchase money for premises comprised in Lots 9 and 11, in the Master's said reports respectively mentioned), making together the sum of £—, into the Bank, with the privity of the Accountant-General of the Court of Chancery, in trust in this matter, to an account to be intitled, "The Produce of the Lunatic's Interest in the Leasehold Property sold;" and the said Accountant-General is to declare the trust thereof accordingly, subject to further order. And I do

hereby further order, that the said sum of £——, when so paid into the Bank, be not transferred or disposed of without notice to the said [*purchaser*], or to ——, his solicitor. And I do hereby further order, that upon the said sum of £—— being so paid into the Bank as aforesaid, the said [*purchaser*] be let into the possession of the hereditaments and premises comprised in the said Lots, respectively numbered 9, 10, and 11, and into the receipt of the rents and profits thereof, from the —— day of —— last. And thereupon also I do hereby further order, that the petitioners, as the committees of the said lunatic's estate, do forthwith in the name and on the behalf of the said [*lunatic*], execute a proper assignment or assignments, or other assurance, of all the estate and interest of the said lunatic, of and in the premises comprised in the said Lots 9, 10, and 11, respectively, unto the said [*purchaser*], his executors, administrators, and assigns, or as he or they shall direct or appoint, such assignment or assignments to be prepared by and at the expense of the said [*purchaser*], his executors, administrators, or assigns, and to be settled by ——, Esq., the Master to whom this matter stands referred, in case the parties differ about the same. And I do think fit, and hereby further order, that the petitioners and the next of kin of the said lunatic be allowed their reasonable and proper costs, charges, and expenses incurred in and about the agreement in the said petition mentioned, and the order made in this matter, bearing date the —— day of July, 1827, consequent thereon, and of this application, and incident thereto, to be taxed by the said Master. And let due notice &c. [*to next of kin*]. And for the purposes aforesaid, the said Accountant-General &c.

—

Petition of the Purchaser of a Lunatic's Estate to be allowed to pay his Purchase Money into the Bank, and for a Conveyance.

IN the matter of ——, a lunatic.

To the Right Honourable &c.

The humble petition of &c. [*the purchaser*].

SH EWETH,

That—[*Statement of an order for sale of the lunatic's real estate.*]

That the said Master, by his report bearing date the —— day of ——, certified that, in pursuance of such order, he was attended by the solicitors for the petitioner, &c. [*The Master's report of his proceedings in the sale and his approval of the purchaser were stated.*]

That, by an order made by your Lordship in this matter, bearing date the —— day of August, ——, the said report of the said Master was duly ratified and confirmed.

That, by one of the said conditions annexed to the particulars of sale of the said estate, your petitioner is directed to pay the said

purchase-money into the Bank of England with the privity of the Accountant-General of the Court of Chancery.

Your petitioner, therefore, humbly prays your Lordship, that he may be at liberty forthwith to pay the said sum of 1500*l.*, being the consideration-money for the purchase of the said estate, into the Bank of England, with the privity of the said Accountant-General, in trust in this matter. And that your Lordship will be pleased to order the committee of the said estate to convey the said hereditaments and premises to your petitioner.

And your petitioner will ever pray, &c.

Order thereon.

That the said purchaser do forthwith pay the sum of 1500*l.*, being the amount of the purchase-money for the real estate of the said lunatic mentioned in the said petition, and also the interest due thereon, at the rate of 5*l. per cent. per annum*, from the 4th day of November to the time of such payment (the amount thereof to be verified by affidavit), into the Bank of England, in the name and with the privity of the Accountant-General of the Court of Chancery, on the credit of this matter, to an account to be intitled, "The Produce of the Sale of the real Estate of the said Lunatic;" and the said Accountant-General is to declare the trust thereof accordingly. And I do hereby further order, that the said sum of 1500*l.*, and the interest aforesaid, when paid into the said Bank as before directed, be laid out by the said Accountant-General in the purchase of Bank 3*l. per cent. Consolidated Annuities*, in trust in this matter, and placed to the account aforesaid; and he is to declare the trust thereof accordingly, subject to further order. And I do think fit, and hereby further order, that, upon the said sum of 1500*l.* and interest being paid into the said Bank as aforesaid, the said [committee], the committee of the estate of the said lunatic, do forthwith in the name and on the behalf of the said lunatic, execute a proper conveyance or other assurance of the hereditaments and premises in the said petition mentioned; and all the estate, right, title, and interest whatsoever of the said lunatic therein and thereto, subject to the dower of the said —, and also to the mortgage on the said estate in the said petition respectively particularly mentioned, unto the said [purchaser], his heirs, executors, administrators, and assigns, or as he or they shall direct or appoint; such conveyance or assurance to be settled by —, the Master to whom this matter stands referred, in case the parties differ about the same; in which case let due notice of attending the said Master be given to all parties interested; and for the purposes aforesaid the said Accountant-General is to draw &c.

Petition of the Committees of the Estate for a Reference as to completing a Contract for the Purchase of an Estate for the Lunatic.

IN the matter of —, a lunatic.

To the Right Honourable &c.

The humble petition &c.

SHewETH,

That—[*Statement of the commission and inquisition, the appointment of committees, the grant of the custody.*]

That the said lunatic is tenant for life in possession of an estate in —, called —, being the family estate of the said lunatic, the annual rental whereof amounts to £—, and upwards.

That a piece of freehold land, containing — acres or thereabouts, lying contiguous to the said estate and convenient to be held therewith, having been offered for sale, your petitioners, on behalf of the said lunatic (but subject to your Lordship's approbation), have contracted with —, the owner, for the purchase thereof at the sum of 47*l.* per acre.

That a certain farm house, lands, and hereditaments, containing in the whole — acres, or thereabouts, also lying contiguous to the said estate of the said lunatic, and convenient to be held therewith, having been likewise offered for sale, your petitioners, on behalf of the said lunatic, (but subject to your Lordship's approbation), have contracted with —, the owner, for the purchase thereof at the sum of 500*l.* [*Some good reason for the proposed purchase should be shewn*].

Your petitioners, therefore, humbly pray your Lordship, that it may be referred to —, the Master to whom this matter stands referred, to inquire and certify to your Lordship whether it will be fit and proper, and for the benefit of the said lunatic's estate, that the said contracts so as aforesaid entered into by your petitioners for the purchase of the said lands and hereditaments, should be carried into effect, and whether good titles can be made to the said lands and hereditaments. And if the said Master shall be of opinion that it will be for the benefit of the said lunatic's estate that the said contracts should be carried into effect, and that good titles can be made to the said lands and hereditaments so contracted to be purchased, then out of what fund the purchase-money for the same should be paid. And that the said Master may be at liberty to make a separate report or separate reports relating to all or any of the said matters, and to state any special circumstances, with his opinion thereon, to the Court; or that your Lordship will be pleased to make such further or other order in the premises as to your Lordship shall seem meet.

And your petitioners will ever pray, &c. (e).

(e) The substance of the order of reference is stated *ante*, p. 184.

Prayer of a Petition that the Committee may enter into a Contract for Purchase approved by the Master.

That your petitioner, as the committee of the estate of the said lunatic, may be at liberty, subject to the approbation of the Master, to enter into a contract or contracts for the purchase of one or both of the estates in the said report mentioned to be situate in &c., in the name and on the behalf of the said lunatic; and that the said estates when purchased may be deemed and considered as personal estate to the extent of the sum which may be raised by sale of the Bank Annuities standing in the name of the Accountant-General of the Court of Chancery on the credit of this matter.

Petition of Committee of the Estate, to confirm the Master's Report and to complete a Purchase.

IN the matter of —, a lunatic.

To the Right Honourable &c.

The humble petition of &c., the committees of the estate of the above-named lunatic.

SHWETH,

[*Statement of the order of reference to the Master as to purchase, and his report thereon, finding that it would be for the benefit of the said lunatic's estate that the contract for the purchase of lands should be carried into effect, that a good title could be made to the same, that the purchase-money should be paid by the committees out of the rents of the lunatic's estates, and the amount thereof charged upon the lands purchased and be considered as part of the said lunatic's personal estate*].

Your petitioners, therefore, most humbly pray your Lordship, that the said Master's said report, bearing date the — day of —, may be confirmed; and that your petitioners, as the committees of the estate of the said lunatic, may be at liberty on his behalf to complete the purchase of the said lands and hereditaments so as aforesaid contracted to be purchased of the said [*vendor*], and to pay the purchase-money for the same out of the rents and profits of the said estates of the said lunatic, and that they may be allowed the same on passing their accounts before the said Master; and that it may be referred back to the said Master to settle and approve of a proper conveyance of the said lands and hereditaments so contracted to be purchased of the said [*vendor*], and appoint two fit and proper persons to whom the said lands and hereditaments may be conveyed in trust for the said lunatic, the said conveyance to contain a declaration that the rents and profits of the estates of the said lunatic, to be applied in payment of the said purchase-money, shall

form a lien on the said lands and hereditaments so as aforesaid contracted to be purchased of the said [v^endor] in trust for the said lunatic, his executors, administrators, and assigns. And that it may also be referred to the said Master to tax your petitioners and the next of kin of the said lunatic their costs, charges, and expenses incurred in the purchase of the said lands and hereditaments from the said [v^endor], and in and about the application for the said order and consequent thereon, as between solicitor and client, and that the said costs, charges, and expenses, when taxed, may be paid by your petitioners out of the rents and profits of the said lunatic's estates, and be allowed them in passing their accounts before the said Master; or that your Lordship will be pleased to make such further or other order in the premises as to your Lordship shall seem meet.

And your petitioners shall ever pray, &c. (f).

PETITION OF A CURATOR.

For a Reference to the Master, to inquire whether the Party beneficially interested in Stock had been found a Lunatic (g).

IN the matter of —, Esq., of —, in the county of —, in Scotland, a lunatic.

To the Right Honourable &c.

The humble petition of —, [curator], of North Britain, lawful curator of the said [lunatic].

SHAWETH,

That, by an inquisition taken according to the usage and custom of Scotland (h), by the Sheriff Substitute of Aberdeenshire, pursuant to mandate, it was (among other things) found that the said [lunatic] was at the time of taking the same, and had been from the — day of —, *incompos mentis* and fatuous; and that the petitioner was the next of kin and lawful cousin on the paternal side of the said [lunatic], and was over and above the age of twenty-five years.

That, by a letter of gift of curatory, dated Edinburgh, the — day of —, under testimony of the seal ordained by the treaty of Union to be kept and used in Scotland in the place and stead of the Great Seal, your petitioner was made, constituted, and ordained lawful curator of the said [lunatic], and administrator of all and singular his lands, hereditaments, annual rents, possessions, and goods, moveable and immoveable.

Or, instead of the above allegations, the following statement of the appointment of a curator bonis—

(f) The substance of the order made for completing the purchase is stated, *ante*, p. 184.

(g) See *ante*, pp. 194, 196, 514.

(h) See *ante*, p. 30.

“ That, by an act and decret of the Court of Session in Scotland, bearing date the — day of —, and made upon the petition of [*names of the wife and children of the lunatic and two others*], the nearest collateral relations on the father's and mother's side of the family of the said [*lunatic*], after reciting, that for nearly two years past the mental faculties of the said [*lunatic*] had been considerably impaired, so much so, as to render him quite unfit for attending to any business, or for conducting his own affairs, and that he then continued in such state, as appeared by the medical certificates therein mentioned or referred to, and reciting, that the said lunatic was proprietor of the estate of —, in the county of Dumfries, and had vested part of his fortune in India Stock; and that it had been found that the said estate could not be managed beneficially, nor the dividends on the India Stock uplifted, without the aid of a curator *bonis*; and reciting, that the said petitioners, by their said petition, prayed that your petitioner might be appointed curator *bonis* to the said [*lunatic*], with the usual powers; and that such appointment should subsist until it should be competently recalled, your petitioner finding sufficient security before extract; and reciting, that the said petition had been read and considered by the Lords of Council and Session, on the — day of —; and that their Lordships had appointed the same to be intimated in the minute book, and on the walls for eight days; and that the said petition had been duly intimated in terms of the foresaid interlocutor; and reciting, that a bond of caution had been accordingly given in, the Lords of Council and Session did nominate and appoint your petitioner to be curator *bonis* (i) to the said [*lunatic*], with the usual powers, and did decern that, upon the ingiving of the aforesaid bond, which had been since given in, the said act and decret should be given out.”

That the said [*lunatic*] is entitled (amongst other things) to the sum of [*description of stock*], standing in his name, in the books of the Governor and Company of the Bank of England.

That your petitioner is desirous of having such stock transferred into his own name, and of receiving the dividends now due thereon.

Your petitioner, therefore, humbly prays your Lordship, that it may be referred to one of the Masters of the High Court of Chancery, to inquire whether the said [*lunatic*] has been declared a lunatic within the intent and meaning of an act of Parliament made and passed in the first year of the reign of his Majesty King William the Fourth, intituled ‘ An act, &c. [*title, ante*, p. 502]; and whether the personal estate of the said [*lunatic*] has become vested in your petitioner as curator [*or, curator bonis*], according to the laws of Scotland, where the said [*lunatic*] resides; and in case the said Master shall find that the said [*lunatic*] has been declared a lunatic, and that his personal estate has become vested in your petitioner

(i) See *ante*, p. 32.

as curator [*or, curator bonis*] as aforesaid, that some proper person may be appointed, either to transfer the said sum of £—— [*stock*], now standing in the name of the said [*lunatic*] in the books of the Bank of England as aforesaid, into the name of your petitioner, and to receive the dividends now due on the said stock, and make payment thereof to your petitioner, or to transfer the said sum of £—— [*stock*] into the name, and with the privity, of the Accountant-General of the said Court of Chancery, to the credit of an account to be intitled "The Account of ——, Esq., a lunatic," and to receive the dividends due on the said stock, and pay the same (the amount thereof to be verified by affidavit,) into the Bank, with the privity of the said Accountant-General, to the credit of a like account, or otherwise, as to your Lordship may seem meet.

And your petitioner shall ever pray, &c.

The substance of the usual order made on a petition of this kind is stated, *ante*, p. 195, the Master was also directed to inquire whether the curator had given security for the application of the stock.

PETITIONS RELATING TO LUNATIC TRUSTEES SO FOUND BY INQUISITION (j).

Petition for Reference to the Master, to inquire whether Lunatic is a Trustee.

IN the matter, &c.

To the Right Honourable &c.

The humble petition &c.

SH EWETH,

That—[*The inquisition of lunacy, and the appointment of committees, and the deed by which real estate was conveyed to the lunatic in trust for the petitioner, were stated*].

That the legal estate in fee simple of and in the said hereditaments and premises, comprised in the before-stated indentures of —— [*date*], is now, as your petitioner is advised, vested in the said [*lunatic*], as a trustee for your petitioner, within the intent and meaning of an act of Parliament, passed in the first year of the reign of his present Majesty King William the Fourth, intituled 'An act, &c. [*title, ante*, p. 517].

Your petitioner, therefore, most humbly prays, that your Lord-

(j) See *ante*, pp. 375—382.

ship will be pleased to refer it to the Master to whom this matter stands referred, to inquire and certify whether the said [*lunatic*] is a trustee or mortgagee, within the intent and meaning of the said act of Parliament, of the hereditaments and premises comprised in the indentures of [*date*] hereinbefore stated, and under what circumstances, and, if a trustee, for whom; and whether the said [*lunatic*] has any and what beneficial estate or interest in the said premises; or, that your Lordship will be pleased to make such further or other order in the premises as to your Lordship may seem just.

And your petitioner will ever pray, &c.

Order thereon.

That it be referred to —, Esq., the Master to whom this matter stands transferred, to inquire and certify whether the said [*lunatic*] be seised or possessed of the hereditaments and premises in the petition mentioned, or of any and what part or parts thereof, either alone or jointly with any other person or persons, and whom, upon any and what trust or trusts, or by way of any and what mortgage, and for whom, within the intent and meaning of an act passed, &c. [*title of act, ante, p. 517*]; and whether the said [*lunatic*] hath any and what beneficial estate or interest therein. And after the Master shall have made his report, such further order shall be made as shall be just; and let due notice of attending the said Master be given to the committee of the said lunatic's estate, and to all other parties interested in the matters aforesaid.



Petition of Parties beneficially interested in Estate, to confirm Master's Report, and for Conveyance by Committee of Lunatic of real Estate vested in him as Trustee.

IN the matter of —, a lunatic.

To the Right Honourable &c.

The humble petition &c.

SHewETH,

That—[*Statements—a will creating trusts; the order of reference, and the Master's report, finding that the lunatic was seised, jointly with other persons, of certain real estates; and that the lunatic was a trustee of the same premises, within the meaning of the act of Parliament, 11 Geo. 4 & 1 Will. 4, c. 60, for the petitioners; and that the said lunatic had not any beneficial estate or interest in the premises.*]

Your petitioners, therefore, humbly pray that the Master's said report may be confirmed, and that the said [*committee*] may be directed, by the order of your Lordship, in the place of the said [*lunatic*], to release and convey the said messuages,

so vested in him as aforesaid, and all his estate, right, title, and interest in and to the same, unto your petitioners the said —, their heirs and assigns, or as they shall direct or appoint, in manner hereinbefore mentioned, or otherwise; or that your Lordship will make such further or other order in the premises as to your Lordship shall seem meet.
And your petitioners, &c.

Order thereon.

That the Master's said report be confirmed. And I do hereby further order, that upon payment by the petitioners of the costs and expenses of —, the committee of the said [*lunatic's*] estate, incurred in and about the order of reference made in this matter on the — day of —, and of this application and consequent thereon, such costs, charges, and expenses to be taxed by —, the Master to whom this matter stands referred, in case the parties differ about the same; and that the said —, as such committee, do in the place and on the behalf of the said [*lunatic*], join with —, the surviving co-trustees named in the said report, and with all other necessary parties, if any, and in such manner as the said petitioners shall nominate, direct, or appoint, in releasing, conveying, and assuring the hereditaments and premises mentioned in the said report, of which the said [*lunatic*] is found to be seised or possessed jointly with the said [*other trustees*] as therein also mentioned, and all the estate, right, title, and interest whatsoever of the said [*lunatic*] therein or thereto, unto and to the use of the said petitioners, the purchasers thereof, their heirs and assigns, or to such person or persons, and in such manner, as they shall direct or appoint.

Petition for the Appointment of New Trustees of Stock in the Place of a Lunatic (k).

IN the matter of —, a lunatic.

To the Right Honourable &c.

The humble petition of [*the committee of the person and estate of the lunatic, and of the parties beneficially interested in stock.*]

SHREWETH,

That—[*Statements—a will creating trusts of stock, and other facts, shewing who were the parties beneficially interested, and the trustees of the funds; that certain sums of stock were then standing in the lunatic's name, and in the name of trustees who had declined to act; the commission of lunacy, and the appointment of a committee of the person and estate.*]

(k) See *ante*, pp. 386—389.

Your petitioners, therefore, humbly pray your Lordship, that it may be referred to one of the Masters of the High Court of Chancery, to approve of a proper person or persons to be appointed new trustee or trustees under the said will, in lieu of the said deceased trustees and the said surviving trustee, who declined to act as aforesaid, and that such person or persons may be appointed accordingly; and that the said —, as such committee as aforesaid, and the said [*another trustee*], may be directed to receive the dividends accrued due on the said sums of [*the stock*]; and that the said [*committee*] may be further directed to receive the dividends on the said sum of [*the stock*]; and that they may be respectively ordered to pay over the same to such new trustees as aforesaid, and also, to transfer the said several sums of [*stock*], standing in the names of the said lunatic and the said [*other trustees*], as such surviving trustees as aforesaid, and in the name of the said [*lunatic*] alone, into the names of such new trustees as aforesaid, as trustees under the will of the said [*testatrix*]; and that the costs of this application may be directed to be paid out of the dividends accrued or to accrue due on the said Bank Annuities; or that your petitioners may have such further and other relief as to your Lordship shall seem meet, and the circumstances of their case may require.

And your petitioners shall ever pray &c.

Order thereon.

