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THE LAW

CONCERNING

IDIOTS, LUNATICS, AND PERSONS OF UNSOUND MIND.

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THE LAW

CONCERNING

IDIOTS, LUNATICS, & PERSONS OF UNSOUND MIND.

By CHARLES PALMER PHILLIPS,

OF CHRIST CHURCH, OXFORD, M.A., AND OF LINCOLN'S INN, ESQ., BARRISTER-AT-LAW.

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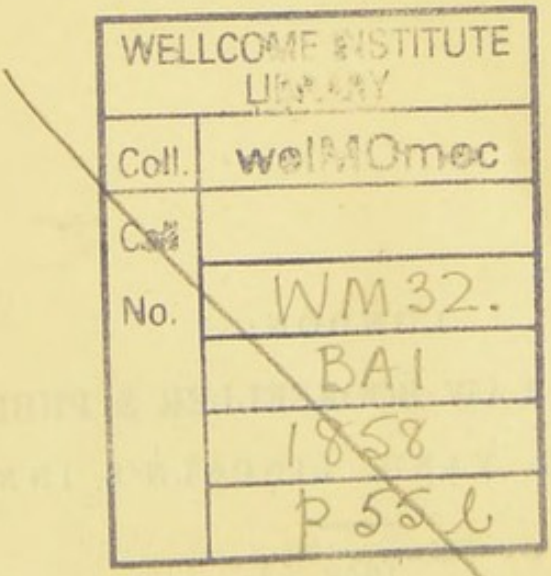
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This Work

IS, BY PERMISSION,

AND WITH THE GREATEST RESPECT,

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BY THE AUTHOR.

PREFACE.

THE best excuse which the author can offer for the compilation of this volume is the importance of the subject on which it treats. He has endeavoured to present in a concise form the Law concerning Idiots, Lunatics, and Persons of Unsound Mind, and the modern practice of our Courts relating thereto, whether founded on Acts of Parliament, General Orders, or the numerous decisions to be found in the Reports. Such a work seemed to him likely to prove acceptable, not only to the members of the legal profession, but also to the various persons who have the management and superintendence of the public and private asylums now existing in all parts of the country.

The introduction *in extenso* of the Statutory enactments on the subject was found to be unavoidable. These have, however, been arranged under appropriate heads, and notes have been annexed of all the cases bearing upon their construction, with such comments as seemed useful.

16, *Old Square, Lincoln's Inn,*
June, 1858.

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THE LAW

CONCERNING

IDIOTS, LUNATICS, AND PERSONS OF UNSOUND MIND.

CHAPTER I.—INTRODUCTORY.

Definition of terms "Idiot," "Lunatic," and "Person of unsound mind."

In treating of the subject of this work it is essential at the outset to fix clearly the legal definition of the several terms "Idiot," "Lunatic," and "Person of unsound mind." It will appear from the authorities cited below that the proper sense to be attached to each of the above phrases has been fully considered and positively determined. We may therefore lay it down that—

Every person whose mind from his birth by a perpetual infirmity is so deficient as to be incapable of directing him in any matter which requires thought or judgment, is in legal phraseology *an idiot*. (1)

Every person *qui gaudet lucidis intervallis*, and who sometimes is of good and sound memory, and sometimes *non compos mentis*, is in legal phraseology *a lunatic*. (2)

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(1) Sir W. P. Wood, V.C., in *Harrod* v. *Harrod*, 1 Kay & Jo. 4; *Co. Litt.* 247 a; *Fitz. N. B.* 233 *b*, *ed.* 1794; 1 *Hale P. C.* 29. Lord Tenterden, C.J., in *Ball* v. *Mannin*, 1 D. & Cl. 393; s. c. 3 Bli. N. S. 1; 4 *Rep.* 124; *Ely's case*, 1 Ridg. P. C. 518, 522; *Bacon's Abr. Idiot (A)*. Lord Hardwicke, C., in *Lord Donegal's case*, 2 Vez. 408; *Swinb. pt.* 2, *s.* 4, *pl.* 1; 1 *Bl. Com.* 304.

(2) 4 *Rep.* 124; *Co. Litt.* 247, and *Ely's case*, 1 Ridg. P. C. 518; 1 *Hale*, 31; *Russell on Crimes*, 7.

Every person who, by reason of a morbid condition of intellect, is as incapable of managing himself and his affairs as an idiot or a lunatic, not being an idiot or a lunatic, or a person of merely weak mind, is in legal phraseology a *person of unsound mind.* (1)

It must be remembered, however, that in legal phraseology a person whose moral feelings are perverted is not by reason of such perversion a person of unsound mind. (2) Further that if the mind is unsound on one subject, it is not sound on any subject, the mind being indivisible. (3)

"*Non compos mentis*" is the legal generic term which includes the three several classes just mentioned. (4)

To avoid any misunderstanding I propose to use the above terms in their legal signification only, as that is established and certain.

The phrase "lucid interval" having been employed, it is desirable here to inquire—

What is a Lucid Interval; and as to the proof of a Lucid Interval.

A lucid interval is "not 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 has recovered its general habit." (5) In other words, it is "a perfect restoration to reason" (6)—"a suspension, not a mere remission, of the morbid state." (7)

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(1) Lord Eldon, C., in *Ridgway* v. *Darwin*, 8 Ves. 65; *Ex parte Barnsley*, 3 Atk. 168; s. c. 2 Eq. Ca. Abr. 581; *Ely's case*, 1 Ridg. P. C. 518; *Ex parte Cranmer*, 12 Ves. 455; *Re Monahan*, 9 Ir. Eq. R. 253. See also Sir W. P. Wood, V.C., in *Harrod* v. *Harrod*, 1 Kay & Jo. 4; and *Carew* v. *Johnston*, 2 Sch. & Lef. 280.

(2) *Frere* v. *Peacocke*, 1 Rob. E. R. 442; *Mudway* v. *Croft*, 3 Curt. 671; *Dew* v. *Clark*, 3 Add. 79—89. But see *Taylor on Med. Jur.* 815; *Prichard on Insanity; Mayo on Med. Test. in Lun.*; and *Winslow's Plea of Insanity.*

(3) Lord Brougham, in *Waring* v. *Waring*, 6 Moo. P. C. 350. Lord Lyndhurst, in *Dew* v. *Clarke*, 5 Russ. 167. See also *Noble's Elem. of Psych. Med.* 81.

(4) 17 *Edw.* 2, *st.* 1, *c.* 10; *Co. Litt.* 247 a; 4 *Rep.* 124; *Rochfort* v. *Ely*, 1 Ridg. P. C. 533—535.

(5) Lord Thurlow, C., in *Att.-Gen.* v. *Parnther*, 3 Br. C. C. 444. Sir W. Grant, M.R., in *Hall* v. *Warren*, 9 Ves. 611; *Wheeler* v. *Batsford*, 3 Hagg. E. R. 599.

(6) *Taylor Med. Jur.* 835.

(7) *Mayo Med. Test. in Lun.* 43.

Sir John Nicholl is reported to have said, "Nor am I able exactly to comprehend what is meant by a lucid interval, if it does not take place when no symptom of delusion can be called forth." (1) The restoration of a mind to its original strength is not however necessary to establish a lucid interval. (2)

The proof of a lucid interval is extremely difficult, (3) particularly in a case of habitual insanity; (4) and the law requires very clear proof of its existence, (5) such proof indeed must be "as clear and demonstrative as the legal proof of insanity supervening on previously uninterrupted sanity." (6)

All the circumstances of an act in an alleged lucid interval should be evidenced; (7) an independent rational act done in a rational manner contributes materially to the proof of a lucid interval; on the other hand, the nature of an act may be some evidence of its not having been done during a lucid interval. (8)

In a medico-legal view the existence of a lucid interval must be always looked upon with suspicion and doubt when the interval alleged is very short, (9) and "the probabilities *à priori* in favour of a lucid interval are stronger in a case of delirium than in one of proper permanent insanity." (10)

The rational rule has been laid down that persons in the habit of watching a lunatic can best prove his lucid intervals. (11) A

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(1) *Wheeler* v. *Alderson*, 3 Hagg. E. R. 575.

(2) Sir E. Sugden, C., in *Creagh* v. *Blood*, 8 Ir. Eq. R. 435; s. c. 2 J. & Lat. 509.

(3) Sir J. Nicholl, in *Ayrey* v. *Hill*, 2 Add. 609; and *Groom* v. *Thomas*, 3 Hagg. E. R. 448.

(4) Sir J. Nicholl, in *Brogden* v. *Brown*, 2 Add. 445. Lord Thurlow, C., in *Att.-Gen.* v. *Parnther*, 3 Br. C. C. 445.

(5) Sir J. Nicholl, in *Ayrey* v. *Hill*, 2 Add. 209; *Dufaur* v. *Croft*, 3 Moo. P. C. 145. Lord Brougham, in *Waring* v. *Waring*, 6 Moo. P. C. 357.

(6) Lord Thurlow, C., in *Att.-Gen.* v. *Parnther*, 3 Br. C. C. 443. Lord Eldon, C., in *Re Holylands*, 11 Ves. 10; *Beck. Med. Jur.* 463 *n.*; and see *White* v. *Driver*, 1 Phillim. 88.

(7) Sir W. Grant, M.R., in *Hall* v. *Warren*, 9 Ves. 611.

(8) *Swinb. pt.* 2, *s.* 3; *Cartwright* v. *Cartwright*, 1 Phillim. 101. Lord Eldon, C., in *Hall* v. *Warren*, 9 Ves. 610. Sir H. J. Fust, in *Chambers* v. *Queen's Proctor*, 2 Curt. 444—448. Dr. Lushington, in *Bannatyne* v. *Bannatyne*, 2 Rob. E. R. 501.

(9) *Taylor Med. Jur.* 836.

(10) Sir J. Nicholl, in *Groom* v. *Thomas*, 2 Hagg. E. R. 433.

(11) Lord Thurlow, C., in *Att.-Gen.* v. *Parnther*, 3 Br. C. C. 444.

lucid interval having been once proved, all acts done during its existence are of course valid. (1)

In the next place we have to consider—

What is the Presumption of Law in regard to Sanity?

From predilection for liberty, and because the state of mind of the idiot, the lunatic, and the person of unsound mind is abnormal, the presumption of the law of England is in favour of sanity; (2) this presumption even extends to the case of a person born deaf and dumb, (3) or deaf, dumb, and blind, (4) although in the payment of money to a person born deaf, dumb, and blind, a court of justice will exercise much caution. (5)

If, however, this presumption in favour of sanity is once rebutted by proof of habitual insanity, the law presumes no lucid interval or restoration to sanity; (6) such interval or restoration must always be established by evidence.

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(1) 4 *Rep.* 25 *a.* Sir J. Nicholl, in *White* v. *Driver*, 1 Phillim. 88. Lord Eldon, C., in *M'Adam* v. *Walker*, 1 Dow. 178; *Towart* v. *Sellars*, 5 Dow. 236; and *Levy* v. *Lindo*, 3 Meriv. 85. Sir W. Grant, M.R., in *Hall* v. *Warren*, 9 Ves. 610. Sir H. Jenner, in *Chambers* v. *Yatman*, 2 Curt. 445; *Att.-Gen.* v. *Parnther*, 3 Br. C. C. 441.

(2) 1 *Hale P. C.* 33; 1 *Swinb.* 119; *Evans* v. *Knight*, 1 Add. 229, 382; s. c. 3 Hagg. E. R. 598. Sir J. Nicholl, in *Burrows* v. *Burrows*, 1 Hagg. E. R. 113, and *Groom* v. *Thomas*, 2 Hagg. E.R. 434, and *Dew* v. *Clark*, 1 Hagg. E. R. 284; s. c. 3 Hagg. E. R. 86. Lord Redesdale, in *M'Adam* v. *Walker*, 1 Dow. 187. Lord Langdale, M.R., in *Steed* v. *Calley*, 1 Keen, 635, and *Selby* v. *Jackson*, 6 Beav. 202, and *Snook* v. *Watts*, 11 Beav. 107. Sir W. Wynne, in *Cartwright* v. *Cartwright*, 1 Phillim. 100. Lord Eldon, C., in *Att.-Gen.* v. *Parnther*, 3 Br. C. C. 443; *White* v. *Wilson*, 13 Ves. 88. Sir H. J. Fust, in *Chambers* v. *Q. Proctor*, 2 Curt. 441. Lord Denman, C.J., in *R.* v. *Oxford*, 9 C. & P. 546. T. B. C. Smith, M. R., in *Long* v. *Long*, 4 Ir. Ch. R. 109. Sir W. P. Wood, V.C., in *Harrod* v. *Harrod*, 1 Kay & Jo. 9; 1 *Bl. Com.* 304; *Perk. s.* 25.