That it be referred to —, the Master to whom this matter stands referred, to inquire and certify whether the £—— [*stock*], mentioned in the said petition to be standing in the books of the Governor and Company of the Bank of England, are standing in the name of the said lunatic, or vested in him either alone or jointly with any other person or persons, and whom, as a trustee or trustees, upon any and what trust or trusts, and for whom, within the intent and meaning of an act of Parliament made and passed in the first year of the reign of his present Majesty King William the Fourth, intituled ‘An act, &c. [*title, ante, p. 517*]; and whether the said lunatic hath any and what beneficial interest therein, and whether there are any and what incumbrances affecting the same; and in case the said Master shall find the said funds to be standing in the name of the said lunatic alone, as such trustee as aforesaid, or jointly with any other person or persons as trustees, who may be since dead, or who are unwilling or incapable to act in the trusts of the will of the said testatrix —, mentioned in the said petition; then I do hereby order that the said Master do inquire and certify whether there is any power or authority in, by, or under the said will of the said testatrix —, to appoint a new trustee or new trustees of the stock or trust funds hereinbefore mentioned, and by whom and by whose direction such power or authority (if any) has been or ought to be exercised; and whether any

and what person or persons have been duly appointed a new trustee or new trustees jointly with the said lunatic, in pursuance of such power or authority, (if any); and whether such person or persons as he may find to have been so appointed, is or are living, and willing and capable to act in the trusts of the said will; but if the said Master shall find that there is no such power or authority in the said will, by virtue whereof a new trustee or trustees can now be appointed in the room of the said [lunatic], then I do hereby further order, that he do inquire and certify who is or are the most fit and proper person or persons to be appointed trustee or trustees of the said funds in the room of the said lunatic; and let due notice of attending the said Master be given to the committee of the estate of the said lunatic, and to all other persons interested in the matters aforesaid.

Petition of the Committee and of the Parties beneficially interested in Stock, to confirm the Master's Report, made in Pursuance of the preceding Order.

IN the matter &c.

To the Right Honourable &c.

The humble petition &c.

SH EWETH,

That—[*Statements—Of the last order of reference—the Master's report finding several facts, and that the lunatic was a trustee of certain funds within the act of the 1 Will. 4, c. 60; that he had no beneficial interest therein; that the only incumbrance affecting the said trust fund was an annuity of £——, directed to be paid half yearly to ——; that three of the trustees were dead, and two others unwilling to act; and that the said lunatic had become incapable to act; that there was no power to appoint new trustees, and that the petitioners had proposed two trustees in the room of the lunatic; and, the said committee having deposed that they were parties of considerable respectability and some property, and that in his judgment they were proper persons, from their responsibility and knowledge of the parties, to be such trustees, and that they were willing to accept the trust;—and that the said Master was of opinion that the two trustees proposed were the most proper persons to be appointed trustees in the room of the lunatic.*]

Your petitioners, therefore, humbly pray your Lordship, that the Master's said report, bearing date the —— day of ——, may be confirmed; and that your Lordship will be pleased to appoint the said [*new trustees*] to be new trustees under the said will of the said [*testatrix*], in lieu of the deceased and unwilling trustees and of the said lunatic, and to discharge the said lunatic and the said [*other trustees*] from the trusts thereof; and further, to order [*committee*], as such committee of the said lunatic, to receive the dividends which are or shall

have become due prior to the transfer after mentioned on the said sum of £—— Bank Four *per cent* Annuities, so standing in the name of the said lunatic alone; and also, as such committee as aforesaid, to concur with the said [*other trustees*] in receiving the dividends, which are or shall have become due prior to their transfer, on the said several sums of [*other stock*] so standing in the names of the said [*lunatic*] and the said [*other trustees*], as survivors, in a joint account with ——, and in paying over the said dividends to your petitioners, the said [*parties interested*]; and that your Lordship will be pleased further to order the said [*committee*], as such committee, to transfer, and the said [*other trustees*] to concur in transferring the said three several sums of Bank Annuities lastly hereinbefore mentioned, from the names of the said lunatic and of the said [*other trustees*], into the names of the said [*new trustees*], as such new trustees as aforesaid, under the will of the said [*testatrix*]; and that it may be referred to ——, the Master to whom this matter is referred, to tax the reasonable and proper costs and expenses of your petitioners in obtaining the order of the —— day of —— [*reference*], and of the proceedings consequent thereon, and of this application and incident thereto, and also the costs of the said [*committee*] of the said lunatic; and that what the said Master shall certify to be the amount of such costs and expenses, when taxed, may be paid to the solicitors of your petitioners and the said committee by the said [*new trustees*]; and that they may be at liberty to sell so much of the said £—— Bank Four *per cent*. Reduced Annuities, as they shall find requisite to raise a sufficient sum to answer such payments; and that the proper officers of the Governor and Company of the Bank of England do permit such respective receipts of dividends, transfers, and sales accordingly; or that your Lordship will be pleased to make such other order in the premises as to your Lordship shall seem fit.

And your petitioners shall ever pray &c.

Order thereon.

That the Master's said report be confirmed; that a proper release and indemnity, or proper releases and indemnities of the said [*lunatic*] and his estate and effects, against any claims arising under the will of the said [*testatrix*], mentioned in the said report, be given and executed to the said [*lunatic*], and to [*committee*], as the committee of his estate, by such of the parties claiming to be entitled to any share or shares, right or interest, under or by virtue of the said will, as under the circumstances the said Master shall approve; such release and indemnity, or releases and indemnities, to be settled and approved by ——, the Master to whom this matter stands referred, in case the parties

differ about the same (1). And I do think fit, and hereby appoint [*new trustees*], respectively named in the said report, to be new trustees of the trust funds and premises hereinafter mentioned, in the room of the said [*lunatic*] and the said [*other trustees*], therein also named. And I do hereby order, that the said [*committee*], as such committee as aforesaid, do, upon such release and indemnity being given as aforesaid, transfer the £—— [*stock*] mentioned in the said report to be standing in the name of the said lunatic alone, in the books of the Governor and Company of the Bank of England; and do also join with the said [*other trustees*] in transferring the £—— [*other stock*] mentioned in the said report to be standing in the name of the said [*lunatic*] and the said [*other trustees*], as survivors in a joint account with ——, both deceased, into the names of the said [*new trustees*], as such trustees as aforesaid, to be by them respectively held and applied upon the trusts, and to and for the ends, intents, and purposes mentioned, expressed, and declared of and concerning the same, in and by the will of the said [*testatrix*] hereinbefore mentioned. And I do hereby further order, that the said [*committee*], as such committee as aforesaid, do receive the dividends due and to accrue due on the said £—— [*stock*] previously to the respective transfers thereof hereinbefore directed, and do pay the same to [*the tenant for life*] named in the said report. And I do hereby further order, that it be referred to ——, the Master to whom this matter stands referred, to tax the reasonable and proper costs, charges, and expenses of the petitioners, and of the committee of the estate of the said lunatic, incurred in and about the obtaining the order made in this matter on the —— day of —— last, and of the proceedings consequent thereon, and of this application and incident thereto. And I do hereby further order, that what the said Master shall certify to be the amount of such costs and expenses when taxed, be raised the said [*new trustees*], as such new trustees as aforesaid, by sale of a sufficient part of the said £—— [*stock*], when transferred into their names as hereinbefore directed. And I do hereby further order, that the same, when so raised, be paid by the said [*new trustees*] to the solicitors of the said petitioners and of the said committee; and let due notice of attending the said Master be given to the said committee, and to all parties interested.

(1) See form of a similar release, post.

PETITIONS RELATING TO LUNATIC TRUSTEES AND
MORTGAGEES, NOT FOUND SUCH BY
INQUISITION (m).



Petition for a Reference to the Master, and for the Appointment of a Person to convey Lands on behalf of a Lunatic Trustee.

IN the matter of [*the trustee*], a person of unsound mind, not found such by inquisition.

To the Right Honourable the Lord High Chancellor of Great Britain.

The humble petition of — [persons beneficially interested.]

SHEWETH,

That—[*Statement of the instruments creating the trusts, and how the legal estate in the property had become vested in the trustee, and the beneficial interest in the petitioners.*]

That the said [*trustee*] is now, and has been for many years past, a lunatic, and in confinement as such in the city of York, but no commission in the nature of a writ *de lunatico inquirendo* has ever issued to inquire of the state of mind of the said [*trustee*].

That your petitioners are desirous of having the legal estate of and in the said hereditaments, which remains vested in the said [*trustee*], conveyed to your petitioners according to their respective interests therein.

Your petitioners, therefore, most humbly pray, that your Lordship will be pleased to appoint some proper person in the place of the said [*trustee*], to convey in such manner as your Lordship shall think fit, the hereditaments and premises now vested in the said [*trustee*] as aforesaid, to your petitioners respectively, as your petitioners respectively shall appear to be entitled to the same hereditaments and premises; or that your Lordship will make such further or other order in the premises as to your Lordship shall seem just.

And your petitioners will ever pray, &c.

Order thereon.

That it be referred to the Master in rotation of the High Court of Chancery, to inquire and certify whether the said [*trustee*] is an idiot, lunatic, or of unsound mind; and in case the said Master shall find the said [*trustee*] to be an idiot, lunatic, or of unsound mind, then he is to inquire and certify whether he is seised or possessed of the hereditaments and premises comprised in the indentures of lease and release of the — and — days of —, in the said

(m) See *ante*, pp. 382—386.

petition mentioned, or of any and what part or parts thereof, either alone or jointly with any other person or persons, and whom, as a trustee or trustees, upon any and what trusts, or by way of any and what mortgage, and for whom, within the intent and meaning of an act of Parliament made and passed in the first year of the reign of his present Majesty King William the Fourth, intituled, 'An act, &c. [*title, ante, p. 517*]. And whether the said [*trustee*] hath any and what beneficial estate or interest in the said hereditaments and premises, or in any and what part or parts thereof. And in case the said Master shall find the said [*trustee*] to be such trustee, then he is to inquire and certify who is or are a fit and proper person or persons to be appointed on the behalf of the said [*trustee*] being so idiot, lunatic, or of unsound mind, and in his name to convey and assign the said hereditaments and premises, or interest, whereof he may be found to be so seised; and after the said Master shall have made his report, such further order shall be made as shall be just; and let due notice of attending the said Master be given to all parties interested in the matters aforesaid.

◆

Petition to confirm the Master's Report, finding —, a Trustee, to be of unsound Mind; and to appoint a Person to convey in his place.

IN the matter &c.

To the Right Honourable &c.

The humble petition &c.

SHEWETH,

That, by an order made by your Lordship in this matter, on the petition of your petitioner, bearing date the 24th day of March, 1831, it was ordered, that it should be referred to the Master in rotation of the High Court of Chancery, to inquire [*the last order of reference was recited*].

That in pursuance of the said order, —, the said Master in rotation to whom this matter was thereby referred, made his report, bearing date the 31st day of August, 1831, and thereby certified that he had been attended by the solicitor for the petitioner, and had proceeded on the said reference; for which purpose an office copy of the will of —, and divers deeds hereinafter referred to, and the affidavits thereinafter stated, had been produced and read before him; and he found [*the will creating the trusts, and the affidavits, were here set forth*]. And upon consideration of the matters thereinbefore set forth, and of what had been alleged before him, touching the same, by the solicitor for the petitioner, the said Master was of opinion, and did find, that the said [*trustee*] was a person of unsound mind, and that he was seised or possessed of the hereditaments and premises comprised in the indenture of — thereinbefore and in the said petition mentioned, jointly with the said petitioner —, upon

the trusts mentioned and declared in and by the will of the said —, thereinbefore in part set forth concerning the same hereditaments and premises; and that he was such trustee within the intent and meaning of the act of Parliament made and passed in the first year of the reign of his present Majesty King William the Fourth, intituled 'An act, &c. [title, ante, p. 517]; and he found, that the said [trustee] had not any beneficial estate or interest in the said hereditaments and premises, or any part thereof. And he also certified, that a proposal had been laid before him on the behalf of the petitioner, whereby [nominee], of —, Gent., was proposed as a proper person to be appointed on behalf of the said [lunatic trustee], and in his name, to convey and assure the said hereditaments and premises; and that he had considered the said proposal, and did approve thereof; and he did, therefore, find that the said [nominee] was a fit and proper person to be appointed on behalf of the said [lunatic trustee] being so of unsound mind, and in his name to convey and assure the said hereditaments and premises whereof he was so seised as aforesaid, &c.

Your petitioner, therefore, humbly prays your Lordship, that the Master's said report, bearing date the 31st day of August, 1831, may be absolutely confirmed, and that [nominee], of &c., may be directed and appointed by your Lordship, as a fit and proper person on behalf of the said [lunatic trustee], being so of unsound mind, as in the said report mentioned, and in his place, to convey and assure, or join in conveying and assuring, the hereditaments and premises whereof he is so seised as in the said report also mentioned, to the uses, upon the trusts, and for the intents and purposes limited, expressed, and declared of and concerning the same, in and by the said will of the said [testator]; or that your Lordship will be pleased to make such further or other order in the premises as to your Lordship shall seem just.

And your petitioner shall ever pray, &c.

Order thereon upon hearing counsel for the petitioner and the trustee.

That the Master's said report be confirmed. And I do hereby appoint [nominee], of —, Gent., in the said report named, in the place of the said [lunatic], being of unsound mind as therein mentioned, to convey and assure. And I do hereby direct the said [nominee], in the place of the said [lunatic], to convey and assure, and to join with all necessary parties in conveying and assuring, the hereditaments and premises whereof the said [lunatic] is found to be seised, as in the said report mentioned, unto the said [new trustee], to the uses, upon the trusts, and for the ends, intents, and purposes, limited, expressed, and declared, of and concerning the same, in and by the will of the said [testator] in the said report mentioned.

petition mentioned, or of any and what part or parts thereof, either alone or jointly with any other person or persons, and whom, as a trustee or trustees, upon any and what trusts, or by way of any and what mortgage, and for whom, within the intent and meaning of an act of Parliament made and passed in the first year of the reign of his present Majesty King William the Fourth, intituled, 'An act, &c. [*title, ante, p. 517*]. And whether the said [*trustee*] hath any and what beneficial estate or interest in the said hereditaments and premises, or in any and what part or parts thereof. And in case the said Master shall find the said [*trustee*] to be such trustee, then he is to inquire and certify who is or are a fit and proper person or persons to be appointed on the behalf of the said [*trustee*] being so idiot, lunatic, or of unsound mind, and in his name to convey and assign the said hereditaments and premises, or interest, whereof he may be found to be so seised; and after the said Master shall have made his report, such further order shall be made as shall be just; and let due notice of attending the said Master be given to all parties interested in the matters aforesaid.

◆

Petition to confirm the Master's Report, finding —, a Trustee, to be of unsound Mind; and to appoint a Person to convey in his place.

IN the matter &c.

To the Right Honourable &c.

The humble petition &c.

SHewETH,

That, by an order made by your Lordship in this matter, on the petition of your petitioner, bearing date the 24th day of March, 1831, it was ordered, that it should be referred to the Master in rotation of the High Court of Chancery, to inquire [*the last order of reference was recited*].

That in pursuance of the said order, —, the said Master in rotation to whom this matter was thereby referred, made his report, bearing date the 31st day of August, 1831, and thereby certified that he had been attended by the solicitor for the petitioner, and had proceeded on the said reference; for which purpose an office copy of the will of —, and divers deeds hereinafter referred to, and the affidavits thereinafter stated, had been produced and read before him; and he found [*the will creating the trusts, and the affidavits, were here set forth*]. And upon consideration of the matters thereinbefore set forth, and of what had been alleged before him, touching the same, by the solicitor for the petitioner, the said Master was of opinion, and did find, that the said [*trustee*] was a person of unsound mind, and that he was seised or possessed of the hereditaments and premises comprised in the indenture of — thereinbefore and in the said petition mentioned, jointly with the said petitioner —, upon

the trusts mentioned and declared in and by the will of the said —, thereinbefore in part set forth concerning the same hereditaments and premises; and that he was such trustee within the intent and meaning of the act of Parliament made and passed in the first year of the reign of his present Majesty King William the Fourth, intituled 'An act, &c. [title, ante, p. 517]; and he found, that the said [trustee] had not any beneficial estate or interest in the said hereditaments and premises, or any part thereof. And he also certified, that a proposal had been laid before him on the behalf of the petitioner, whereby [nominee], of —, Gent., was proposed as a proper person to be appointed on behalf of the said [lunatic trustee], and in his name, to convey and assure the said hereditaments and premises; and that he had considered the said proposal, and did approve thereof; and he did, therefore, find that the said [nominee] was a fit and proper person to be appointed on behalf of the said [lunatic trustee] being so of unsound mind, and in his name to convey and assure the said hereditaments and premises whereof he was so seised as aforesaid, &c.

Your petitioner, therefore, humbly prays your Lordship, that the Master's said report, bearing date the 31st day of August, 1831, may be absolutely confirmed, and that [nominee], of &c., may be directed and appointed by your Lordship, as a fit and proper person on behalf of the said [lunatic trustee], being so of unsound mind, as in the said report mentioned, and in his place, to convey and assure, or join in conveying and assuring, the hereditaments and premises whereof he is so seised as in the said report also mentioned, to the uses, upon the trusts, and for the intents and purposes limited, expressed, and declared of and concerning the same, in and by the said will of the said [testator]; or that your Lordship will be pleased to make such further or other order in the premises as to your Lordship shall seem just.

And your petitioner shall ever pray, &c.

Order thereon upon hearing counsel for the petitioner and the trustee.

That the Master's said report be confirmed. And I do hereby appoint [nominee], of —, Gent., in the said report named, in the place of the said [lunatic], being of unsound mind as therein mentioned, to convey and assure. And I do hereby direct the said [nominee], in the place of the said [lunatic], to convey and assure, and to join with all necessary parties in conveying and assuring, the hereditaments and premises whereof the said [lunatic] is found to be seised, as in the said report mentioned, unto the said [new trustee], to the uses, upon the trusts, and for the ends, intents, and purposes, limited, expressed, and declared, of and concerning the same, in and by the will of the said [testator] in the said report mentioned.

Petition for a Reference to appoint New Trustees of Stock in the Place of a Lunatic Trustee.

IN the matter of [*lunatic trustee*], a person of unsound mind, not found such by inquisition.

To the Right Honourable &c.

The humble petition of — [the parties beneficially interested].

SHEWETH,

That—[*A will creating the trusts of certain stock was stated.*]

That there is now standing in the names of [*deceased trustees and the lunatic trustee*], upon the trusts of the said will, the sums of £—— [*stock*] hereinafter mentioned, (that is to say), [*the sums should be stated*].

That the said [*lunatic trustee*] is now of unsound mind, though not found such by inquisition, and incapable of executing the trusts reposed in her by the said will.

That the said several sums of [*stock*] have never been transferred in pursuance of the will of the said testatrix, to the trustees hereinbefore mentioned, but still continue in the name of the said [*lunatic trustee*], in the books of the Governor and Company of the Bank of England.

Your petitioners, therefore, most humbly pray, that your Lordship will be pleased to direct, that it may be referred to one of the Masters of the High Court of Chancery, to inquire and certify whether the said [*lunatic trustee*] is possessed of the said [*stock*], as a trustee of unsound mind within the intent and meaning of an act of Parliament, passed in the first year of the reign of his present Majesty King William the Fourth, intituled, 'An act, &c. [*title, ante, p. 517*]. And also to inquire and certify who is or are the most fit and proper person or persons to be appointed a trustee or trustees in the room of the said [*lunatic trustee*], in such of the trusts hereinbefore mentioned and set forth, as to which she has become the sole surviving trustee; or that your Lordship will be pleased to make such further or other order in the premises as to your Lordship shall seem meet.

And your petitioners will ever pray, &c.

Order thereon.

That it be referred to the Master in rotation of the High Court of Chancery, to inquire and certify whether the said [*lunatic trustee*] is an idiot, lunatic, or of unsound mind; and in case the said Master shall find the said [*lunatic trustee*] to be an idiot, lunatic, or of unsound mind, then he is to inquire and certify whether she is possessed of the several stocks, funds, annuities, or securities, mentioned in the petition to have been bequeathed by the will of [*testator*], deceased, therein named, or of any or either, and which,

of them, or of any and what part or parts thereof, either alone or jointly with any other person or persons, and whom, as a trustee or trustees, upon any and what trust or trusts, and for whom, within the intent and meaning of the act of Parliament made and passed in the first year of the reign of his present Majesty King William the Fourth, intitled 'An act, &c. [title, ante, p. 517]. And whether the said [lunatic trustee] hath any, and what, beneficial interest in the said stocks, funds, annuities, or securities, or in any or either and which of them, or in any and what part or parts thereof, and whether there are any and what incumbrances affecting the same; and in case the said Master shall find the said [lunatic trustee] to be possessed of the said stocks, funds, annuities, or securities, or any or either of them, or of any part or parts thereof alone as such trustee as aforesaid, or jointly with any other person or persons as trustees, who are dead, or are unwilling or incapable to act in the trusts of the said will of the said [testator], then I do hereby further order, that the said Master do inquire and certify whether there is any and what power or authority in, by, or under the said will of the said [testator], to appoint a new trustee or new trustees of the stocks, funds, annuities, or securities hereinbefore mentioned. But if the said Master shall find that there is no such power or authority in, by, and under the said will, by virtue whereof a new trustee can now be appointed in the room of the said [lunatic]; then I do hereby further order, that he do inquire and certify who is or are the most fit and proper person or persons to be appointed trustee or trustees of the said funds in the room of the said [lunatic trustee]. And after the said Master shall have made his report, such further order shall be made as shall be just; and let due notice of attending the said Master be given to all parties interested in the matters aforesaid.



Petition of the Parties beneficially interested in Stock, to confirm the Master's Report as to the Appointment of New Trustees, and for the Transfer of Stock, and Payment of Dividends, and the Costs of the Petitioners.

IN the matter of &c.

To the Right Honourable &c.

The humble petition &c.

SHEWETH,

That by an order [the last reference to the Master].

That —, Esq., the Master in rotation to whom this matter stands referred, made his report, bearing date the — day of —, and thereby certified, that &c. [the Master's report finding the party a lunatic; that stock was standing in the name of —, deceased trustees and the lunatic; and that the same was vested in the lunatic trustee, as surviving trustee under a will, upon the trusts therein contain-

ed, for the benefit of the petitioners; that the lunatic was such trustee for the petitioners under the act of Parliament in the said order mentioned; and that the Master did not find that the said lunatic trustee had any beneficial interest therein, nor that there were any incumbrances affecting the same, save and except an assignment to —, nor that there was any power or authority under the said will to appoint a new trustee; and the Master's opinion, that the persons proposed as new trustees were the most proper persons to be appointed trustees of the stock in the room of the said lunatic].

Your petitioners, therefore, humbly pray your Lordship, that the Master's said report may be absolutely confirmed, and that the said [*new trustees*] may be appointed to be new trustees in the place of the said [*deceased trustees and lunatic trustee*], of the said sum of [*stock*], so as aforesaid standing in the names of the said [*deceased trustees and the said lunatic trustee*]; and that the Secretary or Deputy Secretary, or Accountant-General for the time being, of the Governor and Company of the Bank of England, may be ordered to transfer the said [*stock*] into the joint names of the said [*new trustees*], upon the trusts, and for the intents and purposes, in and by the said will of the said [*testator*] expressed and declared of and concerning the same; [*or, "and that —, one of the officers of the South Sea House Company, may join and concur, in the place and in the name of the said [lunatic trustee], in transferring the said £— South Sea Stock, and £— South Sea Annuities, into the like names, and upon the like trusts"*]. And that the dividends now due and hereafter to become due on the said [*stock*], may be received by the said [*new trustees*], and paid according to the trusts of the said will of the said [*testator*]; and that it may be referred back to the said Master to tax your petitioners their costs and expenses of this application and incident thereto; and that the said [*new trustees*], on the said transfer [*or "such transfers"*] being made to them as aforesaid, may, by sale of a competent part of the said [*stock*], raise the amount of such costs and expenses, when taxed by the said Master, and pay the same to your petitioners; or &c.

And your petitioners &c.

Order thereon.

That the Master's said report be confirmed. And I do hereby appoint [*new trustees*], respectively named in the said report, to be new trustees of the trust funds and premises hereinafter mentioned, in the place of the said [*lunatic trustee*]. And I do hereby further order, that the Secretary or Deputy Secretary, or Accountant-General or Deputy Accountant-General for the time being of the Governor and Company of the Bank of England, do forthwith transfer the [*stock*] now standing in the names of the said [*old trustees and lunatic*], in the books of the said Governor and Company, by their description of — [*as in the Bank Books*], into the

names of the said [new trustees], as such new trustees as aforesaid, to be by them respectively held and applied upon the trusts, and to and for the ends, intents, and purposes mentioned, expressed, and declared, of and concerning the same, in and by the will of the said [testator] named in the said report. And I do hereby further order, that the said Secretary or Deputy Secretary, or Accountant-General or Deputy Accountant-General, or one of the Cashiers for the time being of the said Governor and Company of the said Bank of England, do receive the dividends now due and to accrue, due on the said [stock] previous to the transfer thereof as hereinbefore directed, and pay the same to the said [new trustees], as such new trustees as aforesaid, to be by them respectively applied according to the trusts of the said will. And I do think fit, and hereby further order, that it be referred to —, the Master to whom this matter stands referred, to tax the petitioners their reasonable and proper costs and expenses of this application, and incident thereto and consequent thereon. And I do hereby further order, that the said [new trustees] be at liberty to raise the amount of the said costs and expenses when so taxed, by sale of so much of the said [stock] when so transferred into their names as aforesaid, as will be sufficient for the purpose; and that they do pay the same when so received to —, the solicitor for the said petitioners (n).

Petition of Persons entitled to the Equity of Redemption of an Estate, for Payment of Mortgage Money, and Assignment of Term.

IN the matter of —, a person of unsound mind, not found such by inquisition.

To the Right Honourable &c.

The humble petition &c., [two persons entitled to the equity of redemption of an estate mortgaged].

SHWETH,

That by indenture, bearing date &c. [a mortgage for 400*l.* and interest, was stated.]

That the said [mortgagee] has been for some years past, and now is, a lunatic, and incapable of managing his affairs, and has been for some time, and now is, confined in the York Lunatic Asylum, but no commission of lunacy has issued against him.

That the said [mortgagee] is a bachelor, and —, of &c., is his brother and sole next of kin; and during the lunacy of the said [mortgagee], the said [brother] has managed the affairs of the said [mortgagee].

That the interest upon the said mortgage debt of 400*l.* was paid to the said [mortgagee] until his lunacy, and since his lunacy the same has been paid to the said [brother] for the use of the said [mortgagee], and has been applied for his maintenance.

(n) *In re Robertson*, 19th August, 1831.

That the principal and interest now due to the said [*mortgagee*], on the said mortgage security, is considerably less than 700*l*.

That your petitioners are desirous of paying off the principal and interest due on the said mortgage security, and of having the legal estate therein for the residue of the said term of 2000 years, now vested in the said [*mortgagee*], reassigned to them; and, for that purpose, that the said [*brother*], or such other person as your Lordship may approve, may be appointed to receive the principal and interest due on the said mortgage, and to reassign the legal estate in the said hereditaments and premises, for the remainder of the said term of 2000 years, under and by virtue of the powers in that behalf contained in an act of Parliament, passed in the first year of the reign of his present Majesty, intituled 'An act, &c. [*title of act, ante, p. 517*].

Your petitioners, therefore, humbly pray your Lordship, that it may be referred to one of the Masters of the High Court of Chancery, to inquire and certify whether the said [*mortgagee*] is a mortgagee of the said hereditaments and premises, within the intent and meaning of the said act of Parliament, and to approve of a proper person to convey or assign the same premises, and to receive the principal and interest due on the said mortgage, in the name and on the behalf of the said [*mortgagee*]; or that your Lordship will be pleased to make such further or other order in the premises as to your Lordship may seem meet.

And your petitioners will ever pray, &c. (o).

Petition to confirm Master's Report, finding a Mortgagee beneficially interested, to be of unsound Mind, and appointing a Person to receive the Mortgage Money, and to convey on his behalf.

IN the matter of [*mortgagee*], a person of unsound mind, but not found such by inquisition.

To the Right Honourable &c.

The humble petition of [*two persons entitled to the equity of redemption of an estate mortgaged*].

SHEWETH,

That, by an order made by your Lordship in this matter, bearing date the — day of —, —, upon the petition of the above-named petitioners, it was ordered &c. [*The order was stated*].

That —, Esq., the Master in rotation to whom this matter stands referred, by his report, bearing date the — day of —, —, certified that he had been attended by the solicitor of the petitioners, and he found, by the affidavit of —, sworn the — day of — last, and the affidavit of —, also sworn on the said — day of — last, that the said [*mortgagee*] was of unsound mind.

(o) The form of an order made on a conveyance, *post*, p. 771. The substance of such an order is stated, *ante*, p. 384.

And that, by an indenture, bearing date the — day of —, —, and made between &c. [*The mortgage deed was here stated, and also the will of the mortgagor, devising the equity of redemption to the petitioners, and the finding of the Master as recited in the reconveyance, post, p. 771*].

Your petitioners, therefore, humbly pray your Lordship, that the Master's said report may be absolutely confirmed, and that the said [*brother*] may be appointed to receive the said sum of 428*l.* on behalf of the said [*mortgagee*], and to convey or assign the said hereditaments and premises in the name and on the behalf of the said [*mortgagee*] to your petitioners, or in trust for them, or as they may direct; and that on payment of the said mortgage money and interest to the said [*brother*], he may be ordered to convey or assign the said premises in the said report mentioned, unto and to the use of the said [*the petitioners*], their heirs and assigns, or unto such person or persons, and in such manner, as they may direct or appoint; and that it may be referred to the said Master to tax the costs and expenses of your petitioners incurred by this application and the former petition, and by the said reference and incidental thereto; and that your petitioners may be at liberty to retain such costs and expenses out of the said sum of 428*l.*; or that your Lordship will be pleased to make such further or other order in the premises as to your Lordship shall seem just.

And your petitioners will ever pray, &c.

Order thereon.

Whereupon I ordered all parties concerned to attend me on the matter of the said petition, on the then next day of petitions, whereof notice was to be given forthwith; and the matter of the said petition coming on to be heard before me on this day, in the presence of —, of counsel for the petitioners, and of —, of counsel for [*the mortgagee*], named in the said petition—Now, upon hearing the said petition, and the Master's report, bearing date the — day of —, —, read, and what was alleged by the counsel aforesaid, I do think fit and hereby order, that the Master's said report be confirmed. And it appearing to me from the said report, that the said [*mortgagee*] is a mortgagee of the hereditaments and premises therein mentioned, within the intent and meaning of the act of Parliament made and passed in the first year of the reign of his present Majesty, King William the Fourth, intituled '*An act, &c. [title of act, ante, p. 517]*'; and that the said [*mortgagee*] is of unsound mind, within the true intent and meaning of the said act; I do hereby appoint &c. (*p*).

(*p*) The order is recited in the reconveyance, *post*, p. 772. And the substance of it is stated, *ante*, p. 384. In a recent case, after some argument, Lord Broug-

ham ordered the costs (except of the reconveyance), to be paid out of the mortgage money. *In re Brearley*, 24th July, 1832.

GENERAL ORDERS IN LUNACY.

I.

Order of Court concerning Idiots and Lunatics, &c.

Monday, 23rd July, 1655.—It is this day ordered, that no order, affidavit, or certificate, touching or concerning any idiot, lunatic, or *non compos*, shall be made use of in this Court, unless the same be filed with Mr. Shadwell, the Clerk of the Custodies, within the space of five days inclusive next after the several and respective dates of such orders, affidavits, and certificates (q).

II.

25th day of July, 1792.—The Lords Commissioners for the custody of the Great Seal, this day taking into their consideration the necessity of having the accounts of the committees and receivers of lunatics' estates regularly passed, and the means of preventing such accounts from running into arrear, do think fit and hereby order, that the Masters of the Court of Chancery do, on the last seal after Trinity Term in every year, certify to the Lord Chancellor, Lord Keeper, or Lords Commissioners of the Great Seal, for the time being, the state of the several committees' and receivers' accounts in their respective offices; and do hereby further direct, that this order be forthwith published and set up in all offices belonging to the Court of Chancery (r).

JA. EYRE, C. S.
W. H. ASHURST.

III.

The Lord Chancellor directs that all petitions for commissions of lunacy be signed by the petitioners, and attested by a solicitor of the Court. That no allowance be made for dinners to juries on the execution of commissions; and that all copies of petitions be carefully and accurately examined before the same are left at this office.

Secretary of Lunatics' Office, May, 1827.

IV.

The Lord Chancellor directs that no petition relating to *Lunatic Trustees*, under the act 1 Will. 4, c. 60, be brought on for hearing, unless *two days' notice* shall have been given to his Lordship's Secretary of Lunatics, and to all parties interested.

Secretary of Lunatics' Office, 23rd Feb. 1832.

(q) Reg. Lib. B. 1654, fol. 1216. ally. Harr. Ch. by Newl. p. 504. Reg.
(r) Beames' Orders, p. 453. See a Lib. B. 1792, fol. 33. Beames' Orders,
general order, 15th December, 1792, as p. 454.
to receivers passing their accounts annu-

LEASES AND CONVEYANCES OF LUNATICS' ESTATES (s).

LEASES.

Lease granted by the Committees of the Estate of a Lunatic, of Messuages and Land, of which he was seised in Fee.

THIS INDENTURE, made &c. between —, a lunatic, of the first part; [two committees] (t), the committees of the person and estate of the said [lunatic], of the second part; and [lessee] of the third part. WHEREAS, in pursuance of an order made by the Lord High Chancellor of Great Britain, bearing date on or about the — day of —, a commission in the nature of a writ *de lunatico inquirendo* was awarded and issued, directed to certain commissioners therein named, to inquire of the lunacy of the said [lunatic]. And by an inquisition taken by virtue of the said writ, on or about the — day of —, it was found that the said [lunatic] was then a lunatic, and did not enjoy lucid intervals, so that he was not sufficient for the government of himself, his manors, messuages, lands, tenements, goods, and chattels. AND WHEREAS, by another order made by the said Lord Chancellor, in the matter of the said lunacy, bearing date the — day of —, it was (amongst other things) referred to —, Esq., one of the Masters of the High Court of Chancery, to inquire and certify who was or were the most fit and proper person or persons to be appointed the committee or committees of the person and estate of the said lunatic: AND WHEREAS the said Master, by his report, bearing date the — day of —, made in pursuance of the said last-mentioned order, certified (amongst other things) that he was of opinion the said [committees] were the most fit and proper persons to be appointed the committees of the person and estate of the said lunatic: AND WHEREAS, by another order, made in the said matter, bearing date the — day of —, it was ordered, that the said Master's said report should be confirmed; and that the custody of the person of the said lunatic, and the care and management of his estate, should be granted to the said [committees]; and in pursuance of the said last-mentioned order, a grant of the custody of the person and estate of the said lunatic to the said [committees] passed the Great Seal, on or about the — day of —: AND

(s) See *ante*, pp. 341—344, and 347.

(t) In the form of a lease of the lunatic's estate, inserted in Bythewood's *Conv.* by Jarman, Vol. 5, pp. 114—116, the committee of the estate is not made a party, which, perhaps, may not be absolutely necessary; but, as the Masters in

Chancery, in some forms settled by them, which I have seen, and from which the precedents here inserted are taken, make such committee a party, I have thought it advisable to follow their practice, which, at all events, is on the safer side.

WHEREAS the said [*lunatic*] is seised and absolutely entitled for an estate of inheritance in fee simple in possession, of and to the messuages or tenements, erections, buildings, and land, hereinafter particularly described, and intended to be hereby demised. AND WHEREAS, by another order made in the said matter by the said Lord Chancellor, bearing date the — day of —, it was ordered to be referred to the said Master to inquire and certify whether it would be fit and proper, and for the benefit of the said lunatic's estate, that a lease of the said messuages or tenements, and premises, should be granted by the said [*committees*] to the said [*lessee*], and for what term, and at what rent, having regard to the said lunatic's interest therein: And whereas the said Master, by his report, bearing date the — day of —, made in pursuance of the said last-mentioned order, certified (amongst other things), that it would be fit and proper, and for the benefit of the said lunatic's estate, that a lease of the said messuages or tenements, and premises, should be granted to the said [*lessee*], for the term of twenty-one years, at the yearly rent of £—, and subject to the covenants and conditions therein mentioned, and hereinafter contained, and subject to such other covenants and conditions as the said Court might think proper to be inserted in such lease: AND WHEREAS, by another order made in the said matter by the said Lord Chancellor, bearing date the 11th day of August, 1831, the said last-mentioned report was confirmed; and it was ordered, that the said [*committees*], as committees of the said lunatic, should be at liberty to grant a lease of the said messuages or tenements, and premises, to the said [*lessee*], upon the terms and conditions approved of by the said Master: And it was thereby referred to the said Master to settle and approve of a proper lease thereof accordingly; and it was ordered, that the said [*committees*], as such committees as aforesaid, should, in the name, and on the behalf of the said lunatic, execute the said lease, when so settled and approved of, upon the said [*lessee*] executing a counterpart thereof: And whereas the said Master hath settled and approved of these presents, as a proper lease of the said premises, and hath signified his approval thereof, by signing his name in the margin of the first skin thereof, and his name and allowance in the margin of the last skin thereof: NOW THIS INDENTURE WITNESSETH, That, by virtue of an act of Parliament made and passed in the first year of the reign of his present Majesty King William the Fourth, intituled 'An act, &c. [*title of act, ante, p. 502*], and in pursuance of the said hereinbefore in part recited order, bearing date the 11th day of August, 1831, and in consideration of the rents, covenants, and agreements hereinafter reserved and contained by and on the part and behalf of the said [*lessee*], his executors, administrators, and assigns, to be paid, kept, done, and performed. He, the said [*lunatic*], acting by the said [*committees*] as such committees as aforesaid, hath demised, leased, set, and to farm let, and by these presents doth, &c. [*Habendum for 21 years*]; YIELDING AND PAYING therefore yearly and every year unto the said [*lunatic*], his heirs and assigns, or unto the said [*committees*], as such committees as aforesaid, or other the person or

persons who, for the time being, shall or may be committee or committees of the estate of the said [lunatic], the rent or yearly sum of £— of lawful money, &c. [in the usual form]. AND the said [lessee], for himself, his heirs, executors, and administrators, doth hereby covenant, promise, and agree to and with the said [lunatic], his heirs and assigns, and also with and to the said [committees], as such committees as aforesaid, or other the person or persons who, for the time being, shall or may be committee or committees of the estate of the said lunatic, in manner following, (that is to say), that he, the said [lessee], his heirs, executors, administrators, or assigns, shall and will, during all the said term hereby granted, well and truly pay, or cause to be paid, unto the said lunatic, his heirs and assigns, or unto the said [committees], as such committees as aforesaid, or unto such person or persons as for the time being shall or may be committee or committees of the estate of the said lunatic, the said yearly rent or sum of £—, on the days and times, and in the manner, hereinbefore appointed for payment thereof respectively, according to the reservation aforesaid, and the true intent and meaning of these presents; [Other covenants in usual form(u); and a covenant to surrender the premises at the end of the term,] unto the said lunatic, his heirs and assigns, or unto the said [committees], as such committees as aforesaid, or unto other the person or persons who, for the time being, shall be committee or committees of the estate of the said lunatic. [Power of re-entry on breach of covenants reserved] to the lunatic, his heirs, and assigns, or to the said [committees], as such committees as aforesaid, or to such other person or persons as for the time being shall be committee or committees of the estate of the said lunatic, &c. AND the said [lunatic] acting by his said [committees], so far only as they are authorized by the aforesaid act of Parliament and the said recited order, bearing date the 11th day of August, 1831, but not further or otherwise, doth hereby for himself, his heirs, executors, and administrators, covenant and agree with the said [lessee], his executors, administrators, and assigns [the usual covenant for quiet enjoyment without interruption, &c.] of, from, or by the said [lunatic], his heirs and assigns, or the committees or committee for the time being of the estate of the said [lunatic], or of or by any other person or persons lawfully claiming or to claim by, from, or under him, them, or any of them. IN WITNESS whereof, the said [committees], by virtue of the said act of Parliament, and in obedience to the order of the said Lord Chancellor, bearing date the 11th day of August, 1831, in the above-written indenture severally referred to and recited, have to these presents, as the committees of the estate of the said [lunatic], and in his place and on his

(u) The tenant of a lunatic's estate was relieved upon petition against an ejectment, founded on a forfeiture by breach of covenant to repair, upon the repairs mentioned in the surveyor's report having been completed, and upon payment

of all the costs incurred by the lunatic's estate in consequence of the breach of covenant and the action of ejectment. *Ex parte Vaughan, in re Edridge*, 1 Turn. & Russ. 434.

behalf, subscribed the name and set the seal of the said [lunatic], [where there are other parties to execute " and the several other parties to these presents have hereunto subscribed their names, and set their seals,"] on the day and year first above written.

The mode of Execution is as follows:

A. B. [the lunatic], by C. D. and E. F. [the committees] (v).

Memorandum signed by the Master.

I approve of and allow this indenture of lease, as contained in this and the preceding skin of parchment. As witness my hand, this ——— day of ———.

Master's signature.]

Attestation indorsed.

Signed, sealed, and delivered, by the within-named [committees], as the committees, and in the name and on the behalf of the within-named [lunatic], in the presence of us.



Lease of a Farm, of which the Lunatic was Tenant for Life, with Power of Granting Leases, made by the Committee of his Estate, in Execution of such power.