(3) *Harrod* v. *Harrod*, 1 Kay & Jo. 4. But see 1 *Hale P. C.* 34; *Steel's case*, 1 Leach Cr. L. 455; *Dickenson* v. *Blissett*, 1 Dick. 268; *Perk. s.* 25. *Yong* v. *Sant*, Dyer, 56 *a.*

(4) *Re Biddulph's and Poole's Trusts*, 5 De G. & Sm. 469, and Note to Introd. to *Whateley's Tr. on Logic*, *ed.* 1844, *p.* 19; but, *contrà*, *Fleta*, 1—6, c. 40; *Perk. s.* 25; *Com. Dig. Capacity* (*D*), 4; 1 *Bl. Com.* 304; 2 *Bl. Com.* 497; *Yong* v. *Sant*, Dyer, 56 *a*; *Chitty's Med. Jur.* 1, 301; *Co. Litt.* 42 b.

(5) *Re Biddulph's and Poole's Trusts*, 5 De G. & Sm. 469.

(6) Sir W. Wynne, in *Cartwright* v. *Cartwright*, 1 Phillim. 100. Dr. Lushington, in *Bannatyne* v. *Bannatyne*, 2 Rob. E. R. 491. Lord Langdale, M.R., in *Snook* v. *Watts*, 11 Beav. 107. Sir J. Nicholl, in *Groom* v. *Thomas*, 2 Hagg. E. R. 434, and *White* v. *Driver*, 1 Phillim. 88. Sir H. J. Fust, in *Grimani* v. *Draper*, 6 Notes of Cases, 422; and in *Johnson* v. *Blane*, 6 Notes of Cases, 444.

The presumption of law being in favour of sanity, the following question may now be raised, viz. —

How may an Idiot, Lunatic, or Person of unsound mind, be recognised and proved to be such?

An idiot may in general be clearly identified "by a peculiar physiognomy, an absence of all expression, and a vague and unmeaning look;" (1) or by "the endless repetition of short sentences, or portions of sentences." (2) In fact "there are many ways in which idiotcy is manifested, as by neglect of the ordinary decencies of life, frequently by foolish laughter, by general vacancy of aspect, and by other modes which are better understood when seen than by any verbal description. There is also a test from an incapacity of understanding numbers;" (3) but any "acts of business disprove idiotcy." (4)

A lunatic, or person of unsound mind, is not so easily identified as an idiot; the legal test of a lunatic or unsound mind, where there is no frenzy, is the existence in the mind of a fixed extravagant delusion. (5) Sir J. Nicholl, in *Dew* v. *Clark*, adopted as a legal definition of the delusion which haunts the lunatic or unsound mind "a belief of facts which no rational person would have believed;" but Lord Brougham, in *Waring* v. *Waring*, said that a more accurate definition would be "the belief of things as realities which exist only in the imagination of the patient." Dr. Haslam has also declared that "false belief is the essence of insanity;" (6) and his opinion is confirmed by

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(1) *Taylor Med. Jur.* 815.

(2) *Mayo Med. Test. in Lun.* 19; and *Taylor Med. Jur.* 815.

(3) Sir W. P. Wood, V.C., in *Harrod* v. *Harrod*, 1 Kay & Jo. 4.

(4) Dr. Lushington, in *Bannatyne* v. *Bannatyne*, 2 Rob. E. R. 491, 494. Sir J. Nicholl, in *Williams* v. *Goude*, 1 Hagg. E. R. 585.

(5) Sir J. Nicholls, in *Groom* v. *Thomas*, 2 Hagg. E. R. 442; *Wheeler* v. *Alderson*, 2 Hagg. E. R. 574, 616; and *Dew* v. *Clark*, 5 Russ. 168; s. c. 3 Add. 91, 208. Lord Eldon, C., in *White* v. *Wilson*, 13 Ves. 89; *Anon. case*, cited by Lord Eldon, in *M'Adam* v. *Walker*, 1 Dow. 178. Lord Langdale, M.R., in *Steed* v. *Calley*, 1 Keen, 642. Sir H. J. Fust, in *Chambers* v. *Q. Proctor*, 2 Curt. 445—449. Lord Brougham, in *Waring* v. *Waring*, 6 Moo. P. C. 349—354. Lord Campbell, C.J., in *Ditchburn* v. *Fearn*, 6 Jur. 201; *Re Dyce Sombre*, 1 M. & Gor. 132; *Freer* v. *Peacocke*, 1 Rob. E. R. 442; *Taylor Med. Jur.* 811.

(6) *Haslam on Insanity.*

Dr. Mayo, who says that the state of mind of the lunatic or person of unsound mind is "marked by delusion or by inconsecutive and incoherent trains of thought, generally by both conditions;" (1) and by Dr. Battie, who thus expresses himself, "Deluded imagination is not only an indisputable but an essential character of madness." (2)

"Great general eccentricity assists materially in the proof of lunacy or unsoundness of mind," (3) and "furnishes strong ground for suspicion of predisposition to madness;" (4) but prolonged departure, without an adequate external cause, from the habits of feeling and thinking exhibited by an individual in the previous tenor of his life, distinguishes the lunatic or person of unsound mind from the merely eccentric man. (5) Indeed "change of character is the great feature of insanity." (6) The language of Lord Langdale, M.R., is also to this effect:—In *Snook* v. *Watts*, he observes, "A man may be subject to delusions, and one of the means, and perhaps the most accurate means, of judging where these apparent indications ought to be relied upon as proving a general unsoundness of mind, is by a comparison of the alleged acts of insanity with other acts of the same person and the general course of his life. When a man's ways and general course of life are such as to indicate sanity and a knowledge of his affairs, proof of one or more particular acts, though very strange in themselves and though affording some grounds for imputing insanity, would not be a sufficient proof to show that all his acts were done under the delusion of insanity. On the other hand, when a man is thought by various persons to have been insane at a particular period, and to have so continued ever since, proof of one or more acts done afterwards apparently in the manner of a man of unsound mind would not, if unaccompanied by other proof and the application of some tests or inquiry, prove that the acts done were done

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(1) *Mayo's Med. Test. in Lun.* 13—27.

(2) *Battie's Treatise on Madness, s.* 1, *p.* 5; and *Noble's Elem. of Psych. Med.* 185.

(3) Sir J. Nicholl, in *Dew* v *Clark*, 3 Add. 182.

(4) Sir H. J. Fust, in *Mudway* v. *Croft*, 3 Curt. 677, 678.

(5) Sir H. J. Fust, in *Mudway* v. *Croft*, 3 Curt. 677. Mr. Pemberton Leigh, in *Austin* v. *Graham*, 8 Moo. P. C. 501; *Ray. Med. Jur.* 129, *s.* 92; *Beck. Med. Jur.* 457; *Noble's Elem. of Psych. Med.* 207, 220.

(6) *Toyl. Med. Jur.* 825.

under circumstances free from delusion, or, what is quite as much of importance, free from the influence to which persons acting under insane delusions are confessedly liable." (1) Rational acts are separately no proof that a person is not lunatic or of unsound mind when the feature of his mental disorder is not frenzy, but a fixed extravagant delusion, because the delusion may not be called forth or may be studiously concealed." (2)

Before actual mental derangement takes place its approach is generally notified by agitation and nervous excitement, (3) but in the condition of the lunatic or person of unsound mind little is to be noticed of those passions and affections which have largely contributed to its causation." (4)

Inability to answer the commonest questions in arithmetic may contribute to prove a person to be lunatic or of unsound mind, but *per se* it is not sufficient proof. (5) So whimsical dispositions of property are not of themselves sufficient proof, (6) but the justice or injustice of such dispositions may cast some light on the state of mind of the disposer. (7) Further, the being easily intimidated and controlled is a common feature of the lunatic or person of unsound mind. (8) The contents of a will coupled with the situation of the testator and the circumstances under which it was made materially contribute to prove, and may sometimes alone suffice to prove, the state of mind of the testator when making such will. (9) It has been said that "the pen of the

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(1) Lord Langdale, M.R., in *Snook* v. *Watts*, 11 Beav. 107.

(2) Lord Thurlow, C., in *Att.-Gen.* v. *Parnther*, 3 Br. C. C. 444. Lord Eldon, C., in *Re Holylands*, 11 Ves. 10. Lord Langdale, M.R., in *Steed* v. *Calley*, 1 Keen, 635. Dr. Lushington, in *Bannatyne* v. *Bannatyne*, 2 Rob. E. R. 491. Lord Cottenham, C., in *Re Dyce Sombre*, 1 M. & Gor. 132; *Taylor Med. Jur.* 814. See also *Clarke* v. *Lear*, cited 1 Phillim. 119, 2 Curt. 446; and *East India Company* v. *Dyce Sombre*, 4 W. R. 714.

(3) Sir J. Nicholl, in *Burrows* v. *Burrows*, 1 Hagg. E. R. 113.

(4) *Mayo Med. Test. in Lun.* 135.

(5) Lord Eldon, C., in *Sherwood* v. *Sanderson*, 19 Ves. 286; *Lord Donegal's case*, 2 Vez. 406; *Bagster* v. *Newton*, Chitty Med. Jur. 1, 353. Sir W. P. Wood, V.C., in *Harrod* v. *Harrod*, 1 Kay & Jo. 4.

(6) *Burr* v. *Delaval*, 8 Mod. 59.

(7) *Harwood* v. *Baker*, 3 Moo. P. C. 290; *Goldie* v. *Murray*, 6 Jur. 608.

(8) Sir J. Nicholl, in *Portsmouth* v. *Portsmouth*, 1 Hagg. E. R. 370.

(9) *Cartwright* v. *Cartwright*, 1 Phillim. 100; *Hall* v. *Warren*, 9 Ves. 506, 610. Lord Eldon, C., in *Levy* v. *Lindo*, 3 Meriv. 85. See also *Scruby* v. *Fordham*, 1 Add. 90; *Brouncker* v. *Brouncker*, 2 Phillim. 60.

insane sometimes brings to light their incoherency and inconsecutiveness of thought which have been far less apparent in their conversation," (1) and interlineations in an autograph will, coupled with the fact that the testator was previously lunatic or of unsound mind, are circumstances carrying symptoms of disorder into the act itself. (2)

To prove the state of a particular mind opinions are of less weight than facts; (3) and opinions procured by *ex parte* application are of little weight. (4) Opinions of different persons as to the sanity of a particular individual are peculiarly liable to differ, because such opinions are often based on different standards of sanity, and because very often the state of a lunatic or unsound mind is itself fluctuating. (5) Acts proving that the actor was lunatic or of unsound mind, and happening previous or subsequent to other acts which in themselves are of equivocal character, of course throw a light on the real character of such previous or subsequent acts; (6) but acts, however numerous, which may be attributed to other causes than insanity, are no proof of that state of mind. (7) The declarations of a person when unquestionably sane tend to support consonant declarations when his sanity has become doubtful. (8) On the other hand, the declarations of a person when his sanity is doubtful, if at total variance with previous declarations by him when his sanity was unquestionable, tend to prove his insanity at the later period. (9) Rational letters by a testator which refer to his prior will may be evidence that he was not lunatic or of unsound mind at the date of the will; (10) but letters addressed and sent to a person are themselves inad-

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(1) *Mayo on Med. Test. in Lun.* 29; *Noble's Elem. of Psych. Med.* 222.

(2) Sir J. Nicholl, in *Groom* v. *Thomas*, 2 Hagg. E. R. 453.

(3) Sir J. Nicholl, in *Evans* v. *Knight*, 1 Add. 239, 240; s. c. 1 Hagg. E. R. 594, 595—in *Kinleside* v. *Harrison*, 2 Phillim. 449, 574—in *Blewitt* v. *Blewitt*, 4 Hagg. E. R. 451—in *Groom* v. *Thomas*, 2 Hagg. E. R. 443; *Wood* v. *Wood*, 1 Phillim. 363. Lord Redesdale, in *Towart* v. *Sellars*, 5 Dow. 244; s. c. 1 Bli. N. S. 78, 79. Lord Tindal, C.J., in *Tatham* v. *Wright*, 2 R. & M. 21, 22.

(4) *Re Dyce Sombre*, 1 M. & Gor. 128.

(5) *Kinleside* v. *Harrison*, 2 Phillim. 456. Sir J. Nicholl, in *Evans* v. *Knight*, 1 Add. 239.

(6) *Ray. Med. Jur.* 287; 2 *Hagg. E. R.* 443; 3 *Hagg. E. R.* 599, 600.

(7) 3 *Hagg. E. R.* 599.

(8) *Coglan's case*, 19 Ves. 508; 1 Phillim. 120.

(9) *Dodge* v. *Meech*, 1 Hagg. E. R. 612.

(10) *Bootle* v. *Blundell*, 19 Ves. 506.

missible as evidence of his insanity without previous proof of his having acted upon them. (1)

Suicide (2) is *per se* insufficient to establish that the person committing the act was *ipso facto* lunatic or of unsound mind; (3) but where a marriage, followed by the suicide of the husband on the afternoon of his wedding-day, was disputed on the ground that at the time of the marriage the husband intended the suicide, Lord Chancellor Eldon remarked: "It was fair to consider whether at the time of the marriage the husband did not intend to commit the act of suicide. 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." (4) *A fortiori*, suicide is not conclusive as to the state of the mind of the person previous to his commission of the suicidal act. (5) Again: where it was shown that a bodily complaint was the effect of a morbid state of mind operating by sympathy on the body, (6) Lord Chancellor Eldon remarked: "There was no doubt but an unsound state of mind might manifest itself by an accompanying ill state of bodily health; but if it was admitted that the mind was in a sound state before then, they were to look at the state of bodily health not as in itself an evidence of mental derangement, but with a view to ascertain what effect it had on the state of the mind." (7) It would seem, moreover, that evidence to show that a person is hereditarily a lunatic or a person of unsound mind, is now admissible, but the rule does not embrace the collateral relations of such person. (8) A finding on a judicial enquiry that a person is an idiot, lunatic, or a person of unsound mind, though not con-

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(1) *Wright* v. *Tatham*, 6 Scott, 58; s. c. 4 Bingh. N. C. 566, 577; *Wheeler* v. *Alderson*, 3 Hagg. E. R. 609. But see *Waters* v. *Hewlett*, 1 A. & E. 8.

(2) Suicide includes self-destruction by a person *non compos mentis*: *Clift* v. *Schwabe*, 3 C. B. 437.

(3) *Burrows* v. *Burrows*, 1 Hagg. E. R. 109; *Ray. Med. Jur.* 287; *M'Adam* v. *Walker*, 1 Dow. 179. But see 1 *Hale P. C.* 30.

(4) Lord Eldon, C., in *M'Adam* v. *Walker*, 1 Dow. 179.

(5) *Chambers* v. *Q. Proctor*, 2 Curt. 415; *Brooks* v. *Barrett*, 7 Pick. 94.

(6) Insanity, when coupled with bodily infirmity, is a material fact to be communicated to an assurer: *Lindenau* v. *Desborough*, 3 M. & Ry. 45.

(7) Lord Eldon, C., in *M'Adam* v. *Walker*, 1 Dow. 179.

(8) *Frere* v. *Peacocke*, 3 Curt. 670; *R.* v. *Ross Tuchett*, 4 Law T. 50. See however *Doe d. Mather* v. *Lightfoot*, 8 C. & P. 270; *M'Adam* v. *Walker*, 1 Dow. 179.

clusive, is evidence of the facts thereby found ;(1) but the admissibility in a civil proceeding of a coroner's inquest finding lunacy or unsoundness of mind is at least questionable. (2)

Proof of insanity must be evidenced by acts ; (3) and "where insanity has not previously existed, proof of insanity is not to be made out by rambling through the whole life of a party, but must be applied to the particular date of any act impeached, on the ground of his insanity." (4) Lord Chancellor Eldon said that it was not a proper mode of proceeding in a question of sanity merely to state facts to medical men and take their opinion upon these facts without any previous personal examination by them of the person whose sanity is in question. (5) The subject, in its medical aspect, of the appearance and condition of idiots, lunatics, and persons of unsound mind, has been fully discussed in the treatises of Haslam, Ray, Beck, Prichard, Mayo, Chitty, Winslow, Taylor, Smith, Esquirol, Pinel, Monro, Noble, and other learned professional persons, to which the reader is accordingly referred.

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(1) *Sergeson* v. *Sealey*, 2 Atk. 412 ; *Faulder* v. *Silk*, 3 Campb. 126 ; *Dane* v. *Viscountess Kirkwall*, 8 C. & P. 683 ; *Rodd* v. *Lewis*, 2 Lee, 176 ; *Hall* v. *Warren*, 9 Ves. 609 ; *Re Walden*, 1 M. & C. 625 ; *Price* v. *Berrington*, 2 Beav. 286 ; *Browning* v. *Reane*, 2 Phillim. 69 ; *Hume* v. *Burton*, 1 Ridg. P. C. 204 ; *Ellis* v. *Bowman*, 17 Law T. 11 ; *Ex parte Bradbury*, 4 Dea. 211 ; *Frank* v. *Mainwaring*, 2 Beav. 124 ; *Elliott* v. *Ince*, 5 W. R. 466, 482 ; s. c. 3 Jur. N. S. 596. Lord Brougham, C., in *Howard* v. *Digby*, 2 Cl. & Fin. 662. Lord St. Leonards, in *Stanton* v. *Percival*, 5 H. L. C. 279.

(2) *Jones* v. *White*, 1 Stra. 68. It may be mentioned here that to allege falsely and maliciously of any person that he is subject to mental derangement is a criminal act: *R.* v. *Harvey*, 2 B. & C. 257.

(3) Lord Hardwicke, C., in *Clarke* v. *Periam*, 2 Atk. 340 ; 1 *Swinb. on Wills*, 121.

(4) Lord Eldon, C., in *White* v. *Wilson*, 13 Ves. 89, and in *Hall* v. *Warren*, 9 Ves. 610. See also *Chambers* v. *Q. Proctor*, 2 Curt. 441.

(5) 1 *Dow.* 179 ; and see *M'Naghten's case*, 8 Scott, N. R. 600—603 ; 1 *Carr. & K.* 134—136 ; 10 *Cl. & Fin.* 208—212.

CHAPTER II.

As to the Civil Incapacity of an Idiot, Lunatic, or Person of unsound mind.

The civil acts of an idiot, of a person of unsound mind, and of a lunatic, except in a lucid interval, are void. (1) And, moreover, the general rule may be laid down, that when delusion is the feature of the mental disorder, it is unnecessary to connect the civil act with the delusion in order to nullify the act. (2) There is an old maxim to the effect that "No person can in a civil cause stultify himself." (3) This, however, stands on no better ground than "that a man cannot always remember what he did when he was *non compos mentis*, nor did this maxim ever extend to privies in blood to him who was *non compos mentis*, (4) nor privies in representation to him, (5) nor privies in estate to him; (6) further, it has been often disapproved of, (7) and is, it would seem, not recognized in the civil law. (8) Patteson, J., while admitting that the maxim anciently prevailed, has observed, "Modern cases have qualified it, and enabled a man or his representatives

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(1) Sir J. Nicholl, in *Portsmouth* v. *Portsmouth*, 1 Hagg. E. R. 355, and in *Groom* v. *Thomas*, 2 Hagg. E. R. 436. Sir H. J. Fust, in *Frere* v. *Peacocke*, 1 Rob. E. R. 448. Sir W. P. Wood, V.C., in *Harrod* v. *Harrod*, 1 Kay & Jo. 8. Lord Cranworth, C., in *Ince* v. *Elliot*, 5 W. R. 465.

(2) Sir J. Nicholl, in *Groom* v. *Thomas*, 2 Hagg. E. R. 436—454. Lord Brougham, in *Waring* v. *Waring*, 6 Moo. P. C. 358.

(3) *Litt. s.* 406; *Perk. s.* 21, 23; *Stroud* v. *Marshall*, Cro. Eliz. 398; *Cross* v. *Andrews*, Cro. Eliz. 622; *Mannin* v. *Ball*, 1 Dow. & Cl. 389; *Brown* v. *Jodrell*, 3 C. & P. 30; *Bonner* v. *Thwaites*, Toth. 130.

(4) *Litt. s.* 406; 4 *Rep.* 124; *Co. Litt.* 247 b; 4 *Cruise Dig.* 107.

(5) 4 *Rep.* 124; *Faulder* v. *Silk*, 3 Campb. 126.

(6) *Thompson* v. *Leach*, Carth. 435; *Comb.* 469; 2 *Salk.* 427; 3 *Lev.* 284. But see 4 *Rep.* 124.

(7) *F. N. B.* 504 *b.* 1; *Fonbl. Tr. Eq.* 5 *ed.* 48 *n.*; 1 *Story Eq. Jur. s.* 39. Lord Tenterden, C.J., in *Browne* v. *Jodrell*, 1 M. & M. 106; *Powell on Contr.* 14, 15. Lord Langdale, M.R., in *Williams* v. *Wentworth*, 5 Beav. 329.

(8) Lord Stowell, in *Turner* v. *Myers*, 1 Hagg. C. R. 415.

to show that he was so lunatic or drunk as not to know what he was about when he made a promise or sealed an instrument." (1) On a plea of *non est factum* a defendant was allowed to give in evidence his mental infirmity to show that *fraud* was practised on him; (2) and in allusion to the same maxim it has been also said that it "is to be understood only of acts done by the lunatic to the prejudice of others that he should not be admitted to excuse himself on the pretence of lunacy, but not as to acts done by him to the prejudice of himself." (3)

The feoffment of a feoffor *non compos mentis* is only voidable and not void, but that is so from the publicity of the act raising a legal presumption in favour of the sanity of the feoffor. (4)

One who was *non compos mentis* could not levy a fine or suffer a recovery, (5) but the caption of a fine being a record of Court was until the vacation of the fine conclusive evidence of the sanity of the cognizor to support the fine itself. (6) The Act abolishing Fines and Recoveries (3 & 4 Wm. 4, c. 74) enacts (ss. 33, 48) that the person or persons for the time being intrusted by the Sovereign's sign manual with the care and commitment of the custody of the persons and estates of persons by inquisition found idiot, lunatic, and of unsound mind, shall be the protectors or protector of every settlement of which but for the state of his mind, an idiot, lunatic, or person of unsound mind would under that Act be the protector, and such person or persons may in that character consent on motion or petition to a disposition by the first tenant in tail in remainder of the settled property. The 91st section of that Act also provides that if a husband shall, in consequence of being a lunatic, idiot, or of unsound mind, and whether he shall have been found such by inquisition or not, be incapable of executing a deed or of making a surrender of lands held by copy of court roll, the Court of Common Pleas at Westminster may, by an order to be made in a summary way upon

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(1) *Molton* v. *Camroux*, 4 Exch. 19.

(2) *Gore* v. *Gibson*, 13 M. & W. 624; *Yates* v. *Boen*, Stra. 1104; *Bull N. P.* 172; *Stock*, 33; *Hale's note to F. N. B.* 262.

(3) *Ridler* v. *Ridler*, 1 Eq. Ca. Abr. 279.

(4) *Thompson* v. *Leach*, *antè*, 11, n. 6.

(5) 18 *Edw.* 1, *st.* 4; 15 *Edw.* 2.

(6) 1 *Ridg. P. C.* 106, 276; *Mansfield's case*, 12 Rep. 124; *Lewing's case*, 10 Rep. 42.

the application of his wife and upon such evidence as the said Court shall deem meet, dispense with his concurrence in any case in which his concurrence is required by that Act or otherwise; and all acts, deeds, or surrenders, to be done, executed, or made by the wife in pursuance of such order, in regard to lands of any tenure, or in regard to money subject to be invested in the purchase of lands, shall be done, executed, or made by her in the same manner as if she were a *feme sole;* and when done, executed, or made by her, shall (but without prejudice to the rights of the husband as then existing independently of that Act) be as good and valid as they would have been if the husband had concurred. Provided always, that this clause shall not extend to the case of a married woman where, under this Act, the person or persons entrusted with the care and commitment of the custody of the persons and estates of persons found lunatic, idiot, and of unsound mind and his Majesty's High Court of Chancery shall be the protector of a settlement in lieu of her husband.