THIS INDENTURE &c., between [the lunatic] by [committee], the committee of his person and estate, and in his name and on his behalf, of the first part; [the trustees of a settlement], of the second part; and [the lessee], of the third part. WHEREAS, under and by virtue of indentures of lease and release, bearing date &c., and made between [the parties], divers manors, messuages, lands, tenements, and hereditaments (of which the farm and lands, hereinafter particularly described, and hereby demised or intended so to be, are part), were limited to the use of the said [lunatic] and his assigns, for his life, without impeachment of waste, with remainders over, as therein is mentioned. AND, by the said indenture of release, powers were given to the person or persons who for the time being should, by virtue of the limitations therein contained, be in the actual possession of the hereditaments thereby released, to make such demises or leases of the same as are therein mentioned, at and under such rents and reservations to be incident to the reversion expectant on such leases, and subject to such conditions and restrictions as are in the said indenture of release expressed. AND WHEREAS, by an indenture, bearing date &c., and made between [the parties], the farm and lands hereinafter particularly described and intended to be hereby demised, were, for the considera-

(v) See *Wilkes v. Back*, 2 East. 142; *White v. Cuyler*, 6 Term Rep. 176.

tions therein mentioned, amongst other hereditaments, demised by the said [*lunatic*] unto the said [*trustees*], from the day of the solemnization of the marriage then intended, and which was soon after solemnized between the said lunatic and —, for the term of ninety-seven years, if the said [*lunatic*] should so long live, without impeachment of waste, upon the trusts therein mentioned; but subject to a proviso in the indenture now in recital contained, that the same should not be deemed to prevent or suspend the execution of any of the powers contained in the hereinbefore in part recited indenture, not exercised by the indenture now in recital, but that the said [*lunatic*] might exercise all such of the powers as were by the said hereinbefore in part recited indenture given to him, and not by the indenture now in recital exercised, as effectually as if the said indenture now in recital had not been made; but with a proviso that the said [*lunatic*] should not execute the powers of leasing, save only with the consent of the trustees or trustee for the time being in writing first had and obtained.

AND WHEREAS a commission in the nature of a writ *de lunatico inquirendo* having been issued under the Great Seal of the United Kingdom of Great Britain and Ireland, to inquire (among other things) of the lunacy of the said [*lunatic*]; it was by an inquisition taken thereon found, that the said [*lunatic*] was of unsound mind, so that he was not sufficient for the government of himself, his manors, messuages, lands, tenements, goods, and chattels, and that he had been in the same state of unsound mind and condition from the time in the same inquisition mentioned, (being a period subsequent to either of the hereinbefore in part recited indentures),

AND WHEREAS, by two several orders of the Lord High Chancellor of Great Britain, made in the matter of the lunacy of the said [*lunatic*], and bearing date respectively the 6th and 12th days of May, 1823, the custody of the person, and the care and management of the estates of the said [*lunatic*], were ordered to be granted to the said [*committee*], and grants have passed the Great Seal accordingly, by means whereof the said [*committee*] now is the committee of the person and estate of the said lunatic.

AND WHEREAS, by another order of the Lord High Chancellor of Great Britain, made in the said matter, and bearing date the 22nd day of February, 1825, his Lordship did refer it to —, Esq., the Master to whom the said matter stood referred, to receive proposals from time to time for granting a lease or leases of any part or parts of the said [*lunatic's*] estates, which were then out of lease; and the said Master was to be at liberty to report the same to the Lord Chancellor from time to time, with his opinion thereon, as he should think fit; after which such further order should be made as should be just.

AND WHEREAS —, the Master to whom the matter of the lunacy of the said [*lunatic*] now stands transferred, made a report in the said matter (in pursuance of the said last-recited order), and bearing date the 17th day of December, 1827, and thereby certified, that the said committee having brought in before the said Master a state of

facts, and proposal for granting two several leases, one of which was to the said [*lessee*] of the farm, lands, and premises hereby demised or intended so to be, according to the terms of an agreement entered into the 12th June, 1827, and made between R. E., on the behalf of the said [*committee*], as such committee as aforesaid, of the one part; and the said [*lessee*], of the other part; he the said Master thereby certified that he found that the said farm, lands, and premises hereby demised or intended so to be, were parts of the property comprised in the hereinbefore in part recited indenture of release of the —, by virtue of which the said [*lunatic*] had a power of leasing the same for a term of twenty-one years; and it having been proposed before the said Master, that a lease should be granted to the said [*lessee*], of the farm, lands, and premises mentioned in the said agreement, and according to the terms and conditions mentioned and contained in the said agreement; and he the said Master certified, that he had considered the said proposal, and the evidence in support thereof, and did approve of the same; and the Master was of opinion that it would be fit and proper that a lease should be granted to the said [*lessee*] of the said farm, lands, and premises, according to the terms and conditions mentioned in the said agreement, but with the consent in writing of the trustees appointed and acting by virtue of the said hereinbefore in part recited indenture of —: And the said Master was also of opinion, that the rent to be reserved by the said lease, and the covenants to be entered into by the *lessee*, ought to be made payable to, and to be performed with the person or persons who, for the time being, should be entitled to the reversion of the premises to be demised by such lease expectant upon the expiration of the term of years to be granted by such lease. AND WHEREAS, by an order of the Lord Chancellor made in the said matter, bearing date the 26th day of January, 1828, it was ordered that the said Master's report should be confirmed, and that it should be referred to the said Master to settle and approve of two proper leases, one of which was to be to the said [*lessee*] of the farm, lands, and premises in the said report mentioned, upon the terms and conditions therein specified; and that the said [*committee*], as the committee of the said [*lunatic*], should be at liberty in the name and on the behalf of the said lunatic, by and with the consent of the said [*trustees*] (to be testified by their being made parties to and executing such lease) to execute such lease when settled and approved of upon the said [*lessee*] executing a counterpart thereof. AND WHEREAS, in pursuance of the said last-recited order, the said last-mentioned Master hath made a report in the said matter, bearing date the — day of —, and thereby certified, that he had settled and approved of a proper lease, being these presents, to be granted to the said [*lessee*] of the farm, lands, and premises herein-after particularly mentioned and described; and that, in testimony of his approbation thereof, he should sign an allowance in the margin of the first skin of the indenture of lease, and set his name in the margin of each of the other skins thereof, and he hath accordingly signed such his allowance, and set his name on these presents.

NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said lastly hereinbefore recited order, and in pursuance and in exercise and execution of the power or authority in that behalf given to the said [lunatic] by the said hereinbefore in part recited indenture of —, and by force and virtue of all and every other power and powers, authority and authorities whatsoever enabling him the said lunatic in this behalf, and by force and virtue of the statute passed in the first year of the reign of his present Majesty King William the Fourth, intituled ‘An act, &c. [title, ante, p. 502], and in consideration of the yearly rent, and of the covenants and agreements hereinafter reserved, and contained by and on the part and behalf of the said [lessee], his executors, administrators, and assigns, to be paid, kept, done, and performed, He, the said [lunatic], by the said [committee], acting in his name and on his behalf, and with the privity and approbation of the said last-named Master, testified as aforesaid, and with the consent of the said [trustees] (the present trustees under the said indenture of —), testified by their severally signing, sealing, and delivering these presents, Hath granted, demised, and to farm let, and by these presents Doth grant, demise, and to farm let, unto the said [lessee], all that messuage or tenement [description of the farm], excepting and always reserving unto the person or persons who, for the time being, shall be entitled to the reversion of the premises hereby demised, expectant on the determination of the said term of fourteen years hereby granted, all timber, &c. [the exceptions], TO HAVE AND TO HOLD the said messuage or tenement and farm, and all and singular other the premises hereby demised, or intended so to be, with their appurtenances, (except as before excepted), unto the said [lessee], his executors, administrators, and assigns, from the 11th day of October now last past, for and during and unto the full term of fourteen years thence next ensuing. YIELDING AND PAYING, therefore, yearly and every year, during the said term, unto the said [lunatic] (w), or unto the person or persons who, for the time being, shall be entitled to the reversion of the said

(w) It was held, that the committee of a lunatic tenant for life is not an assignee within the meaning of the first or second sections of the Irish statute 23 & 24 Geo. 3, c. 46, which enables the executors, administrators, or assigns of a tenant for life to recover by action, or by distress, the whole, or a proportion of the rent due on his death. And therefore, where a lease of an estate of which a lunatic was tenant for life, had been granted by a Master in Chancery in Ireland under the order of the Court, [See ante, pp. 352—354] reserving rent half yearly, and the lunatic died before the day appointed for payment of a half year's rent, it was held that his committee was a trespasser in entering and distraining for so much of the last half

year's rent as was due at the lunatic's death, notwithstanding an order of the Lord Chancellor, made after the lunatic's death, authorizing the committee to enforce the payment of the rents in arrear due from the lunatic's tenants. *Perse v. Perse and another*, 1 Alcock & Napier's K. B. Ir. Rep. 35. The corresponding English enactment is the 11 Geo. 2, c. 19, s. 15, under which it was held, that upon the death of a tenant for life with power of granting leases, who had let part of the estate by a parol agreement, reserving rent half-yearly, such rent was apportionable between the administrator and the remainder-man, who was a lunatic. *Ex parte Smyth, In re Smyth*, 1 Swanst. 337.

hereinbefore demised premises, immediately expectant on the determination of the said term of fourteen years, the yearly rent or sum of £—— of lawful money current in Great Britain, by even and equal quarterly payments, (that is to say), [*in usual form*]. [*Proviso, that if rent should be in arrear thirty days, or if lessee should assign the premises*] without the licence and consent of the person or persons who for the time being should be so entitled to the reversion as aforesaid, in writing under his or their hand or respective hands first had and obtained, or if &c., [*other usual conditions*], then, and in any or either of the said cases, it shall and may be lawful to and for the person or persons who for the time being shall be so entitled to the reversion expectant as aforesaid, into and upon the said demised premises, or any part thereof in the name of the whole to re-enter, and the same to have again, repossess, and enjoy, as in his or their former estate and right, anything herein contained to the contrary thereof in anywise notwithstanding. AND the said [*lessee*] doth hereby for himself, his heirs, executors, and administrators, covenant, promise, and agree to and with the said [*lunatic*] and other the person or persons who for the time being shall be entitled to the reversion expectant as aforesaid in manner following, (that is to say), that he, the said [*lessee*], his executors, administrators, and assigns, shall or will well and truly pay or cause to be paid to the person or persons so for the time being entitled as aforesaid, the said yearly rent or sum of £——, on the days and times and in manner hereinbefore appointed for payment thereof, according to the true intent and meaning of these presents. [*The other usual covenants, or such other covenants as the nature of the property and the terms of the agreement between the parties require, should be here inserted.*] AND the said [*lunatic*] acting by his said committee as aforesaid, so far as he rightfully and lawfully may or can, but no further or otherwise, doth hereby for himself, his heirs, executors, administrators, and assigns, covenant with the said [*lessee*], his executors, administrators, and assigns, that he the said [*lunatic*] or the person or persons who for the time being shall be entitled to the reversion expectant as aforesaid, shall and will [*the usual covenants on the part of the landlord, or such as the nature of the property and the terms of the agreement require, to be here inserted; and for quiet enjoyment by the lessee during the term*], without the lawful let, suit, trouble, molestation, interruption, hindrance, or denial of the said lunatic, or any person or persons lawfully claiming or to claim by, from, under, or in trust for him, or of the person or persons who, for the time being, shall be so entitled to the reversion expectant as aforesaid. IN WITNESS &c. (x).

(x) See conclusion and forms of execution, *ante*, p. 760.

Lease by the Owner of one Moiety of an Estate, and by the Committee of a Lunatic, who was entitled to the other Moiety, without Recitals of the Orders as in the preceding Forms.

THIS INDENTURE, made &c., between [owner], of the first part; and —, Esq., (found to be a lunatic by an inquisition taken under a commission in the nature of a writ *de lunatico inquirendo*), of the second part; and [committee], (committee of the estate of the said [lunatic], by virtue of letters patent under the Great Seal of Great Britain), of the third part; and [lessee] of the fourth part:— WITNESSETH, that in consideration of the yearly rent, covenants, and agreements hereinafter reserved and contained, and on the part of the said [lessee], her executors, administrators, or assigns, to be paid, done, and performed, he, the said [owner], so far as relates to one moiety to which he is entitled in fee-simple in possession, of and in the hereditaments hereinafter described, and intended to be hereby demised, hath demised, leased, and to farm let, and by these presents doth demise, lease, and to farm let: And the said [lunatic], acting by the said [committee], as such committee as aforesaid, by virtue of an act of Parliament passed in the first year of the reign of his present Majesty King William the Fourth, intituled, ‘An act, &c., [title, ante, p. 502]; and also by virtue and in pursuance of the power or powers to the said [lunatic] reserved, and contained in and by a certain indenture of release, bearing date &c., and made between &c., [the parties]; And also by force and virtue of all other powers and authorities to him the said [lunatic] given or in him vested, or in anywise enabling him in this behalf, and in exercise and execution thereof; and also by virtue of an order of the Lord High Chancellor of Great Britain, bearing date the — day of this instant —, made on the petition of the said [committee] as committee as aforesaid, and so far as relates to the moiety comprised in the said indenture of [date], of the hereditaments hereinafter described, and intended to be hereby demised, and also for and in consideration of the yearly rent, covenants, and agreements hereinafter reserved and contained by and on the part and behalf of the said [lessee], her executors, administrators, and assigns, to be paid, done, and performed, Hath, with the approbation of —, one of the Masters of the High Court of Chancery, to whom the matter of the lunacy of the said [lunatic] stands transferred, as certified by his report, bearing even date herewith, and as testified by his allowance, signed in the margin of the first skin of this present indenture, and by his signature in the margin of the other skin hereof, demised, leased, and to farm let, and by these presents doth demise, lease, and to farm let, unto the said [lessee], all that messuage &c. [parcels]; and all ways, paths, passages, lights, easements, waters, watercourses, profits, commodities, and appurtenances whatsoever to the said hereditaments and premises belonging, or in anywise appertaining, TO HAVE AND TO HOLD the said messuage or tenement, and all and singular other the premises hereby demised or intended so to be, with their and every of their appurtenances, unto

the said [*lessee*], her executors, administrators, and assigns, from the — day of — now last past, for and during and unto the full end and term of twenty-five years from thence next ensuing, and fully to be complete and ended, YIELDING AND PAYING therefore yearly and every year during the said term of twenty-five years, hereby granted unto the said [*owner*], his heirs and assigns, and unto the said [*lunatic*] and his assigns, during his life, or unto the said [*committee*] as committee as aforesaid, or unto the committee or committees of the estate of the said [*lunatic*] for the time being; and after his decease, unto the person or persons to whom the reversion, freehold, or inheritance of the said [*lunatic's*] undivided moiety of the said premises hereby demised shall for the time being belong, his and their heirs and assigns, the rent or sum of 80*l.* of lawful money of Great Britain, in equal moieties, (that is to say), the sum of 40*l.*, being one moiety or half part of the said yearly rent or sum of 80*l.*, unto the said [*owner*], his heirs and assigns; and the sum of 40*l.*, being the other moiety or half part of the said yearly rent or sum of 80*l.*, unto the said [*lunatic*] or his assigns, or unto the said [*committee*] as committee as aforesaid, or unto the committee or committees of the estate of the said [*lunatic*] for the time being, and unto such person or persons as, after the decease of the said [*lunatic*] shall, for the time being, be entitled to his undivided moiety or half part of the said premises, by four equal quarterly payments on the days following, (that is to say), on &c. [*in the usual form*]. AND the said [*lessee*], for herself, her heirs, executors, administrators, and assigns, doth covenant, promise, and agree, to and with the said [*owner*], his heirs and assigns, and the said [*lunatic*], and also to and with the said [*committee*], the present committee of the estate of the said [*lunatic*], and also to and with the committee or committees of the estate of the said [*lunatic*] for the time being, severally and respectively; and also to and with the several person or persons to whom the reversion, freehold, or inheritance of the undivided moiety of the said [*lunatic*] of and in the said premises, shall, for the time being, belong, and his and their heirs, executors, administrators, and assigns, by these presents, in manner following, (that is to say), [*Covenant for payment of rent and the other usual covenants in a lease of a house, and a clause of re-entry on nonpayment of the rent, and breach of covenants*]. AND the said [*owner*], for himself, his heirs, executors, and administrators, and so far as relates to his aforesaid moiety of the said demised premises, doth covenant, promise, and agree with the said [*lessee*], her executors, administrators, and assigns. And the said [*committee*] (*y*), so far only as he is authorized by the aforesaid act of Parliament, but not further or otherwise, or on any account to bind

(*y*) In some forms of leases settled by the Master, the committee is thus made to covenant in his own name; but, it is apprehended, that he, like a person acting under a power of attorney, can only be required to covenant in the name of

his principal, the lunatic. See *ante*, pp. 759—764. See 5 *East*, 148; 5 *Esp.* 228; 1 *Camp. N. P. C.* 337; 1 *By. & Mood.* 229; 1 *Moore*, 270; 1 *Mann. & Ryl.* 614; 2 *Taunt.* 375; 3 *Barr. & Ald.* 47; *Sugd. V. & P.* p. 47, 8th ed.

or oblige the said [committee], or his heirs, executors, or administrators personally, or his or their estates and effects, doth hereby, for and on the behalf of the said [lunatic], agree with the said [lessee], her executors, &c. [*the usual covenant for enjoyment during the term without interruption*], of, from, or by the said [owner], his heirs and assigns, or the said [lunatic] and his assigns, or the committee or committees for the time being of his estate, or of or by any other person or persons lawfully claiming or to claim, by, from, or under him, them, or any or either of them. IN WITNESS &c. (z).

CONVEYANCES.

Conveyance of a Lunatic's Estate, sold by the Order of the Lord Chancellor, under the Stat. 11 Geo. 4 & 1 Wm. 4, c. 65, s. 28 (a).

THIS INDENTURE, made &c., between [lunatic], a lunatic, of the first part; — and —, (committees of the estate of the said [lunatic]), of the second part; and [purchaser], of the third part: WHEREAS—[*Such recitals as are necessary to shew the lunatic's interest should, according to circumstances, be inserted as in any other case*]. AND WHEREAS—[*Recitals of the commission of lunacy, and the appointment of committees, see ante, p. 757*]. AND WHEREAS, by another order made by the said Lord Chancellor in the said matter, upon the petition of the said [committees], bearing date the — day of —, —, it was ordered to referred &c. [*The reference as to sale, see ante, pp. 727, 728*]. AND WHEREAS the said Master, by his report, bearing date the — day of —, —, made in pursuance of the said last-mentioned order, certified, (amongst other things), that it was necessary and proper, and for the benefit of the said lunatic and his estate, that the several farms, lands, and premises therein mentioned, including the messuage and land hereinafter described, and intended to be hereby granted and released, should be sold, and that he had accordingly, as directed by the said last-mentioned order, inserted an advertisement in the London Gazette, and in several public newspapers, for the sale of the said estates before him. AND WHEREAS, by another order made by the said Lord Chancellor in the said matter, upon the petition of the [committees], and bearing date the — day of —, —, the said last-mentioned report was confirmed, and it was ordered that &c. [*The order for sale is recited, see ante, p. 730*]. AND WHEREAS, in pursuance of the said last-mentioned order and advertisements, the estates therein mentioned, including the mes-

(z) See *ante*, p. 760.