The statutory protector will only consent when the person who is *non compos mentis* would, if sane, act properly (legally and morally speaking) in consenting.(1) The following case is in point:—A widower *non compos mentis* was under a settlement tenant for life; he had one brother and one child who was tenant in tail next in remainder. The child married, and by her marriage settlement the entail was expressed to be barred, and the lands were expressed to be resettled on the original tenant for life for his life, with remainder to the wife for her life, with remainder to her husband for his life, with remainder as she should appoint, with remainders over. Lord Chancellor Cottenham refused his consent as protector, objecting to the limitation to the appointees of the wife as in fact giving the lands away from her family to her husband.(2) The statute provides for the protectorship of the Lord Chancellor in the case of a lunatic tenant in tail,(3) also in the case of a person found abroad to be

(1) *Re Blewitt*, 3 M. & K. 250; s. c. 4 W. R. 195; *Re Wood*, 3 M. & Cr. 266; *Re Newman*, 2 M. & Cr. 112; *Re Graydon*, 1 M. & Gor. 655; s. c. 1 H. & T. 183.

(2) *Re Graydon*, 1 M. & Gor. 655. See also *Re Yea*, 3 M. & K. 245; *Re Newman*, 2 M. & Cr. 112; and *Re Blewitt*, 4 W. R. 196.

(3) *Re Blewitt*, 4 W. R. 196. But see *Re Wood*, 3 M. & Cr. 269.

non compos mentis, if only the lands, the subject of disposition, are within the jurisdiction of the statutory protector. (1) The Lord Chancellor consented as protector to a disposition by a *quasi* tenant in tail of a sum of stock. (2) If the disposition is a subject of arrangement with the next remainderman, it seems that he should be served with notice of the application to the statutory protector. (3)

It follows, from the proposition laid down at the commencement of the chapter, that the deed of an idiot of a person of unsound mind and of a lunatic, except in a lucid interval, is void. (4) In a suit for foreclosure of a mortgage executed by one found lunatic by inquisition over-reaching the mortgage—the plaintiff proved the mortgage, but the defendant failed to cross-examine such witness—Sir J. Romilly, M.R., decreed foreclosure, and directed that the decree should not be drawn up or passed for six months, and that the defendant might in the meantime take such steps as he might be advised; but on appeal, the Lords Justices gave liberty to the plaintiff to bring an action of ejectment within twelve months, the bill to be dismissed with costs if he should fail to do so and reserved further consideration. (5) Sir J. Romilly, M.R., in a similar case directed an issue to try the sanity of the mortgagor at the date of his executing the mortgage. (6)

Where an equitable interest in an estate had been conveyed by a person of unsound mind to a party who took without notice of the unsoundness of mind, and the case was one in which the conveyance would have been void at law, Lord Langdale, M.R., determined that equity would relieve against the conveyance. (7)

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(1) *Re Graydon*, 1 M. & Gor. 655.
(2) *Re Yea*, 3 M. & K. 245.
(3) *Re Graydon*, 1 M. & Gor. 656; *Re Blewitt*, 4 W. R. 196.
(4) *Thompson* v. *Leach*, Carth. 435; s. c. Comb. 469; *Show. P. C.* 152; 3 *Lev.* 284; 3 *Mod.* 301; 2 *Salk.* 427. Lord Brougham, C., in *Howard* v. *Digby*, 2 Cl. & Fin. 661; *Mannin* v. *Ball*, 1 Smith & Batty, 183. Sir J. Wigram, V.C., in *Price* v. *Berrington*, 7 Hare, 402; *Elliot* v. *Ince*, 5 W. R. 466. See also *Perk. c.* 1, *s.* 23; 2 *Rolle's Abr.* 2 (*E*), *pl.* 5. But see Lord Truro, C., in *Price* v. *Berrington*, 3 M. & Gor. 498.
(5) *Jacob* v. *Richards*, 18 Beav. 308 n.
(6) *Snook* v. *Watts*, 11 Beav. 110.
(7) *Price* v. *Berrington*, 7 Hare, 404.

On setting aside a deed executed for valuable consideration by one *non compos mentis* a Court of equity will however decree repayment of the monies actually paid thereon to his use. (1)

In a case before Vice-Chancellor Stuart, he decreed foreclosure of a mortgage executed by a person of unsound mind, where the mortgagee had no notice of the state of mind of the mortgagor. (2)

Proceedings to impeach a deed, on the ground that the grantor was lunatic at its execution, are if delayed for many years viewed by the Court with extreme jealousy. (3) Further, where the attesting witnesses to such a deed were dead, it was presumed by the Court that they would have sworn to the sanity of the person whose execution they attested. (4)

The form of issue for trying the validity of deeds executed by a person found lunatic by inquisition over-reaching the deeds will be seen in *Frank* v. *Mainwaring*, 4 Beav. 38, to which the reader is accordingly referred. It may here be observed, that the costs of an unsuccessful suit to set aside a deed on the ground that the grantor was lunatic, fall on the plaintiff. (5) There is a great distinction between a deed executed by a sane person in contemplation of a relapse of lunacy, and one executed during the existence of the lunacy, the former being valid. (6) The Court of Chancery refused in one case to set aside the marriage settlement of a man of unsound mind, after the marriage had taken place with a woman innocent of any fraud in the matter. (7)

In a recent case it has been held that a covenant to execute a power charging land, effectually charges the land in equity though the covenantor is prevented by supervening insanity from executing the power. (8)

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(1) *Addison* v. *Vernon*, 2 Vern. 678; *Kirkwall* v. *Flight*, 3 W. R. 529; *Price* v. *Berrington*, 7 Hare, 404. See also *Selby* v. *Jackson*, 6 Beav. 192.

(2) *Campbell* v. *Hooper*, 3 Sm. & G. 153. But see *Davies* v. *Grindley*, Shelf. on Lun. 2d ed. p. 349; and *Addison* v. *Dawson*, 2 Vern. 678.

(3) *Winchcomb* v. *Hall*, 1 Ch. R. 41; *Whalley* v. *Whalley*, 1 Meriv. 436; *Towart* v. *Sellars*, 5 Dow. 231; *Price* v. *Berrington*, 3 M. & Gor. 497.

(4) *Towart* v. *Sellars*, 5 Dow. 231.

(5) *Frank* v. *Mainwaring*, 4 Beav. 37.

(6) 5 *Dow.* 236.

(7) *Barrow* v. *Barrow*, Dick. 504.

(8) *Affleck* v. *Affleck*, 5 W. R. 425.

There are very many cases bearing on deeds (1) and wills (2) obtained through the agency of the party benefitted thereby, and by undue influence practised on persons of weak mind. The principal of them, though not strictly within the purview of this work, as they bear to some extent on its subject, will be found cited in the note below.

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(1) *Walmesley* v. *Booth*, 2 Atk. 25; *Saunderson* v. *Glass*, 2 Atk. 297; *Cray* v. *Mansfield*, 1 Vez. 379; *Pierce* v. *Waring*, cited 1 Vez. 380; *White* v. *Small*, 2 Cha. Ca. 103; *Filmer* v. *Gott*, 4 Bro. P. C. 230; *Bennett* v. *Vade*, 2 Atk. 325; *Clarkson* v. *Hanway*, 2 P. Wms. 203; *Oldham* v. *Hand*, 2 Vez. 259; *Norton* v. *Relly*, 2 Eden, 286; *Dawson* v. *Massey*, 1 B. & B. 219; *Aylward* v. *Kearney*, 2 B. & B. 463; *Watt* v. *Grove*, 2 Sch. & Lef. 503; *Bellew* v. *Russell*, 1 B. & B. 107; *Osmond* v. *Fitzroy*, 3 P. Wms. 129; *Say* v. *Barwick*, 1 Ves. & B. 195; *Welles* v. *Middleton*, 1 Cox, 112; *Balch* v. *Symes*, T. & R. 91; *Nantes* v. *Corrock*, 9 Ves. 182; *Wright* v. *Proud*, 13 Ves. 136; *Harris* v. *Tremenhere*, 15 Ves. 40; *Paine* v. *Hall*, 18 Ves. 475; *Wood* v. *Downes*, 18 Ves. 126; *Huguenin* v. *Baseley*, 14 Ves. 273, 607; *Cheslyn* v. *Dalby*, 2 Y. & C. 170; *Montesquieu* v. *Sandys*, 18 Ves. 126; *Dent* v. *Bennett*, 7 Sim. 539; s. c. 4 M. & Cr. 269; *Gibson* v. *Russell*, 2 Y. & C. C. 104; *Popham* v. *Brooke*, 5 Russ. 9; *Pratt* v. *Barker*, 1 Sim. 1; s. c. 4 Russ. 507; *Griffith* v. *Robins*, 3 Mad. 191; *Hunter* v. *Atkins*, 3 M. & K. 40; *Davies* v. *Cooper*, 5 M. & Cr. 276; *Billage* v. *Southee*, 9 Hare, 534; *Harvey* v. *Mount*, 8 Beav. 444; *Consett* v. *Bell*, 1 Y. & C. C. 569; *Espey* v. *Lake*, 10 Hare, 261; *Bellamy* v. *Sabine*, 2 Phill. 435; *Custance* v. *Cunningham*, 13 Beav. 363; *Blackie* v. *Clarke*, 15 Beav. 595; *Sturge* v. *Sturge*, 12 Beav. 229; *Maitland* v. *Backhouse*, 16 Sim. 58; *Maitland* v. *Irving*, 15 Sim. 441; *Staniland* v. *Willott*, 3 M. & Gor. 664; *Allen* v. *Davis*, 4 De G. & Sm. 136; *King* v. *Savery*, 1 Sm. & G. 301; *Llewellin* v. *Cobbold*, 1 Sm. & G. 379; *Cutts* v. *Salmon*, 4 De G. & Sm. 128; *Hoghton* v. *Hoghton*, 15 Beav. 285; *Holman* v. *Loynes*, 4 De G. M. & G. 270; *Allfrey* v. *Allfrey*, 10 Beav. 353; *Coleman* v. *Mellersh*, 2 M. & Gor. 317; *Cockell* v. *Taylor*, 15 Beav. 115; *Stedman* v. *Collett*, 17 Beav. 613; *Greenslade* v. *Dare*, 20 Beav. 284.

(2) *Filmer* v. *Gott*, 7 Bro. P. C. 70; *Fane* v. *Duke of Devonshire*, 6 Bro. P. C. 137; *Trimlestown* v. *D'Alton*, 1 Dow. & Cl. 85; *Maccabe* v. *Hussey*, 2 Dow. & Cl. 440; *Middleton* v. *Forbes*, 1 Hagg. E. R. 394; *Dodge* v. *Meech*, 1 Hagg. E. R. 612—620; *Ingram* v. *Wyatt*, 1 Hagg. E. R. 384; *Ross* v. *Chester*, 1 Hagg. E. R. 227; *Williams* v. *Goude*, 1 Hagg. E. R. 577; *Brydges* v. *King*, 1 Hagg. E. R. 256; *Mynn* v. *Robinson*, 2 Hagg. E. R. 179; *Mackenzie* v. *Handasyde*, 2 Hagg. E. R. 211; *Marsh* v. *Tyrrell*, 2 Hagg. E. R. 84; *Billinghurst* v. *Vickers*, 1 Phillim. 193; *Moss* v. *Brander*, 1 Phillim. 254; *Barton* v. *Robins*, 3 Phillim. 455 n.; *Segrave* v. *Kirwan*, 1 Beatty, 157, 166, 170; *Paske* v. *Ollatt*, 2 Phillim. 323; *Wheeler* v. *Alderson*, 3 Hagg. E. R. 574, 616; *Darling* v. *Loveland*, 2 Curt. 225; *Norton* v. *Relly*, 2 Eden, 286; *Hylton* v. *Hylton*, 2 Vez. 549; *Barry* v. *Butler*, 2 Moo. P. C. 482; *Baker* v. *Batt*, 2 Moo. P. C. 317; *Bulkeley* v. *Wilford*, 2 Cl. & Fin. 102; *Raworth* v. *Marriott*, 1 M. & K. 643; *Dufaur* v. *Croft*, 3 Moo. P. C. 136; *Middleton* v. *Sherborne*, 4 Y. & C. 358; *Durnell* v. *Corfield*, 1 Rob. E. R. 51; *Michell* v. *Thomas*, 5 Notes of Cases, 500; *Dimes* v. *Steinberg*, 2 Sm. & Gif. 75; *Staniland* v. *Willott*, 3 M. & Gor. 665.