(a) See *ante*, pp. 362, 366—368, 512; 727—735.

suage and land hereinafter described, and intended to be hereby granted and released, were put up for sale before the said [Master], at the public sale room of the High Court of Chancery, situate in Southampton-buildings, Chancery-lane, London, on Thursday, the — day of —, at two o'clock in the afternoon, in — lots, according to certain printed particulars of sale, with certain conditions thereunto annexed, then and there produced, when several persons attended the said sale, and bid for the said premises; and the said [purchaser] having attended such sale, and bid the sum of £— for the premises comprised in Lot —, and no other person having bid more for the same, the said [purchaser] was allowed to be the highest bidder for, and purchaser of the premises comprised in the same Lot —, (which includes the messuage and land hereinafter described, and intended to be hereby granted and released), at or for the price or sum of £—. AND WHEREAS the said Master, by his report, bearing date the — day of —, certified (amongst other things), that he had allowed the said [purchaser] to be the purchaser of Lot —, mentioned in the said particulars and conditions of sale, at the sum of £—, and that he had, in the schedule annexed to his report, set forth the particulars of such Lot —, (a true and correct copy whereof is hereupon indorsed). AND WHEREAS, by another order, made by the said Lord Chancellor in the said matter, upon the petition of the said [committees], and bearing date &c., the said last-mentioned report was confirmed. AND WHEREAS, by another order made by the said Lord Chancellor in the said matter, upon the petition of the said [purchaser], and bearing date the — day of —, it was ordered that the said [purchaser] should be at liberty to pay into the Bank, with the privity of the Accountant-General of the Court of Chancery, in trust in the said matter, to an account to be intituled, "The Produce of the Sale of the Real Estate," the sum of £—, being the amount of the consideration or purchase-money for the premises comprised in Lot —, in the said petition mentioned, together with interest thereon, at and after the rate of *5l. per cent. per annum*, from the — day of —, —, up to the time of payment of the said sum of £—, the amount thereof to be verified by affidavit. And it was thereby further ordered, that the said sum of £—, and interest, when so paid into the Bank, should be laid out in the purchase of *3l. per cent.* Consolidated Annuities, in the name and with the privity of the Accountant-General, in trust in the said matter, to an account to be intituled, "The Produce of the Real Estate;" and the said Accountant-General was to declare the trust thereof accordingly, subject to further order; and it was thereby further ordered, that the said Bank Annuities, when so purchased, should not be transferred or otherwise disposed of without notice to the said [purchaser], or Messrs. —, his solicitors; and it was thereby further ordered, that upon the said [purchaser] paying his said purchase money and interest into the Bank as aforesaid, that he should be let into possession of the premises comprised in the said lot, No.

—, and into the receipt of the rents and profits thereof from the — day of —, —; and thereupon it was further ordered, that the said [*committees*], the committees of the estate of the said lunatic, should forthwith execute in the place of the said lunatic, and join and concur with all other necessary parties in executing a proper conveyance and assurance of all the estate, right, title, and interest of the said lunatic, of, in, and to the premises comprised in the said lot, No. —, unto the said [*purchaser*], his heirs and assigns, or as he or they should direct or appoint, pursuant to the statute in such case made and provided, such last-mentioned conveyance to be settled and approved of by —, the Master to whom this matter stands referred, in case the parties differed about the same. AND WHEREAS, in pursuance of the said last-mentioned order, the said [*purchaser*] did on the — day of —, —, pay into the Bank of England, with the privity of the Accountant-General of the said Court of Chancery, in trust in the said matter, to an account to be intitled, "The Produce of the Sale of the Real Estate," the sum of £—, being the amount of the said purchase money of £—, with interest for the same after the rate aforesaid, up to the time of such payment, as appears by the receipt of one of the Cashiers of the said Bank, and the certificate of the said Accountant-General annexed thereto, and therewith filed in the office of the Registrar of the same court, true and correct copies whereof are hereupon indorsed. [*When the conveyance is settled by the Master, recite his approval of it; see ante, p. 758.*] NOW THIS INDENTURE WITNESSETH, that by virtue of an act of Parliament, made and passed in the first year of the reign of his present Majesty King William the Fourth, intituled 'An act &c. [*title of act, ante, p. 502*], and in pursuance and performance of the said hereinbefore in part recited order [*the order to convey*], of the — day of —, —, and for and in consideration of the sum of £—, of lawful money of Great Britain, well and truly paid by the said [*purchaser*] into the Bank of England, in the name and with the privity of the said Accountant-General, to the credit of the said matter as aforesaid, the payment of which said sum in manner and by the authority aforesaid, and that the same is in full for the absolute purchase of the fee simple in possession, free from incumbrances, of the said messuage and land hereinafter described and intended to be hereby granted and released, they the said [*committees*] do, and each of them doth hereby admit and acknowledge, and of and from the same sum of £—, and every part thereof, the said [*lunatic*], acting by his said committees as aforesaid, and also the said [*committees*] do, and each and every of them doth acquit, release, and discharge the said [*purchaser*], his heirs, executors, administrators, and assigns, and every of them for ever by these presents, He the said [*lunatic*], (acting by his said committees), hath granted, bargained, sold, aliened, released, ratified, and confirmed, and by these presents doth grant, &c., unto the said [*purchaser*], (in his actual possession, &c.), and his heirs, all that, &c. [*parcels—general words*]; And all the estate, &c. of the

said [*lunatic*]: [*Habendum to the purchaser in fee*]. And the said [*lunatic*], (acting by his said committees as aforesaid), doth hereby for himself, &c. [*Usual covenants for title, as in other cases*]. IN WITNESS, &c. (b).

RECONVEYANCE.

Reconveyance of Lands vested in a Mortgagee of unsound Mind, not found such by Inquisition, in pursuance of an Order of the Lord Chancellor under the statute 11 Geo. 4 & 1 Will. 4, c. 60, s. 5 (c).

THIS INDENTURE, made &c., between [*lunatic mortgagee*], of the first part; [*person appointed by the Lord Chancellor's order*], of the second part; and [*mortgagor*], of the third part. WHEREAS, by indentures of lease and release, bearing date respectively on or about the — and — days of —, —, and made or expressed to be made between the said [*mortgagor*] of the one part, and the said [*lunatic mortgagee*] of the other part, for the considerations in the said indenture of release expressed, All [*parcels*] were duly conveyed and assured by the said [*mortgagor*] unto and to the use of the said [*lunatic mortgagee*], his heirs and assigns, for ever, subject to a proviso in the said indenture of release contained, for redemption of the same premises, on payment by the said [*mortgagor*], his heirs, executors, administrators, or assigns, unto the said [*lunatic mortgagee*], his executors, administrators, or assigns, of the sum of £—, with interest for the same, after the rate, at the time and in manner therein mentioned and appointed for payment of the same respectively. AND WHEREAS the said [*lunatic mortgagee*] has lately become of unsound mind, and in consequence thereof is totally incapable of managing his own affairs, or of executing with effect any deed or other legal instrument, but has not been found such by inquisition. [*In cases where the party has been found lunatic by inquisition, instead of the last recital, the commission of lunacy and the appointment of committees should be recited, see ante, p. 757*]. AND WHEREAS the said [*mortgagor*] is desirous of paying off and discharging the principal money and interest due and owing to the said [*lunatic mortgagee*] upon the said recited security as aforesaid, upon having a reconveyance of the said mortgaged premises duly made and executed by him. AND WHEREAS, by an order made in the matter of the said [*lunatic mortgagee*], a person of unsound mind, though not found such by inquisition, by the Lord High Chancellor

(b) See *ante*, pp. 759, 760.

(c) See *ante*, pp. 382, 383, 519.

of Great Britain upon the petition of the said [*mortgagor*], and bearing date the — day of —, it was ordered that it should be referred to —, the Master in rotation, to inquire and certify whether the said [*lunatic mortgagee*] was an idiot, lunatic, or of unsound mind, and incapable of managing his own affairs; and in case the said Master should find the said [*mortgagee*] to be an idiot, lunatic, or of unsound mind, or incapable of managing his affairs, then he was to inquire and certify whether he was seised or possessed of the hereditaments and premises comprised in the said indentures of lease and release, of [*date*], or of any and what part or parts thereof, either alone or jointly with any other person or persons, and whom, as a trustee or trustees, upon any and what trust or trusts, or by way of any and what mortgage, and for whom, within the intent and meaning of an act of Parliament passed in the first year of the reign of his present Majesty King William the Fourth, intituled 'An Act, &c. [*title, ante*, p. 517], and whether the said [*mortgagee*] had any and what beneficial estate or interest therein; and in case the said Master should find him to be a mortgagee of the said hereditaments and premises within the intent and meaning of the said act, then he was to inquire and certify whether any thing and what was due and ought to be paid for principal and interest on the said mortgage, and whether the said [*mortgagee*] was entitled thereto, or to any and what part thereof in his own right and for his own benefit, or in trust for any other person or persons, and whom; and if the said Master should find the said [*mortgagee*] to be entitled to the said principal and interest, or any part thereof, in his own right and for his own benefit as aforesaid, and such principal and interest, or the portion thereof to which the said [*mortgagee*] should be so entitled, should not exceed 700*l.*, then the said Master was to certify who was or were the most fit and proper person or persons to be appointed on behalf of the said [*mortgagee*], being so idiot, lunatic, or of unsound mind, or incapable of managing his affairs, to receive the amount to be so found due to him, and also who was or were the most fit and proper person or persons to be appointed, in the place of the said [*mortgagee*], to convey and assure, or join in conveying and assuring, the hereditaments and premises whereof he might be found to be so seised, and to whom. AND WHEREAS the said Master, by his report bearing date the — day of —, —, made in pursuance of the said order, certified (amongst other things) that he found that the said [*mortgagee*] was a lunatic and of unsound mind, and incapable of managing his affairs, and that he was seised of the hereditaments and premises comprised in the said indentures of lease and release, of [*date*], alone, and not jointly with any other person or persons, within the intent and meaning of the act of Parliament in the said order mentioned; And he found that the said [*mortgagee*] was entitled to the beneficial interest in such mortgage; and he further found that there was due and ought to be paid for principal and interest on the said mortgage 435*l.*, and that the said [*mortgagee*] was entitled thereto in his own right and for his own benefit; and the same not exceed-

ing 700*l.* in the said order mentioned, he was of opinion that the said [*nominee*] was the most fit and proper person to be appointed on behalf of the said [*mortgagee*], he being so lunatic and of unsound mind, and incapable of managing his affairs as aforesaid; and to receive the said 435*l.*, being the amount so found due as aforesaid; and he was also of opinion, that the said [*nominee*] was the most fit and proper person to be appointed in the place of the said [*mortgagee*] to convey and assure, or join in conveying and assuring, the hereditaments and premises and interest whereof he was found to be so seised as aforesaid, to the said [*mortgagor*]. AND WHEREAS, by another order made by the said Lord Chancellor in the said matter, upon the petition of the said [*mortgagor*], and bearing date the — day of —, it was ordered, that the Master's said report should be confirmed; and it appearing to the said Lord Chancellor by the said report, that the said [*mortgagee*] was a person of unsound mind, and incapable of managing his affairs, and that he was seised of the hereditaments and premises comprised in the indentures of lease and release of the [*date*] mentioned in the said petition, by way of mortgage, within the intent and meaning of the said act of Parliament, the said Lord Chancellor thereby appointed [*nominee*], named in the said report, in the place of the said [*mortgagee*], being of unsound mind as aforesaid, upon entering into the security thereafter mentioned, to receive the principal and interest certified to be due to him in respect of the said mortgage, and to convey, assign, and assure, and the said Lord Chancellor thereby directed the said [*nominee*], in the place of the said [*mortgagee*], to convey, assign, and assure all the estate, right, title, and interest whatsoever of the said [*mortgagee*] of, in, and to the hereditaments and premises mentioned and comprised in the aforesaid indentures of [*date*], freed and discharged of and from the principal sum of 400*l.* thereby secured, and all interest due thereon, and all claims and demands in respect thereof respectively, to the said [*mortgagor*], his heirs and assigns, or as he or they should direct or appoint, upon payment to the said [*nominee*] of the sum of 435*l.*, the principal and interest certified to be due by the said Master (after deducting the costs and expenses therein and hereinafter mentioned). And it was further ordered, that such conveyance should be settled and approved by —, the Master to whom the said matter stood referred, in case the parties differed about the same; and it was referred to the said Master to settle and take such security for the due application of the said principal money and interest by the said [*nominee*] as he should consider proper and sufficient; And it was thereby further ordered, that the said [*mortgagor*] should be at liberty to retain, out of the said mortgage-money and interest, his costs and expenses of and occasioned by the several petitions and orders in the said matter, and consequent thereon, (excepting the costs of the reconveyance, which were to be borne and paid by the said [*mortgagor*],) such costs and expenses to be taxed by the said Master in case the parties differed about the same. AND WHEREAS, after deducting the sum of £—, the amount of

the costs and expenses by the said last-mentioned order directed to be retained by the said [*mortgagor*] out of the said mortgage-money and interest, the sum of £—— only remains due to the said [*mortgagee*]. AND WHEREAS the said [*nominee*] has duly entered into security, to the satisfaction of the said [*Master*], for the due application of the said sum of £—— by the said [*nominee*]; in testimony whereof the said [*Master*] has signed the certificate indorsed upon these presents. [*In cases where the parties differ, and the conveyance is settled by the Master, his approval should be recited, see ante, p. 758, in which may be included the last recital as to the security.*] NOW THIS INDENTURE WITNESSETH, that, by virtue of the said act of Parliament, and in pursuance and performance of the said lastly hereinbefore recited order, and for and in consideration of the sum of £—— of lawful money of Great Britain to the said [*nominee*] in hand well and truly paid by the said [*mortgagor*], at or immediately before the sealing and delivery of these presents, in full satisfaction and discharge of all principal and interest money due and owing to the said [*mortgagee*], upon or by virtue of his said recited security, after deducting the said sum of £—— as aforesaid, the receipt and payment of which said sum of £—— he the said [*nominee*] doth hereby acknowledge, and of and from the same and every part thereof he the said [*mortgagee*] (acting by the said [*nominee*] as aforesaid), and also the said [*nominee*], do and each of them doth acquit, release and discharge the said [*mortgagor*], his heirs, executors, administrators, and assigns, and every of them, for ever, by these presents, He, the said [*lunatic mortgagee*], (acting by the said [*nominee*] so appointed as aforesaid), hath granted, bargained, sold, aliened, released, and confirmed, and by these presents doth grant, bargain, sell, alien, release, and confirm unto the said [*mortgagor*], (in his actual possession, &c.) and his heirs, the messuages or tenements, land, and all and singular other the hereditaments and premises comprised in the said recited indentures of lease and release of [*date*], and thereby granted and released, or expressed and intended so to be, with their and every of their rights and appurtenances; And all the estate, &c. of the said [*mortgagee*], of, in, to, or out of the same premises, every or any part thereof, with their appurtenances; TO HAVE AND TO HOLD the said message or tenement, land, and all and singular other the premises hereby granted and released, or expressed and intended so to be, with their and every of their appurtenances, unto the said [*mortgagor*], his heirs, and assigns to the use of the said [*mortgagor*], his heirs and assigns, for ever, freed and absolutely discharged of and from the principal sum of £——, secured by the said recited indentures of [*date*], and all interest due thereon, and all claims and demands in respect thereof respectively. And the said [*mortgagee*], (acting by the said [*nominee*] as aforesaid, doth hereby for himself, &c., [*usual covenant against incumbrances by the mortgagee*]. IN WITNESS whereof the said [*nominee*], by virtue of the above-mentioned act of Parliament, and in obedience to the above-recited order of the said Lord Chancellor, bearing date the

— day of —, —, hath, in the place of the said [mortgagee], and on his behalf, subscribed his name and set his seal, and the said [nominee] hath subscribed his name and set his seal, on the day and year first above written.

[Mortgagee] (l. s.) by [nominee].
[Nominee] (l. s.)

Memorandum to be indorsed and signed by the Master.

I hereby certify, that the within-named [nominee] has, in pursuance of the within-recited order of the — day of —, —, entered into such security as I consider proper and sufficient for the due application of the within-mentioned sum of £— and interest. As witness my hand this — day of —, —.

Witness, [A. B.]

[Signature of the Master to whom the matter was referred].

Attestation,

Signed, sealed, and delivered by the within-named [nominee], in the place and on the behalf of the within-named [lunatic mortgagee], and also by the said [nominee], in the presence of —.

RELEASE.

Release and Indemnity given by one of the Next of Kin of an Intestate on his Share of certain Stocks, Funds, and Securities being transferred and paid to him by the Committee of the Estate of a lunatic, under an Order of the Lord Chancellor.

THIS INDENTURE, made &c., between [releasor], of &c., only surviving brother, and one of the three next of kin of —, late of &c., deceased, of the one part, and —, of &c., the committee of the estate and effects of —, a lunatic, and now residing, &c. widow, and next of kin of the said [intestate], and also administrator *de bonis non* of the estate and effects of the said [intestate], deceased, during the lunacy of the said [lunatic], of the other part: WHEREAS the said [intestate] departed this life in or about the month of June, 1828, intestate, and without issue, leaving the said [lunatic], his widow, him surviving: AND WHEREAS administration of the goods and chattels, rights and credits of the said [intestate], was granted to the said [lunatic], by the Prerogative Court of the Archbishop of Canterbury, on or about the 2nd day of July, 1828: AND WHEREAS [Recital of the commission of lunacy, the appointment of committees, and the grant of the custody, see ante, p. 7]: AND WHEREAS letters of administration of the goods and chattels, rights and credits of the said [intestate], left unadministered by the said [lunatic], were granted to the said [committee], during the lunacy of the said [lunatic]

tic], by the &c., on &c.: AND WHEREAS the said Master, by his report, in writing, bearing date the 14th day of January, 1831, made in pursuance of an order of the Lord Chancellor to that effect, certified that the said [releasor] and [two others] were the only surviving brother and sisters, and only next of kin, of the said [intestate]; and the said Master also reported, pursuant to the said order last referred to, that the said [intestate] was at the time of his decease possessed of the following property and effects; (that is to say), the sum of 1200*l.* cash, in the hands of &c. [*the particulars of the property are here set forth*]. And the said Master found that the said [intestate] was not indebted at his death, nor was the said [lunatic] then indebted: And the said Master reported that the said lunatic did, before her said lunacy, take possession of the said household goods, &c.; and also caused the said stock and funds to be transferred to, and they were then standing in, her name in the books of the Governor and Company of the Bank of England: AND WHEREAS, by a further order of the said Lord Chancellor, made in the said matter, bearing date the 8th day of March, 1831, on the joint petition of [*the committees of the person and estate, and the persons entitled to distributive shares of intestate's estate*], it was ordered, that the said last-mentioned report should be confirmed; and it was (amongst other things) further ordered, that the said [committee] as such committee as aforesaid, should be at liberty to transfer and pay the residue of the said lunatic's moiety of the several stocks, funds, annuities, and securities mentioned in the said report, and the dividends due and to become due in respect thereof, after the payment thereinbefore directed, into the Bank, in the name and with the privity of the Accountant-General of the Court of Chancery, in trust in the said matter; And it was further ordered, that, upon a proper release and indemnity, or proper releases and indemnities, to the said lunatic and her estate being given and executed (at the expense of the said lunatic's estate) by the said petitioners [*the parties entitled to distributive shares of the intestate's estate*] to the said [committee], as committee thereof, (such release and indemnity, or releases and indemnities, to be settled by the said Master), the said committee should, as such administrator as aforesaid, pay the remaining moiety of the said stocks, funds, and securities, and the dividends due and to accrue due in respect thereof, to the said petitioners [*the persons entitled to distributive shares*] in equal shares and proportions. AND WHEREAS the said [releasor], in consideration of his distributive share of the said intestate's bonds, stocks, funds, and securities, as aforesaid, being delivered, transferred, or paid to him, pursuant to the said last-recited order, is desirous of executing this present release and indemnity, settled and approved by the said Master, testified by his signature of approbation in the margin hereof, pursuant to the same order, and the said [releasor] hath also concurrently executed a receipt, duly stamped, for his said distributive share, as required by the statute in that behalf. NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said recited arrangement, and in consideration that one third part or share of and in one moiety

or half part, forming one sixth part of the entirety of the said India Bonds, 3l. per cent. Reduced Bank Annuities, &c., and the sum of 1000l. sterling money, mentioned and particularized in the said Master's report, confirmed by the said last-recited order, as constituting and being part of the personal estate and assets of the said intestate, and of the sum of 500l. sterling, being the accumulations accrued due and received in respect of the said stock, funds, and securities, hath been transferred, delivered and paid to the said [releasor], pursuant to the said last-recited order, and also in consideration of the sum of five shillings sterling money by the said [committee] paid to the said [releasor] immediately before the execution of these presents, the receipt whereof is hereby acknowledged, He, the said [releasor], hath remised and released, and by these presents doth remise and release, unto the said —, as the committee of the estate of the said [lunatic], and also as the administrator during her lunacy of the estate and effects of the said [intestate] (left unadministered by her), his executors and administrators, all and singular the distributive part and share whatever of him, the said [releasor], as brother, and one of the three next of kin of the said [intestate], of and in the said India Bonds, &c., and the said sum of 1000l. sterling money, respectively hereinbefore mentioned in the said Master's report confirmed by the last-recited order, as constituting part of the personal estate, or the produce of part of the personal estate, of the said [intestate], and of the sum of 500l. being the accumulations accrued due, and received in respect of the said stocks, funds, and securities; And also all and all manner of action and actions, suit and suits, cause and causes of actions and suits, accounts, reckonings, claims, and demands whatever, which he the said [releasor], as such brother and one of the next of kin aforesaid, ever had or now hath, or which he, his executors, or administrators, can, shall, or may hereafter have against the said [committee], as such committee or administrator *de bonis non* during lunacy as aforesaid, his executors or administrators, or against the said [lunatic] as such former administratrix as aforesaid, her executors or administrators, for, or on account, or in respect of the distributive share of the said [releasor] in the said India Bonds, &c., [as before]; or for, or on account, or in respect of any matter, cause, or thing in any way relating thereto. And the said [releasor] doth hereby, for himself, his heirs, executors, and administrators, covenant with the said [committee], his executors and administrators, that he the said [releasor], his heirs, executors, and administrators, some or one of them, shall and will from time to time, and at all times for ever hereafter, at his or their own costs and charges in all things, protect, indemnify, and save harmless the said [committee], as such committee and administrator *de bonis non* during lunacy as aforesaid, his executors and administrators, and also the said [lunatic], as such former administratrix as aforesaid, her executors and administrators, and every of them respectively, and also the estate and effects of the said [intestate] from and against all damages, losses, costs, charges, and expenses, to be sustained or incurred by him the said [commit-

tee], as such committee and administrator *de bonis non* during lunacy as aforesaid, his executors or administrators, or by the said [lunatic] as such former administratrix as aforesaid, her executors or administrators, or her estate and effects, for or by reason or on account of the transfer, delivery, and payment of one third part of one moiety, or one sixth part of the entirety of and in the said India Bonds, &c. [as before] to him, the said [releasor], as brother and one of the three next of kin of the said intestate, or to be in any manner occasioned thereby or incident thereto. IN WITNESS, &c.

ASSIGNMENT.

◆

*Assignment of Trust Property by a Person appointed on behalf of
a Trustee of Unsound Mind.*

THIS INDENTURE, made &c., between [lunatic trustee], of the first part; [person named to convey on behalf of the lunatic trustee], of the second part; and [two new trustees], of the third part. WHEREAS, in pursuance of the trust for that purpose contained in the within in part recited indenture of even date with the within written indenture, by indentures of lease and release, bearing date respectively the — and — days of —, —, the release being made or expressed to be made between the said [the parties], the said [lunatic trustee] did grant, bargain, sell, and release unto the said —, their heirs and assigns, the within-mentioned pieces or parcels of land, messuages, and all other the hereditaments in the province of Bengal, within mentioned, and comprised in the said within in part recited indenture of even date, with their appurtenances, To hold the same unto and to the use of the said —, their heirs and assigns, upon trust for sale, and to remit the money produced by such sale to the said [lunatic trustee], and for and upon other trusts authorized and directed to be, or which were declared of or concerning the same, in and by the said within in part recited indenture, and mentioned in the within-written indenture. AND WHEREAS, after the date and execution of the said within-written and within in part recited indentures, the said [lunatic trustee] became of unsound mind, and incapable either of executing the trusts reposed in him, or of appointing a new trustee or trustees in his stead, by virtue of the powers contained in the within-written indenture, and the said within in part recited indenture. AND WHEREAS, by a decree of the High Court of Chancery, pronounced by his Honor the Vice Chancellor, on the — day of — last, in a cause in which the within-named — and others are plaintiffs, and the said [lunatic trustee] is defendant, it was referred to the Master of the said Court in rotation, to appoint one or more proper person or persons to be a trustee or trustees in the place of the said [lunatic trustee], under the within-written inden-

ture, and the said within part recited indentures of [date], for the purposes of those indentures, or such of those purposes as were then capable of taking effect, and to settle the proper deeds for vesting the trust estates in such new trustees so to be appointed. AND WHEREAS —, Esq., one of the Masters of the said Court, and who was the Master in rotation to whom the said decree was referred, did, in pursuance of such decree, make his report, bearing date the — day of — last; and thereby certified (among other things), that he approved of a proposal which had been laid before him, for the appointment of new trustees as therein mentioned, and that he did therefore thereby appoint the said [new trustees] to be such trustees in the place of the said [lunatic trustee]. AND WHEREAS, by an order made in the said cause, and bearing date the — day of the same month of — last, it was ordered that the said recited report of the — day of — should be confirmed. AND WHEREAS, by an order made by the Lord High Chancellor of Great Britain in the said cause, and in the matter of the said [lunatic trustee], and bearing date the — day of —, —, it was ordered, that it should be referred to the said Master. [See order, ante, pp. 747-8]. AND WHEREAS, in pursuance of the said last recited order, the said Master made his report, bearing date the — day of —, —, and thereby certified that he found that the said [trustee] was of unsound mind, and incapable of executing the trusts vested in him under and by virtue of the said indentures, and that he was of opinion that the said [trustee] was a trustee of the hereditaments and premises, with the appurtenances mentioned and comprised in the said indentures within the intent and meaning of the said act of Parliament, and that the said [trustee] had no beneficial interest in the said premises; and that he was also of opinion that the said [trustee] was such trustee for the plaintiffs in the said cause, the said [plaintiffs], and such other persons as were entitled to any benefit under the trusts of the within-written indenture. And the said Master further certified that he was of opinion that the said [nominee] was the most fit and proper person to be appointed on the behalf, and in the name of the said [trustee], to convey, surrender, release, assign, or otherwise assure the hereditaments and premises, with their appurtenances, whereof the said [trustee] was such trustee as aforesaid. AND WHEREAS, by an order made by the said Lord Chancellor in the said cause and matter, and bearing date the — day of — now last past, it was ordered that the last-recited report should be confirmed, and that the said [trustee] should be discharged from the trusts of the said indentures respectively; and that the said [nominee] should convey, surrender, release, and assign, or otherwise assure unto the said [new trustees], the hereditaments and premises, with their appurtenances so vested, or such of them as are now vested, in the said [trustee], under and by virtue of the same indentures, or any of them, for the purposes of such indentures, or such of those purposes as are now capable of taking effect; and that it should be referred back to the said Master to settle the proper deeds for vesting the said trust estates in the said [new trust-

tees]. AND WHEREAS the said Master, in pursuance of the said lastly recited order, hath settled these presents as a proper deed for vesting the said hereditaments and premises, with their appurtenances, in the said [new trustees], as such new trustees, and in testimony of his approval thereof hath signed his allowance in the margin hereof. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said decree and orders, and particularly in obedience to the said lastly recited order of the said Lord Chancellor, and by virtue of the said act of Parliament, and for and in consideration of the sum of 10*s.* sterling to each of them the said [lunatic trustee and nominee], paid by the said [new trustees] at or immediately before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, the said [lunatic trustee], hath granted, bargained, sold, assigned, transferred, and set over, and by these presents doth grant, bargain, sell, assign, transfer, and set over, and the said [nominee], in the place and on the behalf of the said [lunatic trustee], hath bargained, sold, assigned, transferred, and set over, and by these presents doth bargain, sell, assign, transfer, and set over unto the said [new trustees], their executors, administrators, and assigns, All that within-mentioned reversionary right or interest of and in the within-mentioned sum of £—, Three per cent. Reduced Bank Annuities, and the dividends and annual produce thereof; And all the within-mentioned sums of money, debts, chattels, and effects comprised in and assigned, or intended to be assigned, to the said [lunatic trustee] by the within-written indenture, and now remaining vested in him; And also all sums of money to be received or produced from or in respect of the sale or sales made or to be made of the said hereditaments and premises comprised in and conveyed, or intended to be conveyed, by the within in part recited indenture, of even date with the within-written indenture, and the said hereinbefore in part recited indentures of [date], and the rents, issues and profits thereof, until the same shall be sold; And all remittances, bills, dues, and accounts in respect thereof; And all and singular other the monies, personal estate and effects, assigned to, vested in, payable to, or receivable by, the said [lunatic trustee], under or by virtue of the said within-written indenture, the said within in part recited indenture, and the said several hereinbefore in part recited indentures, or any of them, and in respect of which the said [lunatic trustee] is a trustee within the meaning of the said act of Parliament, and the said hereinbefore in part recited decree of the said Court of Chancery, and orders of the said Lord Chancellor; And all the right, title, interest, trust, property, powers, authorities, benefit, claim, and demand whatsoever, both at law and in equity, of him the said [lunatic trustee], of, in, to, upon, or from the said premises, or any of them, and any part thereof; To HAVE, hold, receive, and take the said reversionary interest, monies, and all and singular other the premises hereinbefore assigned or expressed, and intended so to be, unto the said [new trustees], their heirs, executors, administrators, and assigns; Upon such and the same trusts, and to and for such and the same intents and purposes, and with, un-

der, and subject to such and the same powers, provisoes, agreements, and declarations, as are in and by the said within-written indenture, the said within in part recited indenture, and the said hereinbefore in part recited indenture, of the [date] expressed or declared of or concerning the same, or such of them as are now subsisting and capable of taking effect. IN WITNESS, &c.

ANSWER IN CHANCERY

Of a Lunatic and his Committee, to a Bill filed for the Specific Performance of an Agreement (d).

The joint and several answer of *A. B.* [the lunatic], by *C. D.*, his committee and guardian, and of *C. D.* and *E. F.*, defendants to the bill of complaint of *G. H.* and *I. K.*, complainants.

These defendants now and at all times hereafter, saving and reserving to themselves and each of them all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainants' said bill of complaint contained, for answer thereunto, or unto so much and such parts thereof as these defendants are advised is or are material or necessary to make answer unto, they, these defendants, severally answering, say—

And first, this defendant [lunatic], by his said committee and guardian, saith, that by a commission in the nature of a writ *de lunatico inquirendo*, issuing under the Great Seal of Great Britain, and bearing date the — day of May —, directed to certain commissioners therein named, to inquire whether this defendant was a lunatic, or not, this defendant was found a lunatic from the — day of May, —, and the care and custody of this defendant's estate was, by the Lord Chancellor of Great Britain, granted to this defendant's [committee]; and which said commission of lunacy is now in full force.

And this defendant, by his said committee and guardian, further saith, that the contract in the said complainants' bill mentioned and alleged to have been made and entered into by this defendant, appears by the said complainants' bill to bear date subsequent to the time when this defendant has been found to be a lunatic by virtue of the said commission of lunacy; and this defendant [lunatic], by his said committee and guardian, submits, that by reason of his unhappy state of mind, he was, at the time of the alleged contract, incapable of judging with any sound discretion upon the disposition of his property, or any transactions of business; and that he was open and liable to be imposed upon by any artful persons who would humour the particular topic that dwelt upon this defendant's mind.

And this defendant [lunatic], by his said committee and guardian,

(d) See *ante*, p. 424. The commencement of bills filed on behalf of lunatics, will be found in the *Equity Draftsman*, Vol. 1. p. 4, 2nd ed.

submits himself to the protection of this Honourable Court, and that he ought not to be compelled specifically to perform the said alleged agreement for the sale of the said estates. And these defendants, *C. D.* and *E. F.*, severally say, they believe that the said [*lunatic*] was seised in fee of the freehold and copyhold estates and premises in the complainant's bill mentioned, but these defendants severally say, they do not know or believe that the said [*lunatic*], when of sound mind, was desirous to sell or dispose of the same, or any part thereof.

And these defendants, *C. D.* and *E. F.*, severally say, they believe that the said [*lunatic*] has unfortunately for several years past, and long before the — day of — [date of the contract], laboured under a deranged state of mind, by which he has been so severely afflicted, as to be incapable, as these defendants believe, to conduct his affairs, and regulate his property in a rational manner.

And these last-named defendants severally say, they believe that the said complainant, *G. H.*, was, on and previous to the — day of — [date of the contract], well acquainted with the said insane state of mind of the said lunatic. [*Here followed the defendants' answer to other parts of the bill in the usual way, without reference to the lunacy.*]

And these defendants, *C. D.* and *E. F.*, severally say, that at the time of the said [*lunatic's*] executing the said contract, he was a person of insane mind, and that he was not in the full possession of all his senses or faculties, but, on the contrary, laboured under an imbecility of mind that rendered him easy to be imposed upon, and incapable of managing his property, and such he has been found to be under and by virtue of the said commission of lunacy.

And these defendants, *C. D.* and *E. F.*, submit, that the said [*lunatic*], being a lunatic and of unsound mind, and incapable of governing his property at the time of entering into the said contract, the same is void, and ought not to be carried into execution:

And further, these defendants severally submit, that if the said lunacy and unsoundness of mind of the said [*lunatic*] did not avoid the said contract, the same ought not to be enforced in a Court of equity, by reason that the said [*lunatic*] was imposed upon and deceived in respect of the person treating with him, and was prevailed upon to agree to sell the said estate and premises, which he never would have done if he had known the said *J. K.* to have been the purchaser. [*Denial of combination, &c.*].

INDICTMENT

At Common Law for a Conspiracy to confine a Person in a Private Madhouse as Insane, in order that one of the Defendants might possess his Property.

Essex, } THE jurors of our lord the King upon their oath present,
to wit, } that *W. Lucre*, late of the parish of *E.*, in the county of
Essex, yeoman, *Abel Strong*, late of &c., *A. B.*, late of &c., and

C. D., late of &c., being wicked, malicious, and evil disposed persons, of evil name and fame, and of dishonest conversation, and devising, contriving, and intending, one *John Nokes*, an honest liege and faithful subject of this realm, to harass, aggrieve, oppress, and impoverish, and him to subject to great hardships both in body and mind, on the — day of —, in the — year of the reign &c., at the parish of —, in the county of Essex, unlawfully, wickedly, wilfully, and maliciously, did conspire, combine, confederate, and agree together between themselves, that they, the said [*defendants*], by divers subtle arts, stratagems, and devices, should get, acquire, and obtain into their custody and possession, him, the said *John Nokes*, under colour and pretence that he, the said *John Nokes*, was a person insane, out of his mind, and deprived of his natural senses, and that they, the said [*defendants*], should convey, or some of them should convey, or cause and procure the said *John Nokes* to be conveyed, into the custody of the said *Abel Strong*, and that the said *Abel Strong*, and the said *A. B.* and *C. D.*, as assistants to the said *Abel Strong*, should confine, imprison, keep, and secrete, and cause and procure the said *John Nokes* to be confined, imprisoned, kept, and secreted, in the dwelling-house of the said *Abel Strong*, (the same being a house kept and set apart for the reception and management of persons deemed insane, lunatic, and deprived of their senses), for the purpose of imprisoning and confining the said *John Nokes* from all his friends and acquaintance; and that the said *W. Lucre* might thereby be enabled to possess himself and get into his hands, custody, and possession, all and singular the goods, chattels, effects, and estate, of and belonging to the said *John Nokes*, and, by the means aforesaid, deprive him, the said *John Nokes*, of the same; and that in pursuance of the aforesaid conspiracy, combination, confederacy, and agreement, by and between them the said [*defendants*] so as aforesaid had, they the said [*defendants*] unlawfully, wickedly, wilfully, and maliciously, did insult, abuse, terrify, beat, wound, and ill-treat, the said *John Nokes*, and cause and procure him, the said *John Nokes*, to be insulted, abused, terrified, beaten, wounded, and ill-treated, in a cruel and barbarous manner, and thereby, as much as in them lay, to endeavour to deprive him, the said *John Nokes*, of his just and natural senses, for the purpose and on the account that they might have a reasonable and plausible colour and pretence for the removing, conveying, and conducting him, the said *John Nokes*, to the said dwelling-house of the said *Abel Strong*, kept for the purpose of receiving, harbouring, and entertaining of persons insane, lunatic, and deprived of their senses as aforesaid; and that in further pursuance of the aforesaid conspiracy, combination, confederacy, and agreement, between the said [*several defendants*], as aforesaid before had, they the said [*defendants*] afterwards, to wit, on the — day of November, in the — year aforesaid, with force and arms, at the parish of — aforesaid, in the county aforesaid, in and upon the said *John Nokes*, in the peace of God and our said lord the King, then and there being, unlawfully, wilfully, wickedly, and maliciously, did make an assault, and him the said *John Nokes* did

then and there unlawfully, wilfully, wickedly, and maliciously, convey and bring, and cause to be conveyed and brought, into the dwelling-house of the said *Abel Strong*, situate at the parish of — aforesaid, in the county aforesaid, and him, the said *John Nokes*, did then and there unlawfully, wrongfully, unjustly, and injuriously, and against the will of the said *John Nokes*, confine and imprison, and cause and procure to be confined and imprisoned, without any reasonable or justifiable cause whatever, in the said dwelling-house of the said *Abel Strong*, for a long space of time, to wit, the space of fourteen days then next following, whereby the said *John Nokes* did then and there suffer and undergo many and great cruel hardships and distress both in body and mind; and the said *John Nokes* was thereby during all that time deprived of his natural liberty, which he ought to have had and enjoyed, to the great damage, discomfort, terror, and affrightment of the said *John Nokes*, in contempt of our said lord the King and his laws, to the evil example of all others in like cases offending, and against the peace of our said lord the King, his crown and dignity (e).

[*Common counts for assault, battery, and imprisonment.*]

(e) An indictment was preferred against four persons for conspiring together to cause it to be believed, that the prosecutor was of unsound mind and unfit for the management of his affairs, and ought, therefore, to be placed under personal restraint; and, in pursuance of that conspiracy, with having seized the prosecutor, having caused him to be removed from his house and detained in

confinement, and for an assault and false imprisonment. Two of the defendants were found guilty of an assault, but all were acquitted of the conspiracy. *Rex v. Dean and others*, K. B., 23rd February, 1827. It is apprehended that an indictment of this kind lies, notwithstanding the statute of the 2 & 3 Will. 4, c. 107, s. 59, *ante*, p. 612; and see *ante*, p. 485.

PART IV.

FEES AND COSTS IN LUNACY.

BY the Report of the Commissioners for examining into the Duties, Salaries, and Emoluments of the Officers, Clerks, and Ministers of the several Courts of Justice in England, Wales, and Berwick-upon-Tweed, as to the Court of Chancery, it appears that the following Fees had been taken, and were recommended by the Commissioners to be taken (a):—

The Secretary of Lunatics.

	£	s.	d.
For every order made upon hearing	1	7	6
A petition for grant of a custody	1	7	6
A petition for a writ <i>de lunatico inquirendo</i> , or for any other matter, except as above	0	15	0
<i>A charge of 1s. is made for setting down for hearing.</i>			
Entering a caveat	0	5	0
Copy of orders made in Court, or of petitions, the first side	0	1	6
Every other side	0	1	0
Setting down every petition for hearing	0	1	0
Filing and copy of every affidavit, the first sheet (<i>side</i>) (b)	0	2	0
Every subsequent sheet (<i>side</i>)	0	0	8
The fees above to be paid by the party filing and requesting such copy, and not otherwise.			
Where the affidavit is already filed—			
For the officer's hand	0	1	0
For the copy of the first and every other side	0	0	8
The two last fees to be paid by the party requesting such copy, and not otherwise.			
For a search	0	1	0
<i>Fees of the Clerk of the Custodies of Idiots and Lunatics, and his Deputy (c).</i>			
Every commission to inquire of the idiocy or lunacy of any one person	2	12	0

(a) Ordered by the House of Commons to be printed, 6th June, 1816, pp. 133, 134.

(b) It is understood that the charge made is *per side*, and not *per sheet*.

(c) As this office will probably continue many years, notwithstanding the act to abolish it, the fees are inserted. See ante, p. 624, a.

	£	s.	d.
If of two persons	5	4	0
Superseding every commission of idiocy or lunacy	1	4	0
Every bond given by committees of idiots or lunatics	0	14	0
Drawing every bill for the custody of a lunatic's or idiot's person or estate, or both	2	0	0
If containing a revocation of a former grant	3	0	0
If containing a grant of the custody of two persons	4	0	0
Attending the Attorney-General upon every committee's giving security	0	10	0
Every grant of the custody of an idiot's or lunatic's person, estate, or both	3	13	4
If of two persons	7	6	8
Inrolling every grant of the person or estate, or both	1	0	0
If the grant be of the custody of two persons, or contains a revocation of a former grant	2	0	0
Drawing every revocation of a grant of the custody of an idiot's or lunatic's person or estate, or both	1	0	0
Revocation of a grant of every idiot's or lunatic's person or estate, or both	3	13	4
Inrolling every revocation of the custody of an idiot's or lunatic's person or estate, or both	1	0	0
Every commission or <i>dedimus</i> to examine witnesses, or take examinations	0	6	10
Filing and copying all orders, reports, and affidavits, two shillings the first sheet	0	2	0
And 1s. every other sheet, of ninety words each sheet	0	1	0
Copy of depositions or examinations, one shilling the first sheet	0	1	0
And 8d. every other sheet, of ninety words each	0	0	8
Vacating or delivering up every bond or recognizance	1	6	8
Every summons to committee and sureties to account	0	6	8
Two <i>scire facias's</i>	1	4	8
Every writ of execution, <i>per skin</i> , containing sixteen sheets, of ninety words each sheet	1	6	8
Half skin	0	13	4
Every attachment	0	3	10
Every writ <i>ne exeat regno</i>	0	12	4
Filing every year's account of an idiot's or lunatic's estate, affidavit of the truth thereof, and Master's report	1	0	0
Copying every year's account	0	5	0
Every certificate	0	6	8
Every caveat entered	0	5	0
Copy of commission and inquisition, one shilling the first sheet	0	1	0
And eightpence every other	0	0	8
A search	0	1	0

Note.—It is understood that the office of the Clerk of the Custodies is open from ten in the morning till three in the afternoon, and from six till eight in the evening.