Although, as we have already seen, an idiot or person of unsound mind or a lunatic, except in a lucid interval, cannot contract, (1) yet neither he nor his representatives can recover back in equity monies paid by him on a contract executed by the other party in ignorance that he was contracting with one *non compos mentis*; (2) nor can the idiot or lunatic or person of unsound mind, or his representatives, successfully resist payment on such a contract. (3) If there has been no such ignorance in the other party, the idiot, lunatic, or person of unsound mind has a good defence on the ground of fraud; and evidence of irrational conduct on the part of the idiot, lunatic, or person of unsound mind, before and after the contract, is admissible to prove the fraud. (4) Evidence of the general reputation of the insanity of a person in the neighbourhood of his residence is of course inadmissible to prove that a person dealing with him is cognisant of that fact. (5)

The Courts of law and equity imply a contract by one *non compos mentis* to pay for necessaries supplied to him, (6) but if he is already sufficiently supplied with any goods, it seems that he is not liable for a further supply of such goods, although supplied without notice of the previous supply. (7) So a Court of

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(1) Sir John Nicholl, in *Browning* v. *Rean*, 2 Phillim. 70. Sir W. Scott, in *Turner* v. *Myers*, 1 Hagg. C. R. 416. Sir W. Grant, M.R., in *Niell* v. *Morley*, 9 Ves. 479; 1 *Bl. Com.* 438, 439; 1 *Lee, E. R.* 211; *notis Beverley's case*, 4 Rep. 124; *Blackbeard* v. *Lindigren*, 1 Cox, 205; *Hall* v. *Warren*, 9 Ves. 609; *Steed* v. *Calley*, 1 Kean, 620. Sir W. P. Wood, V.C., in *Harrod* v. *Harrod*, 1 Kay & Jo. 7; *Cumming* v. *Ince*, 11 Q. B. 115. See also *Manby* v. *Bewicke*, 3 Kay & Jo. 342.

(2) *Molton* v. *Camroux*, 4 Exch. 19; *Beavan* v. *McDonnell*, 9 Exch. 309; *Ince* v. *Elliott*, 5 W. R. 466; *Niell* v. *Morley*, 9 Ves. 478.

(3) *Dane* v. *Kirkwall*, 8 C. & P. 679; *Baxter* v. *Portsmouth*, 5 B. & C. 171; s. c. 2 C. & P. 181; *Campbell* v. *Hooper*, 3 Sm. & G. 153; *Anon.*, cited in *Howard* v. *Digby*, 2 Cl. & Fin. 662, 663; *Samuel* v. *Robinson*, 7 Law T. 301.

(4) *Browne* v. *Jodrell*, 3 C. & P. 30; s. c. 1 M. & M. 106; *Levy* v. *Baker*, 1 M. & M. 106, n. b; *Sentence* v. *Poole*, 3 C. & P. 1; *Frost* v. *Beavan*, 17 Jur. 369; s. c. 22 Law J. Ch. 630.

(5) *Greenslade* v. *Dare*, 20 Beav. 284.

(6) *Wentworth* v. *Tubb*, 1 Y. & C. C. 171; s. c. 2 Y. & C. C. 537; *Manby* v. *Scott*, 1 Sid. 112; *Williams* v. *Wentworth*, 5 Beav. 325; *Nelson* v. *Duncombe*, 9 Beav. 232; s. c. 11 Beav. 211; *Stedman* v. *Hart*, 1 Kay, 610; *McLean* v. *Leeming*, 16 Law T. 6; *Re Burbidge*, 3 M. & Gor. 3; *Re Cumming*, 18 Jur. 181; *Chester* v. *Rolfe*, 18 Jur. 114; *Tayler* v. *Tayler*, 3 M. & Gor. 431; *Howard* v. *Digby*, 2 Cl. & Fin. 663.

(7) *McLean* v. *Leeming*, 16 Law T. 6.

equity will in a trust account allow a trustee credit for monies properly expended by him for the protection and benefit of his *cestui que trust* when such *cestui que trust* was of unsound mind. (1) And this principle has been extended to the case of expenditure by a lunatic's nearest relations acting *bonâ fide* for his benefit: (2) and a solicitor employed in obtaining an inquisition which found a person *non compos mentis*, has been held to be a creditor of the *non compos* in respect of his services; (3) likewise, a physician who had been consulted by one *non compos mentis*, pending an inquisition into her state of mind, and to whom the patient had given a promissory note, was adjudged entitled to receive the amount thereof. (4)

The Courts also imply a contract on the part of an idiot, lunatic, or person of unsound mind to pay for goods supplied to him suitable to his degree and in ignorance of the state of his mind; (5) and the wife of a lunatic or person of unsound mind may pledge his credit for necessaries supplied to herself, her right so to do springing from the marriage contract. (6)

With respect to an executory contract of one who has become lunatic or of unsound mind since the contract was entered into, it has been held that such can be enforced against him; (7) thus a demurrer will not lie to a bill for specific performance of an agreement to buy land, on the ground of the supervening mental incapacity of a person beneficially entitled to monies advanced on a mortgage of the land to a trustee for him. (8)

It is said to have been laid down, that the purchase of goods at an auction by one *non compos mentis* is so far void as to exclude the liability of the auctioneer for the difference

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(1) *Nelson* v. *Duncombe*, 11 Beav. 233.
(2) *Selby* v. *Jackson*, 6 Beav. 192.
(3) *Chester* v. *Rolfe*, 4 De G. M. & G. 798.
(4) *Elliot* v. *Ince*, 4 W. R. 516.
(5) *Dane* v. *Kirkwall*, 8 C. & P. 679; *Baxter* v. *Portsmouth*, 5 B. & C. 171.
(6) *Read* v. *Legard*, 6 Exch. 636. See also *Re Drewery's Trust*, 23 Law T. 108.
(7) *Owen* v. *Davies*, 1 Vez. 81. Of course if a sane person confined in a lunatic asylum contract for his liberty with those who confine him, such contract is void for the duress: *Cumming* v. *Ince*, 11 Q. B. 115.
(8) *Duke of Beaufort* v. *Glynn*, 3 W. R. 463, 502.

between the price obtained at that and a subsequent sale; and that "if an insane man bought goods at an auction, a plea setting forth his insanity would be no answer to an action to recover the price, though no doubt the fact of insanity would influence a jury, and they would never give to a plaintiff in such an action more than the fair value of the goods, and not any higher price at which they might have been sold."(1) A sale in market overt binds a person *non compos mentis*.(2)

An idiot or a person of unsound mind or a lunatic, except in a lucid interval, cannot contract marriage.(3) Although such marriage is absolutely void, it can be formally declared void only by an ecclesiastical Court in a suit of nullity. The pretended wife of the husband *non compos mentis*, pending the suit against her for nullity, is entitled as well to alimony as to payment of all such costs as she incurs in her defence, although charged with fraud in procuring the marriage.(4) The alleged husband or wife after his or her recovery may be the plaintiff in the suit,(5) but the Ecclesiastical Court requires evidence taken before itself in the suit confirmatory of the plaintiff's case.(6) It must also be borne in mind that everything is presumed in favour of a marriage *de facto* solemnized.(7) An appeal lies from the Ecclesiastical Court to the Queen in council.(8) The validity of such a marriage may also be questioned on an application to the Ecclesiastical Court for letters of administration by the alleged husband or wife.(9) Supervening insanity of a husband or wife

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(1) *Samuel* v. *Robinson*, 7 Law T. 301—per Pollock, C.B.

(2) 2 *Inst.* 713.

(3) *Turner* v. *Myers*, 1 Hagg. C. R. 416; *Browning* v. *Rean*, 2 Phillim, 70, 71; *Parker* v. *Parker*, 1 Hagg. C. R. 417; s. c. 2 Phillim. 19; 2 *Lee*, 382; *Portsmouth* v. *Portsmouth*, 1 Hagg. E. R. 359; *McAdam* v. *Walker*, 1 Dow. 148; 1 *Bl. Com.* 439; *Ellis* v. *Bowman*, 17 Law T. 11; *R.* v. *Kelly*, Sheif. on Lun. 2d ed. 515; *Inst. Juris. Can. b.* 2, *t.* 12; *Cor. Jus. Can. b.* 2, *t.* 13, *De Nuptiis.* But see *Hargr. Co. Litt.* 80a, *note* 1; 1 *Bl. Com.* 438; *Sanchez. lib.* 1, *disp.* 8, *No.* 15; *Rolle's Abr.* 357, c. 97.

(4) *Portsmouth* v. *Portsmouth*, 3 Add. 65.

(5) *Turner* v. *Myers*, 1 Hagg. C. R. 415.

(6) Sir J. Nicholl, in *Portsmouth* v. *Portsmouth*, 1 Hagg. E. R. 356.

(7) Sir J. Nicholl, in *Portsmouth* v. *Portsmouth*, 1 Hagg. E. R. 359; and in *Browning* v. *Rean*, 2 Phillim. 69. Sir W. P. Wood, V.C., in *Harrod* v. *Harrod*, 1 Kay & Jo. 8, 14, 15, 17.

(8) 2 & 3 *Wm.* 4, *c.* 92.

(9) *Browning* v, *Rean*, 2 Phillim. 69; *Parker* v. *Parker*, 2 Lee, 282.

does not destroy their contract of marriage, or the rights which flow from such contract. (1)

The 17th section of 4 Geo. 4, c. 76, enacts that in case the father of an infant about to be married shall be *non compos mentis*, or in case the guardian or mother, whose consent is necessary by that Act to such infant's marriage, shall be *non compos mentis*, the infant may petition the Court of Chancery, and if the marriage shall appear to the Court proper, the Court shall declare the same to be so, and such declaration shall be equivalent to the consent of the father, mother, or guardian.

Where a lady alleged by her friends to have been always of unsound mind was taken by them from a man with whom she had *de facto* married, and he applied for a *habeas corpus*, the Court allowed that the return to the *habeas corpus* should be that the lady was not the wife of the man, in order that he might traverse such return. (2)

Although, as it has been remarked, (3) "insane persons are, from depression, often will-makers," yet the will of an idiot, lunatic, or person of unsound mind, both as to realty (4) and personalty, is void; (5) but supervening lunacy or unsoundness of mind of a testator will not affect his previously executed will. (6)

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(1) *Inst. Juris. Can. b.* 2, *t.* 12; *Cor. Jus. Can. b.* 2, *t.* 13, *De Nuptiis*; *Parnell* v. *Parnell*, 2 Phillim. 158.

(2) *R.* v. *Kelly*, Shelf. on Lun. 2d ed. 515.

(3) Sir J. Nicholl, in *Groom* v. *Thomas*, 2 Hagg. E. R. 444.

(4) *Dyer*, 143 *b*; 2 *Bl. Com.* 497; 4 *Rep.* 123 *b*; *Marquis of Winchester's case*, 6 Rep. 23 b; 34 & 35 *Hen.* 8, *c.* 5, *s.* 14; *Hob.* 225; *Webb* v. *Claverden*, 2 Atk. 424; *Hudson's case*, Skin. 79; *Digge's case*, Skin. 79; *Combe's case*, Moore's Rep. 759; *Vin. Abr. tit. Devise* (*A*), *pl.* 22; *Right* v. *Price*, 1 Doug. 231; *Mountain* v. *Bennett*, 1 Cox, 353—357; *Greenwood* v. *Greenwood*, 3 Curt. App.; *Arthur* v. *Bokenham*, 11 Mod. 157; *Sheph. T.* 403—413; 1 *Sid.* 612. Lord Hardwicke, C., in *Wallis* v. *Hodgeson*, 2 Atk. 56.

(5) *Swinb. pt.* 2. *ss.* 3, 4; *Godolph. pt.* 1, *c.* 8, *s.* 2; *Dew* v. *Clark*, 3 Add. 79; *East India Company* v. *Dyce Sombre*, 4 W. R. 714. Sir J. Nicholl, in *Fulleck* v. *Allinson*, 3 Hagg. E. R. 547; and in *Ayrey* v. *Hill*, 2 Add. 209—220. The criteria of testamentary mental incapacity have been stated in *Combe's case*, Moore, 759; *M. of Winchester's case*, 6 Rep. 23 b; *Kinleside* v. *Harrison*, 2 Phillim. 449; *Greenwood* v. *Greenwood*, 3 Curt. App.; *Goldie* v. *Murray*, 6 Jur. 608; *Harwood* v. *Baker*, 3 Moo. P. C. 290; *Grimani* v. *Draper*, 6 Notes of Cases, 423. Dr. Lushington, in *Bannatyne* v. *Bannatyne*, 1 Rob. E. R. 474.