	£	s.	d.
<i>Fees of Commissioners of Lunatics.</i>			
Signing the precept, each commissioner	1	1	0
Signing and sealing the inquisition, each commissioner	1	1	0
Attending to take the inquisition, when the place is in London or Westminster, not off the stones, each commissioner (<i>d</i>).	2	2	0
If off the stones in any of the villages in the immediate vicinity of London	3	3	0
If at a greater distance, the fee is increased in a moderate proportion	0	0	0

The Parliamentary Commissioners recommended three guineas *per* day to be allowed, besides travelling expenses.

The travelling expenses are paid by the solicitor to the commission (*e*).

COSTS IN LUNACY.



IN the matter of —, a lunatic.

The bill of costs, charges, and expenses of —, the heir-at-law, and one of the committees of the person, incurred in issuing out and prosecuting the commission of lunacy in this matter, and of the proceedings subsequent thereto.

Easter Term, 1831.

Instructions for commission of lunacy	0	13	4
Several attendances on the lunatic's friends and keeper, procuring necessary evidence	0	13	4
Drawing and engrossing petition for commission of lunacy	0	10	0
Attending [<i>the petitioner</i>], reading over, and attesting his signature thereto	0	6	8
Instructions for five special affidavits in support	0	6	8
Drawing and engrossing affidavit of —, fols. 11.	0	14	8
Attending to read over and get sworn	0	6	8
Oath	0	1	6
<i>[Similar charges for the four other affidavits.]</i>			
Attending upon Dr. A. in —, requesting him to attend the lunatic at —, and report the state of her mind, which he promised to do	0	6	8
Attending him afterwards, when he stated that he had no doubt the facts deposed to in the affidavits were correct, but he declined making an affidavit, as he had not seen any thing grossly wrong in the lunatic's behaviour	0	6	8

(*d*) It appears, that, in ordinary cases, the commissioners are now allowed three guineas.

(*e*) See Report ordered by the House of Commons to be printed, 6th June, 1816, p. 137.

Costs in Lunacy.

787
£ s. d.

Writing to Mr. D. of —, Surgeon, requesting him to see [alleged lunatic], but he declined, and attending at his house, but he was from home	0	6	8
Attending to present petition	0	6	8
Paid answering	0	16	0
Paid filing affidavit of —, and for office copy	0	7	10
[Five similar items of other affidavits.]			
Attending several times at Secretary of Lunatics', to know if commission had issued, and ascertained that Lord Chancellor had directed it	0	6	8
Letters and porters	0	5	0

Trinity Term, 1831.

Paid for commission	4	18	0
Solicitor's fee thereon	2	2	0
Attending commissioners to appoint day for executing commission	1	0	0
Commissioners having requested that some medical witness should be examined, attending Dr. B., in —, requesting him to see the lunatic, and afterwards attending him and taking notes of his evidence	0	13	4
Drawing and engrossing precept to sheriff	0	10	0
Attending commissioners for their signatures	0	15	0
Paid their fees	3	3	0
Solicitor's fee thereon	1	1	0
Attending sheriff to fix a day for executing the commission	0	6	8
Attending the witnesses, appointing them to attend	0	13	4
Making brief of affidavits for commissioners, seven sheets	1	3	4
Drawing the inquisition	1	0	0
Fair copy	0	6	8
Attending Mr. P., and settling it	0	6	8
Engrossing same for jurors to sign	0	6	8
Attending the execution of the commission at Gray's-inn-coffee-house, when Mrs. A. was declared lunatic—solicitor and clerk	3	3	0
Paid the commissioners	9	9	0
—eighteen jurymen	18	18	0
— Under-sheriff	4	4	0
— Summoning officer	2	2	0
— Tavern expenses	6	15	6
Engrossing the inquisition on parchment, for the commissioners to sign	0	13	4
Parchment	0	4	0
Copy to keep with the signatures of the jury	0	5	0
Attending to file the inquisition at the Petty Bag Office	0	6	8
Paid filing	1	2	3

	£	s.	d.
Paid Dr. B., for three attendances on the lunatic, and for attending to give evidence	16	16	0
Paid coach-hire for lunatic and witnesses	2	0	0
Instructions for petition for appointment of committee of person and estate	0	6	8
Drawing and engrossing same	0	8	0
Fair copy for the Chancellor	0	2	0
Attending presenting, and for same	0	6	8
Paid answering and setting down petition, as caveat had been entered on behalf of next of kin	0	16	0
Drawing brief for counsel, and copy, one sheet	0	10	0
Fee to Mr. N., with brief, and clerk	1	3	6
Attending him	0	6	8
Attending Court, petition heard, and order made	0	13	4
Court fees	0	13	0
Paid for minutes of order	0	3	6
Close copy	0	2	6
Notice to settle	0	3	0
Attending, settling minutes, and bespeaking order	0	6	8
Paid for order	1	7	8
Attending to file order with Clerk of the Custodies	0	6	8
Paid filing it	0	10	2
Letters and parcels	0	5	0

Michaelmas Term, 1831, and Hilary Term, 1832.

Attending for reference to Master in rotation, and paid	0	7	8
Copy order for the Master	0	2	6
Drawing state of facts, and proposal for committee of person and estate, fols. 8.	0	5	4
Warrant on leaving copy and service	0	4	6
Instructions for affidavits in support	1	1	0
Drawing and ingrossing affidavit of —, in support, fols. 11.	0	14	8
<i>[Three other affidavits, and charges according to length.]</i>			
Attending the four deponents, reading over affidavits, and afterwards with them to be sworn	1	6	8
Paid oaths	0	6	0
Warrant on leaving the above affidavits, copy and service	0	4	6
Paid for copy, state of facts, and proposal for appointment of committee of person and estate, on behalf of Miss —, fol. 7.	0	3	6
Attending Mr. —, conferring and advising thereon	0	13	4
Paid for office copy, affidavits of — and others, in support of Miss —'s proposal, fols. 8.	0	4	0
<i>[Charges for office copies of eleven other affidavits, at the rate of sixpence a folio.]</i>			

Costs in Lunacy.

789.

£ s. d.

Attending warrant to proceed on proposal of Miss —, when ten days' time was given us to answer the affidavits	0	6	8
Instructions for affidavit of Mrs. —, in reply	0	6	8
Drawing and engrossing affidavit of Mrs. —, fols. 4	0	5	0
Attending, reading over, and afterwards to Master's office, to swear same	0	6	8
Paid oath	0	1	6
[The like charges in proportion to the length for several other affidavits.]			
Warrant on leaving the above affidavits, copy, and service	0	4	6
Perusing and considering affidavits, previously to attending the Master	1	1	0
Warrant to proceed on proposal of [the petitioner]	0	4	6
31st Jan.—Attending warrant this day on our proposal, and also attending warrant to proceed on the proposal of Miss —, when, after much discussion, we consented to withdraw our proposal as to the committee of the estate, and agreed upon two persons, — and —, to be such committees, and the consideration of who should be committee of the person stood over, engaged 1½ hour	1	1	0
Several attendances at the Master's Chambers, to ascertain if he had decided on the proposal of committee of the person, when he said he would give his decision in a few days	0	6	8
Warrant to shew cause why warrant on preparing report should not issue, copy and service			
8th Feb.—Attending warrant, when Master had visited the lunatic, and decided in favour of our proposal	0	6	8
Paid for warrant on preparing report, copy and service	0	4	6
Copy for copy draft of report, fols. 20.	0	10	0
Close copy	0	6	8
Warrant to settle report, copy and service	0	4	6
28th Feb.—Attending warrant to settle report, and proceeded	0	6	8
Drawing and engrossing affidavit of —, as next of kin, and paid oath	0	10	6
Warrant on leaving	0	4	6
Another warrant to settle report, and service on Mr. —	0	4	6
Two copies and services on Mr. —	0	10	0
[Three other similar items.]			
Warrant to sign report, and service on Messrs. —	0	4	6
Two copies, and services on Mr. —	0	10	0
[Three other similar items.]			
Oath of service of the above warrants	0	7	6
15th March—Attending warrant to sign report	0	6	8
Close copy report	0	6	8
Paid for report transcribing	1	12	0

	£	s.	d.
Master's clerk	2	2	0
Attending to file report, and for office copy	0	6	8
Paid filing	1	1	2
Letters and parcels	0	5	0

Easter Term, 1832.

Instructions for petition to confirm report, and for allowances for past and future maintenance	0	6	8
Drawing petition, fols. 12.	0	12	0
Fair copy for the Chancellor	0	4	0
Attending presenting, and for same	0	6	8
Paid answering	0	16	0
Two fair copies of petition, with Chancellor's order for service	0	10	0
Service on —, the solicitors for next of kin	0	10	0
Making brief of petition for Counsel	0	6	8
Fee to Mr. N. and clerk, with same	1	3	6
Attending him	0	6	8
5th May—Attending Court this day, petition heard, and order made	0	13	4
Court fees	0	13	0
Paid for copy minutes	0	7	6
Close copy	0	3	0
Notices to —, to settle	0	5	0
Attending settling	0	6	8
Attending passing	0	6	8
Paid for order	1	7	10
Attending filing duplicate with the Clerk of the Custodies	0	6	8
Paid filing	1	6	4
Perusing the will of the late husband of the lunatic, to ascertain the amount of her income	0	6	8
Drawing state of facts of the lunatic's property, for the Attorney-General	0	7	6
Drawing and engrossing affidavit thereof	0	10	0
Attending deponent to be sworn, and paid oath	0	7	8
Attending to leave affidavit at Clerk of the Custodies, and to bespeak bond	0	6	8
Paid filing affidavits with the Clerk of the Custodies	0	5	0
Attendances on Mr. —, arranging as to the sureties to be given, and afterwards on the Clerk of the Custodies thereon	0	6	8
Drawing and engrossing affidavit of Mr. —, as to the sufficiency of Mr. —, the surety of Mr. —	0	7	6
Attending to examine into the character of Mr. —, the surety in the bond, on behalf of Mr. —	0	13	4
Attending reading over, and afterwards to Master's office to be sworn	0	7	8

Costs in Lunacy.

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	£	s.	d.
Attending to file same with Clerk of the Custodies	0	6	8
Paid filing	0	4	0
Instructions for grant	0	13	4
Attending to bespeak same	0	6	8
Attending the committees of the estate, and also their sureties, at their houses, reading over and attesting the due execution of the bond by them	1	0	0
Attending to make oath of the due execution of the se- veral parties, and paid oath and exhibit	0	10	8
Attending Clerk of the Custodies, and filing affidavit	0	6	8
Paid filing affidavit	0	5	0
Paid for same, and for bond and duty	21	7	4
Solicitor's fee thereon	2	2	0
Copy, mandatory part of order, of the 5th May, 1832, for the Master	0	5	0
Drawing state of facts, and proposal for maintenance, fols. 10.	0	6	8
Instructions for affidavit in support	0	6	8
Drawing and engrossing affidavit of —, fols. 10.	0	13	4
Attending him, reading over, and afterwards to be sworn, and paid oath	0	8	2
Warrant on leaving two copies and services	0	7	0
The like to proceed	0	7	0
Letters and parcels	0	5	0

Trinity Term, 1832.

26th May—Attending warrant to proceed, when same allowed, unless cause shewn in ten days	0	6	8
2nd June—Attending warrant to proceed, when propo- sal allowed	0	6	8
Warrant on preparing report	0	7	0
Paid for copy report, fols. 15.	0	7	6
Close copy	0	5	0
Warrant to settle report	0	7	0
19th July—Attending warrant to settle report	0	6	8
Paid for report, and transcribing	1	10	0
Master's clerk	1	1	0
Instructions for petition to confirm report, and to refer it back to the Master to tax the costs, charges, and expenses of all parties	0	6	8
Drawing petition, fols. 30.	1	10	0
Engrossing petition on paper	0	10	0
Attending presenting, and afterwards for same	0	6	8
Paid answering	0	16	0
Two copies to serve with Lord Chancellor's order thereon	1	0	0
Service thereof	0	10	0
Fair copy petition for counsel, 4 sheets	0	10	0
Fee to Mr. N. with same, and clerk	1	3	6
Attending him	0	6	8

	£	s.	d.
23th. July—Attending Court, petition heard and order made	0	13	4
Court fees	0	13	0
Paid for minutes	0	7	6
Close copy	0	5	0
Two notices to settle	0	5	0
Attending settling	0	6	8
Attending passing	0	6	8
Paid for the order	1	8	0
Expedition	0	10	6
Attending filing duplicate with Clerk of the Custodies	0	6	8
Paid filing	1	8	0
Drawing this bill of costs, and fair copy, fols. 51.	1	14	0
Warrant on leaving	0	7	0
Two warrants to tax	0	14	0
Attending taxing	0	13	4
Paid Clerk in Court	0	13	4
Paid copy bill of costs of — and others, fols. 41.	1	0	6
Attending two warrants to tax	0	13	4
Paid for copy bill of costs of — and others, next of kin, fols. 5.	0	2	6
Attending one warrant to tax	0	6	8
Paid for report of costs	3	19	6
Attending filing	0	6	8
Paid filing, and for office copy	0	5	0
Letters and porters	0	5	0

The total amount of the above bill as taxed by the Master (10th Aug. 1832), was 226l. 7s. 7d. It is perhaps hardly necessary to observe, that, in contested cases the costs greatly exceed that sum.

Bill of Costs of the Next of Kin incurred on the Appointment of Committees and Settlement of the Maintenance.

IN the matter of —, Esq., a lunatic.

The bill of costs, charges, and expenses of —, the next of kin of the said lunatic, incurred on the application for appointment of committees, and for maintenance.

Paid for copy, state of facts, and proposal for committees, fols. 27.	0	13	6
The like of affidavit in support, fols. 25.	0	12	6
Attending two warrants thereon	0	13	4
Paid for copy draft report, fols. 28.	0	14	0
Close copy	0	9	4
Attending two warrants to settle	0	13	4
Having been served with a petition to confirm Master's report, brief thereof for counsel	0	10	0
Fee to Mr. — therewith, and clerk, to consent.	1	6	6

Costs in Lunacy.

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	£	s.	d.
Attending him	0	6	8
Attending Court, petition heard and order made as prayed	0	13	4
Paid for copy minutes of the order	0	3	0
Close copy	0	1	6
Attending settling	0	6	8
Attending passing the order	0	6	8
Paid for copy of the committee's state of facts for main- tenance, fols. 52.	1	6	0
Paid for copy of the joint affidavit of —, in support of the state of facts	0	4	6
Attending two warrants on state of facts for maintenance	0	13	4
Paid for copy of the lunatic's expenses from the death of his mother to April, 1830, fols. 37.	0	18	6
Attending two warrants thereon	0	13	4
Paid for copy draft report, fols. 49.	1	4	6
Close copy	0	16	4
Attending two warrants to settle same	0	13	4
Attending another warrant to settle	0	6	8
Having been served with a petition to confirm the Mas- ter's report on maintenance, brief thereof for counsel	0	16	8
Fee to Mr. — therewith, and clerk	1	3	6
Attending him therewith	0	6	8
Attending Court, petition in the paper but not called on	0	10	0
Attending Court, petition heard and order made	0	13	4
Paid court fees	0	13	0
Paid for copy minutes of order	0	5	6
Close copy	0	3	0
Attending settling	0	6	8
Drawing this bill of costs and copy, fols. 9.	0	6	0
Warrant on leaving copy	0	5	6
The like to proceed, copy and service	0	5	6
Attending taxing	0	6	8
Paid clerk in court	0	6	8
Paid for copy committee's costs	1	15	0
Attending warrant to tax	1	0	0
Letters and porters	0	5	0



Bill of Costs for obtaining two Leases of a Lunatic's Estate.

IN the matter of —, a lunatic.

Bill of costs of committee on order dated 8th December, 1831,
as to granting leases of premises at —.

Michaelmas Vacation, 1831.

Attending Mr. —, the surveyor, in consequence of Mr. A.'s and Mr. B.'s applications for new leases of premises in —, and instructing him to view the pre- mises and to report thereon	0	6	8
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	£	s.	d.
Attending the committee with the surveyor's report, when he approved of the terms	0	6	8
Drawing state of facts and proposals as to leases to <i>A.</i> and <i>B.</i> , and copy for the Master	1	5	4
Warrant on leaving copy and service	0	4	6
Attending the surveyor, taking instructions for special affidavit in support thereof	0	6	8
Drawing his affidavit, fols. 12.	0	12	0
Engrossing same	0	4	0
Attending surveyor, reading over the engrossment, and to get him sworn	0	6	8
Paid oath (Holiday)	0	2	6
Two warrants to proceed on state of facts, copies and services	0	9	0
Warrant on report being prepared, copy and service	0	4	6
Paid for copy draft report, fols. 30.	0	15	0
Close copy thereof	0	10	0
Two warrants to settle copies and services	0	9	0
Attendances thereon	0	13	4
Paid for report, transcribing, &c.	1	15	0
Warrant to sign report, copy and service	0	4	6
Attendance	0	6	8
Master's clerk	2	2	0
Paid filing report and office copy	1	3	4
Attending the Clerk of the Custodies for the purpose	0	6	8
Instructions for special petition to confirm the Master's report, and for reference to the Master to settle draft leases, &c.	0	6	8
Drawing petition, fols. 35.	1	15	0
Engrossing	0	11	8
Copy for the Lord Chancellor	0	11	8
Attending to present petition	0	6	8
Paid answering	0	16	0
Copy petition and order to serve on next of kin	0	11	8
Service thereof	0	2	6
Copy brief for counsel, 4 sheets	0	13	4
Fee to counsel therewith, and clerk	2	4	6
Attending	0	6	8
Drawing observations by way of instructions to counsel explaining the particular circumstances of this case, rendering it necessary to prevail on the Court to hear this petition on an early day out of course, and fair copy, and attending counsel therewith and thereon	0	10	0
Attending court, petition heard and order made	0	13	4
Paid court fees	0	13	0
Paid for copy of minutes of order	0	5	6
Close copy thereof	0	3	0
Perusing and attending settling	0	6	8
Paid for order	1	7	10

	£	s.	d.
Attending examining and passing same	0	6	8
Paid filing order and for office copy	1	6	4
Making copy of title and mandatory part of the order for the Master	0	3	4
Making copy of draft of <i>A.</i> 's lease for the Master, fols. 57	0	19	0
Warrant on leaving copy and service	0	4	6
Three warrants to settle draft lease, copies and services	0	13	6
Attendances thereon	1	0	0
Four warrants to examine the engrossments of lease and counterpart, 8 skins, copies and services	0	18	0
Attendances examining same, being lease and counterpart	1	6	8
Paid Master's clerk his fee on examining	1	6	8
Paid the Master's allowance to both parties	0	5	0
Making copy draft of <i>B.</i> 's lease for the Master	0	19	0
[The six items preceding the last were the same as to <i>B.</i> 's lease].			
Warrant on preparing report, approving &c., copy and service	0	4	6
Paid for copy draft report, fols. 12.	0	6	0
Close copy thereof	0	4	0
Warrant to settle copy, and service	0	4	6
Attendance	0	6	8
Paid for report, transcribing, &c.	1	9	0
Warrant to sign report, copy and service	0	4	6
Attending	0	6	8
Master's clerk, report and costs	2	2	0
Paid filing report and for office copy	0	12	0
Attending the Clerk of the Custodies for the purpose	0	6	8
Drawing this bill of costs and copy for the Master, fols. 18.	0	12	0
Warrant on leaving copy and service	0	4	6
Warrant to tax copy and service	0	4	6
Attending taxing clerk and solicitor	0	13	4
Paid for copy next of kin's costs, fols. 7	0	3	6
Attending taxing	0	6	8
Letters and messengers	0	5	0

The amount of the above bill allowed by the Master, 26th January, 1832, was 50l. 13s. 8d.

IN the matter of —, a lunatic.

Bill of costs of the next of kin of the lunatic on order for granting leases of premises at — to [two lessees].

Michaelmas Vacation, 1831.