(6) *Hoby* v. *Hoby*, 1 Hagg. E. R. 146, 162; 4 *Rep.* 61 *a*; *Inst. lib.* 2, *tit.* 12, *s.* 1; *In goods of Brand*, 3 Hagg. E. R. 754; *Swinb. pt.* 2, *s.* 3, *pl.* 4.

There have been very many decisions of the Common Law, Equity, and Ecclesiastical Courts, upon the subject of the validity of wills as depending on the capacity of a testator; some of the most important of them have been already referred to.

It is not sufficient, in the Ecclesiastical Court, to plead the want of mind, memory, and understanding of a testator, without pleading some facts to lead up to the incapacity alleged. (1)

And where there is evidence before it of fluctuating mental capacity in a testator, an ecclesiastical Court will not pronounce for his will without proof that such will was the expression of the testator's volition. (2) A testator must not only be able to understand to whom he is by will giving his property, but he must also have capacity to comprehend the extent of his property and the nature of the claims of others whom by his will he is excluding from all participation in that property. (3) A witness attesting the execution of a will signifies by his attestation his belief in the sanity of the testator, (4) and therefore should he subsequently give evidence against the sanity of the testator at the date of such will, his evidence is justly open to grave suspicion; (5) but a will has been pronounced against on the ground of the testator being of unsound mind, upon the evidence of the attesting witnesses. (6) "The sanity of a testator may be proved by one competent witness attesting the will." (7) And where one of the witnesses to a will had since become of unsound mind, proof of his signature was admitted. (8) Further when disinterested medical men, being the witnesses attesting a will, swore to the testator's sanity,

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(1) *Brenckley* v. *Still*, 2 Rob. E. R. 163.

(2) *Williams* v. *Goude*, 1 Hagg. E. R. 594, 595; *Durling* v. *Loveland*, 2 Curt 229.

(3) *Harwood* v. *Baker*, 3 Moo. P. C. 290.

(4) *Tatham* v. *Wright*, 2 R. & M. 16. Dr. Lushington, in *Bannatyne* v. *Bannatyne*, 2 Rob. E. R. 501. Lord Eldon, C., in *Towart* v. *Sellars*, 5 Dow. 236.

(5) *Tatham* v. *Wright*, 2 R. & M. 16; *Bootle* v. *Blundell*, 19 Ves. 504; *Howard* v. *Brathwaite*, 1 V. & B. 208; *Broome* v. *Ellis*, 2 Lee, 528; *Walton* v. *Shelley*, 1 T. R. 296; *Digge's case*, cited in Skinner, 79; *Mackenzie* v. *Handesyde*, 2 Hagg. E. R. 219; *Le Breton* v. *Fletcher*, 2 Hagg. E. R. 558.

(6) *Starnes* v. *Marten*, 1 Curt. 294.

(7) Sir W. Lee, C.J., in *Anstey* v. *Dowsing*, 2 Stra. 1254. See also *R.* v. *Nueys*, 1 Sir W. Bla. 416.

(8) *Bernett* v. *Taylor*, 9 Ves. 382.

the Ecclesiastical Court would not without plea set aside the will on proof by interrogatories that the testator many years previously had been under an insane delusion. (1) An issue *devisavit vel non* implies in it, where the execution is not the point in issue, a question of the mental capacity of the testator. (2)

The Ecclesiastical Court will not at once reject an allegation propounding a will which sounds to folly when facts are pleaded showing that the testator conducted himself always as a sane person. (3)

A person of unsound mind or a lunatic, except in a lucid interval, cannot revoke a will; (4) and if a person leaves two wills of personalty, and the later betrays that the testator was at its date lunatic or of unsound mind, those interested under the later will should be required by the persons interested under the earlier to propound it; should they then decline to propound it, probate in common form will be decreed of the earlier will. (5)

If there is strong presumption against the validity of a will, on the ground of the testator's mental incapacity, the Court of Chancery will, *pendente lite* concerning the validity of such will, appoint a receiver against the person claiming under it; (6) *à fortiori* the Court will refuse its aid to persons claiming under such will. (7) Upon the propounding a will of personalty in the Ecclesiastical Court, that is proving it there *per testes*, the validity or invalidity of it will be declared. And a person interested in opposing a will of personalty may, before probate of it in common form or within 30 years afterwards, compel the executor to propound it. (8)

As a consequence of the divided jurisdiction of the Common

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(1) *Kemble* v. *Church*, 3 Hagg. E. R. 273.
(2) *Bates* v. *Graves*, 2 Ves. 288, 289.
(3) *Arbery* v. *Aske*, 1 Hagg. E. R. 219.
(4) 4 *Rep.* 61 *a*; *In goods of Fordham*, 1 Add. 74; *In goods of Shaw*, 1 Curt. 905; *In goods of Bicknell*, 3 Add. 231; *In goods of Downer*, 1 Eccl. & Adm. 106.
(5) *Palmer* v. *Dent*, 2 Rob. E. R. 285.
(6) *Watkins* v. *Brent*, 1 M. & Cr. 103; *Rutherford* v. *Douglas*, 1 Sim. & Stu. 111 n.; *Rendall* v. *Rendall*, 1 Hare, 152; *Dimes* v. *Steinberg*, 2 Sm. & G. 85; *Whitworth* v. *Whyddon*, 2 M. & Gor. 55; *Bainbrigge* v. *Baddeley*, 3 M. & Gor. 413. See also *Herbert* v. *Lounds*, 1 Ch. R. 22.
(7) *Nelson* v. *Oldfield*, 2 Vern. 76; *Rogers* v. *Bromfield*, Finch, 67.
(8) *Williams on Exors. 4th ed.* 281, *et seq.*

Law Courts and Ecclesiastical Courts over a will of lands and personalty, the same testator may by the different Courts be adjudged sane and insane. (1)

A will was executed by one found by inquisition to be of unsound mind; he died before *supersedeas*, and in a suit to establish the will, his heiress, deterred by a clause of forfeiture, abstained from asking for an issue *devisavit vel non*. The forfeiture was evaded by the Court of Chancery granting the issue on the application of the assignees in trust of her expectant interest. (2)

The hearing of a suit was adjourned in order to admit proof of the sanity of the testator in the suit, his execution of his will having been regularly proved. (3) And where the will of one found lunatic by inquisition had been admitted to probate, but was overreached by the inquisition, the Court of Chancery, upon the petition of the executrix, ordered funds in that court belonging to the estate of the lunatic to be transferred to trustees to be approved by the commissioners, and to be held upon the trusts of the will. (4)

A person *non compos mentis* cannot be an executor or administrator; (5) but to exclude a person appointed executor from being joined in the probate on the ground of his being *non compos mentis*, it is necessary to plead expressly that he is so. (6) It being discretionary in the Ecclesiastical Court to grant administration either to the widow or next of kin of an intestate, the next of kin will be preferred if the widow is lunatic or of unsound mind. (7) If, however, the next of kin consent to the appointment of an administrator *durante vitio animi* of the widow, the next of kin cannot, on the death of such administrator, claim to be administrator except *durante vitio animi*. (8) In the case of an intestate

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(1) *Montgomery* v. *Clark*, 2 Atk. 378; *Maxwell* v. *Lord Montague*, 3 Atk. 546; 1 *R. & M.* 106 n.

(2) *Cooke* v. *Turner*, 15 Sim. 623; s. c. 2 M. & Gor. 29.

(3) *Abrams* v. *Winsup*, 1 Russ. 526.

(4) *Re Garden*, Law J. Ch. 13, 439.

(5) *God. pt.* 2, *c.* 6, *s.* 2; *Bac. Abr. Idiot* (*D*), *Exors.* (*A*), 5; *Williams on Exors. 4th ed.* 195, 368.

(6) *Evans* v. *Tyler*, 1 Rob. E. R. 128.

(7) *In goods of Williams*, 3 Hagg. E. R. 217; *In goods of Southmead*, 3 Curt. 28; *In goods of Hinckley*, 1 Hagg. E. R. 477; *In goods of Dunn*, 5 Notes of Cases, 97; *In goods of Ogden*, 1 Eccl. & Adm. 113.

(8) *In goods of Penny*, 1 Rob. E. R. 427.

Jew administration was granted to the secretary of the Great Synagogue *durante animi vitio* of the next of kin, a Jewess of unsound mind; (1) and in another case, executors of a previous administratrix were appointed administrators *durante animi vitio* of her sister (the sole next of kin) without citing her next of kin. (2)

If a sole executor or administrator become lunatic or of unsound mind, administration may be granted to another person for his use *durante vitio animi*. (3) Usually the committee of the estate (if any) of such executor or administrator is the person; (4) but if the committee expressly or impliedly consent, the administration will be granted to a sole residuary legatee; (5) and if there is no such committee, administration is usually granted to the next of kin of the executor or administrator, and sureties must justify in double the amount of the goods to be administered, (6) in such case the state of mind of the executor or administrator must be established by affidavit, also, the fact that no inquisition has been had. (7)

The widow of an intestate who left one child an infant became of unsound mind, but was not found so by inquisition; administration was granted to the infant's aunt for the use of the widow and child *durante vitio animi* of the widow, and *durante minoritate* of the infant. (8)

Administration *durante vitio animi* of an executor does not prejudice such executor's right of retainer. (9)

If one of several executors become lunatic or of unsound mind, any probate granted to them will be recalled, and a new probate

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(1) *In goods of Joseph*, 1 Curt. 907.
(2) *In goods of Southmead*, 3 Curt. 28.
(3) Dr. Lushington, in *Ex parte Evelyn*, 2 M. & K. 4; *Hills* v. *Mills*, 1 Salk. 36; *Anon.* 1 Lee, 625; *In goods of Binckes*, 1 Curt. 286; *Franks* v. *Cooper*, 4 Ves. 763; 2 *Add.* 336 *n.*; *Re Crump*, 3 Phillim. 497; *Williams on Exors. 4th ed. p.* 428.
(4) *In goods of Phillips*, 2 Add. 336 n. b; *In goods of Milnes*, 3 Add. 55; *Rodnall* v. *Webb*, 3 Add. 56 n.; *Franks* v. *Cooper*, 4 Ves. 763.
(5) *In goods of Milnes*, 3 Add. 55; *Rodnall* v. *Webb*, 3 Add. 56 n.
(6) *Ex parte Evelyn*, 2 M. & K. 4; *Re Crump*, 3 Phillim. 497; *Re Hinckley*, 1 Hagg. E. R. 477.
(7) *Ex parte Evelyn*, 2 M. & K. 4.
(8) *Anon.* 1 Lee, 625.
(9) *Franks* v. *Cooper*, 4 Ves. 763.

will be granted to his co-executors, with power to him to prove when he shall have recovered. (1)

If a *cestui que trust* or legatee is *non compos mentis*, and therefore incapable of giving a discharge for any payments to him, it will be well to consider how far the Trustee Relief Act may assist the case. Lord Chancellor Truro doubted whether trustees could under that Act pay into the Court of Chancery trust funds, in which a person *non compos mentis* was interested ;(2) however, such funds have been paid into that Court under the Trustee Relief Act, and dealt with by that Court in the undermentioned cases.

A fund of which a person *non compos mentis* was *cestui que trust* was paid into the Court; Lord Chancellor Truro paid it out to a petitioner, who could have given a good discharge for the same to the trustees at the date of its payment into the Court. (3) A fund of which an adult female of unsound mind (though not so found by inquisition) was *cestui que trust*, was paid into the Court of Chancery: she was living with her *father*, and he was alleged to be incapable of maintaining her; on her petition, Sir J. Romilly, M.R., ordered payment of the dividends of the fund (£770 15s. 4d.) in Court under the Act to be paid to her *father* for her maintenance. (4) In another case the sum of £143 stock, belonging to one of unsound mind, not found so by inquisition, had been paid into the court. Lords Justices K. Bruce and Cranworth, upon the petition of the *cestui que trust* by a next friend, said they had no objection to make the order for payment of the principal fund to the *brother* of the *cestui que trust* subject to certain inquiries, the *brother* undertaking to apply it towards the support of the petitioner. (5) Orders have also been made for payment out of the Court of Chancery of such

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(1) *In goods of Marshall*, 1 Curt. 297.
(2) *Re Upfull's Trust*, 3 M. & Gor. 285.
(3) *Re Upfull's Trust*, 3 M. & Gor. 285.
(4) *Re Berry*, 13 Beav. 456.
(5) *Re Weldon*, 18 Law T. 85. See also *Re Dodsworth's Trust*, 10 Hare, 16.

funds to parish officers by whom an insane person entitled to the funds had been maintained. (1)

On the other hand, where stock and cash yielding £200 per annum, and belonging to one of unsound mind, though not found so by inquisition, were transferred and paid into the Court of Chancery under the Trustee Relief Act, and he petitioned for payment of the income to certain of his near relations for his support, Sir J. Romilly, M.R., refused any order, saying that it was doubted by Lord Truro how far the Act applied to such a case, and that he the M.R. did not think the Act gave him jurisdiction, adding, "Here I observe the income exceeds £200 a year, and I should in effect be making an order in lunacy if I were to accede to the prayer of this petition. You may apply to the Lord Chancellor, but I cannot make the order." (2)

[Mr. Darling, in his treatise on the Trustee Relief Act, expresses his opinion that the Court of Chancery can, under its *general* jurisdiction, apply for the benefit of a person *non compos mentis* any funds belonging to him and in that court, although paid in under the Trustee Relief Act. (3)]

When a sole administrator had become lunatic or of unsound mind, the Ecclesiastical Court, before granting administration limited to the duration of his insanity, revoked the letters of administration granted to him, (4) or impounded them. (5) When one of several administrators had become lunatic or of unsound mind, administration was granted to his colleagues upon their bringing in the original grant. (6) The Ecclesiastical Court would not, when a competent party was opposing a will, stay the admission of the executor's allegation propounding such will until confirmation of the appointment of a committee of one of the next

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(1) *Re Parker*, 2 W. R. 138; *Re Ward's Estate*, 2 W. R. 406; *Re Drewery's Trust*, 23 Law T. 108.

(2) *Re Irby*, 17 Beav. 335. See also *Pothecary* v. *Pothecary*, 2 De G. & Sm. 740.

(3) *Darling*, 71. See also *Re Woodburn's Will*, 5 W. R. 642; and *Re Young*, 5 W. R. 400.

(4) *Offley* v. *Best*, 1 Sid. 373.

(5) *In goods of Hinckes*, 1 Curt. 286.

(6) *In goods of Phillips*, 2 Add. 335; *In goods of Newton*, 3 Curt. 428.

of kin, especially when such committee was already a party to the litigation.(1) Where administration has been granted *durante animi vitio*, it may be revoked on the mental recovery of the lunatic or person of unsound mind. (2)

It may be here, perhaps, remarked that one *non compos mentis* takes under a beneficial devise or bequest to him. (3)

From what has already been said, it follows that one *non compos mentis* cannot appoint an agent, (4) or be an agent; (5) but he may employ, so far as he may be said to exercise volition on the subject, a solicitor to prevent a judical finding that he is *non compos mentis;* and if the resistance is unsuccessful, his estate will be liable to the costs subject to this—that if anything fraudulent or unfair, frivolous or litigious, appears to have taken place on the part of the solicitor no debt will arise. (6)

Further, a person *non compos mentis* cannot commit an act of bankruptcy, (7) though he may be made a bankrupt for an act of bankruptcy committed by him when sane. (8) Also, in a bankruptcy, he cannot himself prove his debt in bankruptcy; (9) but

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(1) *Tyrrell* v. *Jenner*, 2 Hagg. E. R. 72.
(2) *Com. Dig. Admon.* (*B*) 8.
(3) *Byth & Jarm.* 3*d ed. vol.* 11, *p.* 49.
(4) *Story's Law of Agency*, *s.* 6; *Brangan* v. *Gorges*, 7 Ir. Eq. R. 221. Lord Tenterden, C.J., in *Stead* v. *Thornton*, 3 B. & Ad. 357 n.; and in *Stephens* v. *Badcock*, 3 B. & Ad. 362. Parke, B., in *Tarbuck* v. *Bispham*, 2 M. & Wel. 2; *Ince* v. *Elliott*, 5 W. R. 466.
(5) *Britt. c.* 126; *Story on Law and Agency*, *s.* 487. The effect of supervening insanity upon the relation of principal and agent is not yet well settled; but by analogy to the case of the death of a principal, a Court of equity would probably give effect to all *bonâ fide* dealings with the agent which took place after the principal became *non compos mentis*, but before that event became known to the agent, especially where a valuable consideration passed.—See *Smith's Merc. Law*, 5*th ed.* 160; *Ex parte Bradbury*, 4 Dea. 211; *Duke of Beaufort* v. *Glyn*, 3 W. R. 463, 502; *Story on Agency*, 2*d ed.* 614, *note;* 1 *Cre. Eliz.* 446; and *Perk. ch.* 1, *s.* 22, 23; *Campbell* v. *Anderson*, 4 Bli. N. S. 513; *Ex parte M'Donnell*, Buck, 399: also *Bailey* v. *Collett*, 18 Beav. 179.
(6) *Wentworth* v. *Tubb*, 2 Y. & C. C. 538; *Field* v. *Tarner*, 3 W. R. 469; See also *Shelf on Lun.* 2*d ed.* 134.
(7) *Ex parte Priddy*; *Shelf on Lun.* 2*d ed.* 565, 566. See also *Ex parte Stamp*, 1 De G. 345.
(8) *Anon.* 13 Ves. 590.
(9) *Ex parte Clarke*, 2 Russ. 575.

proof of such debt may be made on his behalf by a person acquainted therewith. (1)

As to other instances of the civil incapacity of a person *non compos mentis*, it may be mentioned that a notice given to or demand made on him is ineffectual, (2) neither can he indorse a bill. (3) An idiot cannot of course be a witness; (4) but a person lunatic or of unsound mind may be a witness if he understands and acknowledges the obligation of an oath; (5) if he has not such understanding, he, as a witness, would be considered to be dead. (6) A person *non compos mentis* is incapacitated from voting at parliamentary elections; (7) but the returning officer has only to decide whether at the moment of voting the person offering to vote can discriminate between the candidates for election, and repeat the oaths in an intelligible manner; if able so to do, his vote should be received by the returning officer. (8) A person *non compos mentis* is ineligible as a member of parliament; (9) and if a member of parliament becomes lunatic or of unsound mind, his seat may be avoided. (10) As to the capacity of one *non compos mentis* to acquire a domicil, the question has, it seems, been once only touched and by Lord Eldon, who, on a question of the domicil of a person sometime before his death *non compos mentis*, said, "I am not clear that the period of his lunacy is to be discarded, but I will take him to have died then. (11)

An action at law may be in the name of a person *non compos*

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(1) *Ex parte Clarke*, 2 Russ. 575; *Herbert* v. *Matthews*, 19 Ves. 612; *Ex parte Oxtoby*, 1 De G. 453; *Ex parte Maltby*, 1 Rose, 387.

(2) *Kirby* v. *Carr*, 3 Y. & C. 185; *Capper* v. *Dando*, 4 Nev. & M. 335; s. c. 2 A. & E. 458. But see *Robertson* v. *Lockie*, 15 Sim. 286; and *Tracey* v. *Lawrence*, 2 Drew. 406.

(3) *Alcock* v. *Alcock*, 3 M. & Gr. 268.

(4) 1 *Phillips on Evid.* 7.

(5) *Fennel* v. *Tait*, 1 Cr. M. & R. 584; *R.* v. *Hill*, 2 Den. C. C. 254.

(6) 12 *Vin. Abr.* 224.

(7) *Bedfordshire*, 2 Lud. 567; *Hey Co.* 259, 260.

(8) *Hey Co.* 260; *Elect. Man. by Lewis*, 18. See *Bridgewater*, 1 Peck, 108; *Oakhampton*, 1 Fraser, 164.

(9) *Rogers on Elect.* 180; *Elect. Man. by Lewis*, 8.

(10) *Grampound*, 29*th Oct.* 1556; *D'Ewes*, 126; 1 *Com. J.* 75; *Alcock's case*, 66 Com. J. 226, 265.

(11) *Bempde* v. *Johnstone*, 3 Ves. 201.

mentis, but it must be prosecuted by a sane person. (1) [The exemption of persons *non compotes mentis* from the operation of the Statute of Limitations (2) may be attributed to their incapacity to prosecute actions.] The wife of a lunatic not found so by inquisition may sue at law in his name for a debt due to him; and where she did so and the debt was paid into court in the action, it was paid out to her. (3) The wife of a lunatic has also been permitted to apply on his behalf for the purpose of procuring his discharge, under 48 Geo. 3, c. 123. (4) An idiot sueing at law must appear in person, and then any one who prays to be admitted as his friend to sue for him may be so admitted. (5) An adult lunatic may appear in person or by attorney. (6) Bankers refused to return money to a client whom they had grounds for suspecting to be of unsound mind; he brought an action against them for the money; the Court of law refused to compel an indemnity by him to them for such payment, as they could pay the money into court in the action. (7)

The Statute Law has provided for the discharge of the duties of an archbishop or bishop become *non compos mentis*, (8) so also of a beneficed clergyman. (9) A person *non compos mentis* should not act as judge, (10) he cannot be an arbitrator, (11) nor a guardian. (12) When an attorney had become permanently insane, the Court of Queen's Bench discharged his articled clerk, but refused to reckon in the computation of the necessary period of

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(1) *Co. Litt.* 135 b.
(2) 21 *Jac.* 1, *c.* 16, *s.* 2; 3 & 4 *Wm.* 4, *c.* 27, *s.* 16; 3 & 4 *Wm.* 4, *c.* 42. And see *Duroure* v. *Jones*, 4 T. R. 310; *Cotterell* v. *Dutton*, 4 Taunt. 825; *Sturt* v. *Mellish*, 2 Atk. 614; *Rhodes* v. *Smethurst*, 6 M. & W. 351; *Lewis* v. *Thomas*, 3 Hare, 26; *Humfrey* v. *Gery*, 7 C. B. 567: also 4 *Anne*, *c.* 16, *ss.* 17, 18; and *Stock*, 39.
(3) *Rock* v. *Slade*, 7 Dowl. 22.
(4) *Clay* v. *Bowler*, 6 Nev. & M. 815.
(5) *Co. Litt.* 135 b; 4 *Rep.* 124.
(6) 4 *Rep.* 124. Parke, B., in *Humphreys* v. *Griffiths*, 6 M. & W. 89.
(7) *Hope* v. *Watson*, 2 Leg. Obs. 413.
(8) 6 & 7 *Vic. c.* 62, *s.* 11.
(9) 1 & 2 *Vic. c.* 106, *s.* 77.
(10) *Mirror of Justices*, *ch.* 2, *s.* 2.
(11) *Watson on Arbitr. and Aw.* 85.
(12) *Co. Litt.* 88 b. See also 4 *Geo.* 4, *c.* 76, *s.* 16.

apprenticeship the period elapsed since such insanity; (1) on the other hand, when a parish apprentice became insane, the Court of Queen's Bench confirmed an order of Sessions relieving the master of him. (2)

A person *non compos mentis* may not file a bill in the Court of Chancery without the intervention of a sane person; if he do so as a sole plaintiff, the bill may be taken off the file; (3) and if he do so as a co-plaintiff, his name may be struck out of the bill. (4)

A bill may be filed or petition presented in the Court of Chancery in the name of a person alleged to be *non compos mentis*, but not found so by inquisition, by any person professing to be his next friend; (5) but when a bill not beneficial to the plaintiff was filed in his name, he being *non compos mentis*, without the intervention of a next friend and without his authority by a defendant in the suit, the Court of Chancery on the application of another defendant directed the bill to be taken off the file, and ordered the defendant who had filed it to pay the costs of his co-defendants. (6) A person *non compos mentis*, found so by inquisition, sues by the committee of his estate; (7) and if he has no such committee, an information may be exhibited on his behalf by the Attorney-General. (8) A lunatic or person of unsound mind should be a party to a suit in equity on his behalf, because he may recover; and if he recover, no decree in a suit to which he was not a party will bind him. (9) Strictly, however, he should not, it seems, be a party if the object of the suit is to stultify any act by him. (10) Upon an information exhibited on behalf

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(1) *Ex parte Turner*, 10 Law J. 351.

(2) *Anon.* 1 Skin. 114.

(3) *Blake* v. *Smith*, 1 Younge, 594. Lord Eldon, C., in *Wartnaby* v. *Wartnaby*, 1 Jac. 377.