Paid for copy, state of facts and proposals, fols. 38.	0	19	0
The like of surveyor's affidavit, fols. 12.	0	6	0
Attending two warrants on the above state of facts and proposals	0	13	4

	£	s.	d.
Paid for copy draft report, fols. 30.	0	15	0
Close copy thereof	0	10	0
Attending two warrants to settle report	0	13	4
Making brief petition to confirm report, &c. 4 sheets	0	13	4
Fee to counsel therewith and clerk	1	3	6
Attending	0	6	8
Attending court, petition heard and order made	0	13	4
Paid for copy minutes	0	5	6
Close copy thereof	0	3	0
Perusing and attending settling same	0	6	8
Paid for copy draft of <i>A.</i> 's lease, fols. 57	1	18	0
Attending three warrants to settle the draft	1	0	0
Attending four warrants, examining the engrossments, lease and counterpart	1	6	8
[The three last items as to <i>B.</i> 's lease were repeated here].			
Paid for copy draft report, approving &c. fols. 12.	0	6	0
Close copy thereof	0	4	0
Attending warrant to settle	0	6	8
Drawing this bill of costs and copy, fols. 7.	0	4	8
Warrant on leaving copy and service	0	4	6
Warrant to tax, copy and service	0	4	6
Attending taxing, clerk and solicitor	0	13	4
Paid for copy committee's costs, fols. 18.	0	9	0
Attending taxing	0	6	8
Letters and messengers	0	5	6

*The amount of this bill as allowed by the Master on 26th
January, 1832, was 19l. 2s. 4d.*

ADDENDA.



Page 20, at bottom, add—The Lord Chancellor of Ireland is usually intrusted by the King's Sign Manual with authority to make orders and grants of the custody of the persons and estates of lunatics in that country as in England (*a*).

P. 24, after first paragraph, add—In a case in Ireland Lord Chancellor *Manners* made an order of reference in a lunacy after the death of the lunatic, to inquire and report who were the heir-at-law and next of kin of the lunatic. The Master made his report. Lord Chancellor *Hart* afterwards, on the case coming before him, held, that the Chancellor's authority under the Sign Manual continues only during the life of the lunatic, and is at an end when the lunatic dies; that the order of reference was wrong, and that he could make no order in lunacy touching the property of the deceased lunatic after it had ceased to be his. His Lordship mentioned *Cotton's lunacy*, in which Lord *Eldon* made a similar order, which, after having led to two trials at law, was acknowledged by him to have been wrong; and finally a bill was filed (*b*). But Lord Chancellor *Hart* held, that he had jurisdiction, from the necessity of the case, to call upon the committee of the estate to wind up his account and to hold the assets in safety; but that the next of kin had not primarily any right which could be recognised, but that they must work out their title through the Prerogative Court, in the regular way (*c*).

P. 30, note (s), add—The forms of proceedings in the appointment of Curators, will be found in Bell's Forms of Deeds in Scotland, Vol. 3, pp. 357—380.

(*a*) See 2 Sch. & Lef. 438; 1 Alcock & Napier, Ir. Rep. 35.

(*b*) *Beer v. Ward*, Jac. Rep. 194.

(*c*) *In re Barry*, 1 Molloy, 414.

P. 62, at the end of first paragraph, add—On a petition for a commission of lunacy in Ireland, the affidavit of a medical practitioner was read, setting out, that the deponent had conversation with the supposed lunatic, and that his language was incoherent, and that he was, in deponent's opinion, not of sound mind. Lord Chancellor *Hart* said, "This will not do. The very words which gave the impression of incoherency should be set out. This is the inference, and the affidavit should state the facts. The precise facts and all the evidences that can be got together, should be laid before me. It is not a matter lightly to be granted. The mere issuing of a commission may produce irritation highly detrimental. It is, therefore, not to issue without great circumspection, and a case made satisfactory to the mind of the judge, that he has before him proof amounting at least to shew the necessity of further inquiry. I cannot send this case to an inquiry without previously looking into it myself, so as to see that there is sufficient to satisfy my own mind of the probability of insanity. Prodigality in the dispersion of property forms no ingredient, provided it appears that the party committing the extravagance, saw that he was doing an improvident thing. I shall desire that he shall be visited by three or four of the most eminent physicians, and shall see and converse with them separately and hear their reports. It is almost the only case in which the judge is justified and bound to resort to private means of obtaining information."

He said that he had known the worst consequences to result from submitting a case to the jury in the first instance; and, therefore, unless he had reasonable doubts, he would not send it to an inquiry by a jury.

The Court looks at a petition not presented by the nearest relations with particular jealousy, for it implies that the persons who ought to protect the supposed lunatic neglect their duty.

The expenses attendant on these previous steps will be paid out of the fund, should it ever come into the possession of the crown by the party being found a lunatic (*d*).

P. 83, note (n), *add*—This bill did not pass.

P. 107, *before last paragraph, add*—An inquest of office ought not to be received upon the oath of a party, but brought in with the commission under the Great Seal (e).

P. 136, *at end of fourth paragraph, add*—A recognizance having been put in suit in Ireland against a surety for a receiver, who was in default, the defendant demurred on the petty bag side of the Court of Chancery to the replication on very technical grounds of want of certainty in the allegations, and the demurrer was overruled by the Lord Chancellor sitting on the common law side (f). The defendant then applied to the cursitor for a writ of error to be brought before the Exchequer Chamber, which the officer refused, there being no precedent for such a writ of error (g). On the defendant's moving that the officer should be directed to issue the writ, Lord Chancellor *Hart* said, "The writ lies from the Court of Chancery, when the Chancellor sits in it as a Court of law, as from the other Courts to the Twelve Judges. The king is not a party here except in the form of the name. The writ cannot be refused." But the Chancellor intimated that it would be better to rehear the argument on the demurrer before him, assisted by one or two of the common law judges, upon the party undertaking not to bring a writ of error afterwards; and in the mean time, as such writ would not stop execution, making payment or giving security before the rehearing was allowed (h).

P. 143, note (q), *add*—This bill did not pass.

P. 144, *at bottom, add*—Lord Chancellor *Hart* observed, "That the practice which prevailed in Ireland, of appointing a Master of the Court committee of the estates of lunatics is objectionable, for he can have no direct knowledge, and

(e) *Moile v. The Earl of Warwick*, 1 Leo. 65. and Lord Keeper *North* held, that such a writ did not lie. *Rex v. Cary*,

(f) *Rex v. Dolphin*, 1 Molloy, 392. 1 Vern. 131. See 4 Inst. 80, Dyer, 315 a.

(g) Mr. Justice *Blackstone* could find no trace of such a writ of error since the 14 Eliz. see 3 Comm. 49; (h) *Rex v. Dolphin*, 2 Molloy, 26. See *Hov. Suppl. to Ves. 1 Vol. p. 479.*

the very purpose of the office is to acquire direct knowledge, and take an active part in the management, and in controlling the receiver, in warranting the ordering of payments and allowances, and generally guarding the safe exercise of the jurisdiction. Whenever any relation of the family will undertake it and give security, and is eligible, he, and not a Master, ought to be appointed committee of the estate. That no branch of the duty of a Judge in the Court of Chancery is so peculiar and anxious as that which regards this helpless class of persons, often subjected themselves and their estates to gross injustice. That the private establishments in England, though, by authority of an act of Parliament, visited by regular superintending physicians, were still liable to much abuse. And that he remembered the case of a lady, entitled to a fortune of £3000 a-year, which came before Lord *Eldon*, in which a malady, not very grievous in itself, had been irritated by ill treatment to complete temporary insanity. That it was caused by the treatment was clear; for, when she was removed to a milder custody and more comfortable treatment, she recovered so far as to enjoy life, and afterwards to manage her fortune. His Lordship further observed, that Lord *Eldon*, in that case, got at so much abominable misconduct, that it gave him (Lord Chancellor *Hart*), a lesson for ever to attend scrupulously to cases of lunatics, and look with the utmost jealousy at every point connected with the treatment of the persons, and the care of their estates especially; because the first will generally be found to hinge upon the second (i).



P. 147, at end of third paragraph, add—A receiver of the estate of a lunatic, proceeding in a wrong form of action, which he was advised to abandon, and adopt another form of action, in which he succeeded for the lunatic, was refused the costs, amounting to £130, of the former proceedings, although the Master reported that he had acted *bonâ fide*, and ought to be allowed such costs (k).

(i) *In re Hussey*, 1 Molloy, 226.

(k) *In re Montgomery*, 1 Molloy, 419.

P. 161, *at end of first paragraph, add*—A reference was directed to the Master to inquire what ought to be allowed for the maintenance of the illegitimate children of a lunatic, but refused as to their mother (*l*).

P. 188, *at end of second paragraph, add*—Whenever the patron of any living or benefice, to which the provisions of Gilbert's Act are proposed to be extended, shall happen to be a lunatic, his committee may transact the several matters therein mentioned for such patron, who will be bound thereby in such manner as if he had been of sound mind (*m*). The committees of persons of unsound mind may execute on their behalf any agreement of reference, or deed of submission, or approbation of any award or map authorized to be made, by a recent act, for identifying ecclesiastical lands (*n*).

P. 190, *at end of third paragraph, add*—As a copyholder does not derive his estate out of the interest of the lord of the manor only, but the essence of a copyhold is the custom of the manor, where a grant is made by a lord, who has a lawful estate or interest, the lord being considered as an instrument only to grant, the copyholder is in by the custom of the manor after the grant has been made, without regard to the extent of such estate or interest, or the capacity of the person, of the grantor; so that if a lord be *non compos*, such grants, surrenders, and admittances of and to copyholds held of the manor, as are warranted by the custom of it, will be good, notwithstanding the mental disability of the lord (*o*).

P. 198, *at end of third paragraph, add*—Where a married woman, who was the committee of the estate and person of her lunatic husband, was entitled to stock standing in the name of a trustee for her; and such stock was, under an order made in the lunacy, transferred into the name of the Accountant-General, in the matter of the lunacy, and

- (*l*) *Ex parte Haycock, in re Jones*, (o) Co. Cop. s. 34; 4 Rep. 23 b;
 5 Russ. 154. 8 Rep. 63 b; Vin. Abr. Copyhold
 (*m*) 17 Geo. 3, c. 53, s. 14. (G), pl. 18; Gilb. Ten. by Watk. 255;
 (*n*) See 2 & 3 Wm. 4, c. 80, s. 3. 1 Watk. on Cop. by Cov. 30.

part of it was afterwards sold out and applied in payment of costs; and the lunatic died, leaving his wife him surviving; it was held, that the stock had been reduced into the possession of the lunatic, and that the wife was not entitled to it by right of survivorship (*p*).

P. 214, note (*e*), add—See *In re Barry*, post, p. 797.

P. 241, at end, add—In a case where the Master had reported that it would be for the benefit of the lunatic's estate, that certain furniture should be sold, and the petition prayed a sale of this furniture—It appeared, that the lunatic, when sane, had made a will, by which he bequeathed this furniture to a particular individual; and one point submitted to the Court was, whether, under such circumstances, the Court would interfere to defeat the bequest, by directing the property to be sold. Lord Chancellor *Lyndhurst* said, that he would not defeat the intention which the lunatic had manifested, when sane; and, therefore, that no direction should be given for the sale of the furniture (*q*).

P. 245, note (*i*),
249, note (*w*), } add—This bill did not pass.

P. 250, at end of third paragraph, insert—It was held, that the committee of a lunatic, who had received and paid over rents to a subsequent mortgagor, was not liable in an action for money had and received to a judgment creditor, to whom the land had been delivered by the sheriff under an *elegit* sued out upon a judgment prior to the mortgage, of which judgment there was no docket, though the issue had been docketed, which was insufficient within 4 & 5 Wm. & Mary, c. 20: the mortgagee being entitled to preference, and it being the first duty of the committee to keep down the interest of the mortgages, with the money arising from the rents (*r*).

P. 276, note (*m*), add—Swinb. p. 2, s. 3, pl. 2; Godolph. Orp. Leg. p. 1, c. 8, pl. 2.

(*p*) *In re Jenkins*, 5 Russ. 183.

(*r*) *Braithwaite and Another v.*

(*q*) *Ex parte Haycock, in re Jones, Watts*, 2 Crompt. & Jervia, 318.

5 Russ. 154.

P. 301, *note (t), add*—The judgment of Lord Chancellor *Lyndhurst*, on refusing the commission of review, is now reported in 5 Russ. 164—172.

P. 311, *note (b), add*—See 2 & 3 Will. 4, c. 92, and the next note.

P. 313, *at the end of first paragraph, insert*—By statute 2 & 3 Will. 4, c. 92, s. 1, the act 25 Hen. 8, c. 19 (*s*), so far as relates to the power of appeal, and the appointment of Delegates; and the 8 Eliz. c. 5, are repealed from the 1st February, 1833; and by the third section of the 2 & 3 Will. 4, c. 92, it is enacted, “ That from and after the said first day of February, one thousand eight hundred and thirty-three, it shall be lawful to and for every person who might heretofore, by virtue of either of the said recited acts, have appealed or made suit to his Majesty in his High Court of Chancery, to appeal or make suit to the King’s Majesty, his heirs or successors, in council, within such time, in such manner, and subject to such rules, orders, and regulations, for the due and more convenient proceeding, as shall seem meet and necessary, and upon such security, if any, as his Majesty, his heirs and successors, shall from time to time by order in council direct; and that the King’s Majesty, his heirs and successors, in council, shall thereupon have power to proceed to hear and determine every appeal and suit so to be made by virtue of this act, and to make all such judgments, orders, and decrees in the matter of such appeal or suit as might heretofore have been made by his Majesty’s Commissioners appointed by virtue of either of the hereinbefore recited acts, if this act had not been passed; and that every such judgment, order, and decree, so to be made by the King’s Majesty, his heirs and successors, shall have such

(*s*) The statute 25 Hen. 8, c. 19, which can, therefore, only have been repealed by 1 & 2 Phil. & Mary, c. 8, but was revived by 1 Eliz. c. 1, s. 10, but the *latter* act is not referred to in the 2 & 3 Will. 4, c. 92, which it has been continued.

and the like force and effect in all respects whatsoever as the same respectively would have had if made and pronounced by the aforesaid High Court of Delegates; and that every such judgment, order, and decree shall be final and definitive, and that no commission shall hereafter be granted or authorized to review any judgment or decree to be made by virtue of this act."

By the fourth section of the act it is provided, that appeals then pending, or which may be pending previous to 1st February, 1833, shall not be affected:

P. 357, *at end of first paragraph, add*—The Great Seal acquires no authority to displace the right of a creditor to enforce payment of his debt, because his debtor is a lunatic, except when the party, or the agent himself, attributes that jurisdiction by intervening in the matter of the lunacy (*t*).

P. 404, *at end of first paragraph, add*—By the Irish statute, 10 Car. 1, s. 2, c. 6, no person can enter on lands except within twenty years after his right accrued; there is a saving of ten years in favour of a *non compos*, or his heir, after coming of sound mind.

P. 405, *note (f), add*—The bill for the limitation of actions relating to real property did not pass. The two other bills did. See 2 & 3 Will. 4, c. 71, s. 7; c. 100, s. 6.

P. 406, *at end of first paragraph, add*—By the fourteenth and seventeenth sections of the Irish statute 10 Car. 1, sess. 2, c. 6, the period of limitations in personal actions is the same in Ireland as in England, and contains a similar proviso in favor of persons under disabilities. By the Irish statute, 8 Geo. 1, c. 4, s. 2, in any action or suit for the recovery of any debt by bill, bond, or other specialty, where no action or suit has been prosecuted, nor interest paid within twenty years, the defendant may plead payment in bar: there is a saving in favor of any person *non compos mentis*, commencing his action within five years after the removal of such disability.

P. 442, note (h), *add*—This case is now reported, see *Ex parte Ridgway, in re Crompton*, 5 Russ. 152.

P. 447, note (o), *add*—See *post*, pp. 588—621.

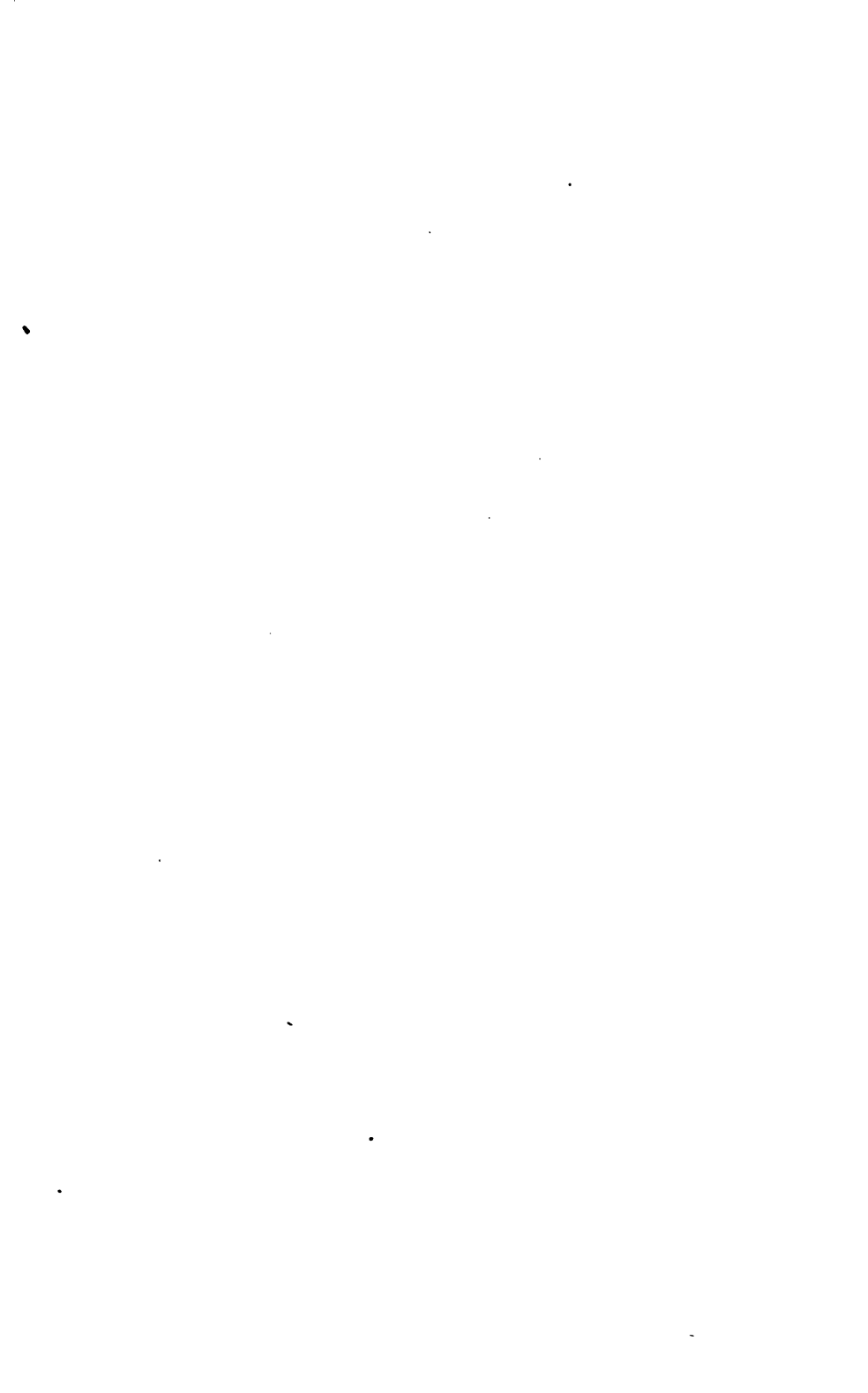
P. 628, *after the last paragraph, add*—According to the present practice, the Secretary of Lunatics draws up the order, and makes a duplicate, which is filed with the Clerk of the Custodies, who always makes an office copy. The order is filed with the Clerk of the Exceptions, who, in obedience to the directions therein contained, draws up another original order, which contains those formal directions, which enable the Accountant-General to act, and which order is entered on the records of the Court of Chancery. If funds or cash in the lunacy, which are in the Bank of England or other corporate bodies, are to be transferred or paid to the Accountant-General, each of those bodies requires an office copy to be deposited with them, previously to such transfer or payment (v).

The expense of the above orders is much increased by the present practice of introducing into them the whole recitals contained in the petitions and affidavits, upon which such orders are grounded (w).

In order to effect a purchase of stock, the order of Court, directing that the cash on the credit of any matter may be invested, must be left at the Accountant-General's office, together with a request, signed by the solicitor, desiring the sum in question to be laid out in such stock as the order may direct (x).

(v) Report on the Chancery Commission, 1826, p. 570.

(w) *Ibid.*
(x) *Id.* p. 560.



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