(4) *Brangan* v. *Gorges*, 7 Ir. Eq. R. 225.

(5) 11 *Beav.* 211; *Red.* 22 *n. a*; *Carr* v. *Boyce*, 13 Ir. Eq. R. 102. See also *Clay* v. *Bowler*, 5 A. & E. 400.

(6) *Blake* v. *Smith*, 1 Younge, 594.

(7) *Boyce* v. *Carr*, Smith's Ch. Pr. 6th ed. 204; *Hartley* v. *Gilbert*, 13 Sim. 596.

(8) *Att.-Gen.* v. *Parkhurst*, 1 Ch. Ca. 112; *Att.-Gen.* v. *Mayor of Dublin*, 1 Bli. N. S. 348; *Att.-Gen.* v. *Tyler*, 1 Dick. 378; s. c. 2 Eden, 230.

(9) *Woolrich's case*, 1 Ch. Ca. 153; *Att.-Gen.* v. *Tyler*, 1 Dick. 378; s. c. 2 Eden, 230.

(10) *Att.-Gen.* v. *Parkhurst*, 1 Ch. Ca. 112; and *Woolrich's case*, 1 Ch. Ca. 153. But see 1 *Eq. Ca. Abr.* 279.

of a person *non compos mentis* (not found so by inquisition), the Court in which the information is exhibited will direct proceedings for the care of the lunatic's person and property, and the immediate appointment in his case of committees. (1) The Attorney-General has exhibited an information to stultify an instrument executed by a person *non compos mentis*, where the committee of the estate of such person asserted the validity of the instrument, and claimed under it as executor of another person. (2) To an information on behalf of one *non compos mentis* a responsible relator is of course necessary. (3)

It has been said that an idiot is not a necessary party to a proceeding in the Court of Chancery on his behalf. (4)

On a bill to avoid a lease by the plaintiff's father when lunatic the Court of Chancery refused relief, because the Attorney-General was not a party. (5) So on a bill for tithes by a bishop and sequestrator during the mental incapacity of an incumbent, Barons Page and Gilbert were of opinion that the incumbent or his committee should have been a party. (6)

In the suit of a wife by her next friend, the wife becoming of unsound mind, the Court of Chancery stayed all proceedings until the result of a pending inquiry into her state of mind, because if she was thereby found *non compos mentis* the committee of her estate was the proper party to conduct the suit. (7)

On granting a writ of *ne exeat* on behalf of a lunatic creditor, the affidavit of his committee has been admitted in lieu of the affidavit of the lunatic. (8)

A person *non compos mentis* may appeal to the House of Lords from any decree of a Court of equity within two years next after his coming of sound mind. (9) Where decrees were manifestly erroneous and prejudicial to the rights of a party

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(1) *Att.-Gen.* v. *Howe*, Lord Red. Tr. on Pl. 30 n.
(2) *Att.-Gen.* v. *Parnther*, 3 Bro. C. C. 441; s. c. 2 Dick. 748.
(3) *Att.-Gen.* v. *Tyler*, 2 Eden, 230.
(4) Lord Keeper, in *Att.-Gen.* v. *Woolrich*, 1 Ch. Ca. 153.
(5) *Leigh* v. *Wood*, Finch, 135.
(6) *Bishop of London* v. *Nicholls*, Bunb. 141.
(7) *Hartley* v. *Gilbert*, 13 Sim. 596.
(8) *Stewart* v. *Graham*, 19 Ves. 316.
(9) 6 *Cl. & F.* 976. See *De Burgh* v. *Clark*, 4 Cl. & F. 562.

who was during all the proceedings of unsound mind, the Court of Chancery in Ireland set aside the decrees upon a rehearing, the decrees not having been enrolled, although the earliest decree was 20 years old and the second 18 years old when the petition for rehearing was presented. (1)

A lunatic or person of unsound mind imprisoned for debt, damages, costs, money, or contempt of Court for non-payment of any sum of money or of costs, is incapable of taking the benefit of the Act for the Relief of Insolvent Debtors (2) in such manner as he might have done if of sound mind, but his discharge may be obtained under that Act in the following manner:—By the 102d section it is enacted that under the circumstances above referred to "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 prisoner 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, 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 inquiring 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, 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 was committed to such prison, as the said Court shall

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(1) *Knox* v. *Watters*, 10 Ir. Eq. R. 353.
(2) 1 & 2 *Vic. c.* 110.

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 21 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 or their attorney or attornies 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 person was of sound mind, could or ought to be vested in the said provisional assignee, 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 same 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 such order as aforesaid had been made vesting the same in 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 schedule according to the provisions 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 directed to be received as proof of conveyances and assignments made in pursuance of this Act."

There is no provision in the protection statutes for the case of a lunatic or person of unsound mind.

Unless a partnership deed provides for dissolution, in the event of any of the partners becoming *non compos mentis*, the partnership cannot in that event be dissolved without an order of the Lord Chancellor or a decree of the Court of Chancery.(1) There have been many instances of such decrees.(2) To obtain such an order or decree it must appear that the partner *non compos mentis* has been some time in that condition, and that his recovery is improbable;(3) the costs of the proceeding to obtain the dissolution fall on the partnership assets,(4) and the dissolution will be from the date of the order or decree.(5) If the other partners do not object, and if it is beneficial to the partner become *non compos mentis*, the partnership may be continued.(6) Where a partnership deed provided for dissolution in the event "of such severe illness as should oblige A. (one of the partners then in England) to quit India for more than one year"—A.

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(1) *Sayer* v. *Bennet*, 1 Cox, 107; *Jones* v. *Noy*, 2 M. & K. 125.

(2) 2 *Ves. sen.* 35; *Sayer* v. *Bennet*, 1 Cox, 107; *Patey* v. *Patey*, Law J. Ch. 1836; *Milne* v. *Bartlett*, Law J. Ch. 1839, 254; *Leaf* v. *Coles*, 1 De G. M. & G. 175; 1 *Kay & Jo.* 765.

(3) *Wrexham* v. *Hudleston*, 1 Sw. 514; *Waters* v. *Taylor*, 2 V. & B. 303; *Kirby* v. *Carr*, 3 Y. & C. 184; *Sadler* v. *Lee*, 6 Beav. 324; *Leaf* v. *Coles*, 1 De G. M. & G. 175. In the last cited case the lunatic recovered, 1 *De G. M. & G.* 417.

(4) *Jones* v. *Welch*, 1 Kay & Jo. 765.

(5) *Sander* v. *Sander*, 2 Coll. 276; *Besch* v. *Frolich*, 1 Phill. 172; *Jones* v. *Welch*, 1 Kay & Jo. 765.

(6) *Re Nunn*, Shelf. on Lun. 2d ed. 570.

arrived from England in India *non compos mentis*, and to promote his recovery he was sent back—it was held, in a suit for dissolution of the partnership, that the dissolution should be from the date of A.'s leaving India. (1) Further, where a partner had become *non compos mentis*, and his copartners proposed terms of dissolution beneficial to him, though different from the terms of the partnership deed, the Lord Chancellor decreed dissolution according to such proposals. (2)

A person *non compos mentis* cannot, without the intervention of another person, concur in stating a special case under 13 & 14 Vic. c. 35, for the opinion of the Court of Chancery; but the committee of his estate may, after having been authorized in that behalf by the Lord Chancellor, concur in the case in his own name, and in the name and on behalf of such person; if such person has not been the subject of an inquisition, the Court of Chancery may appoint a special guardian for the purpose of concurring in the case in the name and on behalf of such person. Notice of an application must however be given to such person, if any, as the Court shall think fit; and every case to which one *non compos mentis* is a party by special guardian should state how such guardian was constituted. Upon the case being filed and the appearances duly entered thereto, every party *non compos mentis* is for the purposes of such case bound by the statements therein; and when any party to a special case is *non compos mentis*, application may be made to the Court on motion for leave to set down the same, of which motion notice should be given to every party to such case, in whom, as executor, administrator, or trustee, any property in question therein is or is alleged to be vested in trust for or for the benefit of such party, and also, if such application be not made by or on behalf of such party, to such party and his committee if any. On the hearing of the motion, the Court may give leave to set down such case, if it is of opinion that it is proper that the questions raised in such case should be determined thereon, and should be satisfied by affidavit or other sufficient evidence that the

(1) *Bagshaw* v. *Bagshaw*, 10 Beav. 535.
(2) *Leaf* v. *Coles*, 1 De G. M. & G. 171, 417.

statements contained therein so far as the same affect the interest of such party are true, but otherwise may refuse such application; or if it shall be of opinion that it is proper that the question raised in such case should be determined thereon, but should not be satisfied that the statements contained therein so far as they affect the interest of such party are true, it may refer it to one of the Masters of the Court to make inquiries, and upon further application by motion upon the Master's report the Court may give or refuse leave to set down such case. (1)

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(1) 13 & 14 Vic. c. 35.

CHAPTER III.

As to the Civil Responsibility of Idiots, Lunatics, and Persons of unsound mind.

EVERY idiot, lunatic, and person of unsound mind is responsible in a civil action for an illegal act committed by him to the injury of another person, because the recompense to be recovered in such action is not by way of penalty on the defendant, but by way of satisfaction for damage to the plaintiff. (1) A person *non compos mentis* is therefore liable to an action of trespass, (2) also to an action of *quare impedit*. (3) He is also liable in *assumpsit* for necessaries, because the law implies a promise on his part to pay for such things. (4) Although a defendant be *non compos mentis*, he must be personally served with a writ of summons in a civil action, or it must be shown that the writ has come to his knowledge, or that he wilfully evades service. (5) In a case where the defendant was detained in a private lunatic asylum, and the keeper of the asylum refused access to him, and a copy of the writ had been left with the keeper, it was suggested by the Court in which the action was pending "that the keeper should be informed that it was his duty to allow the writ to be served on the defendant, or else application might be made for a *habeas corpus* for the purpose of bringing up the defendant, so that service might be duly effected. (6) A person *non compos mentis* may be arrested for debt, (7) so supervening insanity does not

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(1) 1 *Hales P. C.* 15, 16. See also Lord Kenyon, C.J., in *Haycraft* v. *Creasy*, 2 East, 104.

(2) *Weaver* v. *Ward*, Hob. 134; 2 *Rolle's Abr.* 547, *pl.* 4; *Bacon's Abr. Tresp.* (*G*), *Idiot* (*E*).

(3) *Tyrell* v. *Tyrell*, 6 Bingh. 283. See 5 *M. & Gr.* 669 *n.*

(4) *Mauley* v. *Scott*, 1 Sid. 112; *Baxter* v. *Lord Portsmouth*, 5 B. & C 170; *Brown* v. *Jodrell*, 3 C. & P. 30; *Williams* v. *Wentworth*, 5 Beav. 329.

(5) *Doe d. Gibbard* v. *Roe*, 9 Dowl. 844; *Holmes* v. *Service*, 15 C. B. 294; *Ridgway* v. *Cannon*, 23 Law T. 143.

(6) *Ridgway* v. *Cannon*, 23 Law T. 143.

(7) *Nutt* v. *Verney*, 4 T. R. 121; *Steel* v. *Alan*, 2 B. & P. 362. Lord Eldon, C., in *Ex parte Hall*, Jac. 161: and *Ex parte Hastings*, 14 Ves. 182.

discharge a prisoner. (1) Where the return to a writ of latitat, verified by affidavit of a physician, stated that the defendant was on the 13th day of June last, the day before the return of the writ, when the officer came to arrest him, in a lunatic asylum, insane, and in a desperate and raving state, so that he could not be taken or removed without danger to the life of the officer, and in so bad a state of health that he could not be taken or removed without endangering his own life, and that he remained and continued there so insane and in such a bad state of health that he could not be taken or removed without endangering his life from thence until the return of the writ, the Court refused to interfere by attachment. (2)

The property of a person *non compos mentis* may at law be taken in execution, and the Court of Chancery will not except under special circumstances restrain the execution. (3) So if a person *non compos mentis* holds a living it may be sequestered for debt. (4) If a person by reason of his insanity loses his ability to perform a contract entered into by him when sane, no damages can be recovered against him for the consequent breach of such contract, because *actus Dei nemini facit injuriam*. (5)

Bail will not be exonerated from producing their principal by the bare fact that their principal has become insane since they became bail; (6) and on an application by bail for a rule absolute to enlarge the time for rendering their principal, who was insane, Lord Ellenborough, C. J., said, "It is not stated, I observe, in the affidavits that the defendant is a dangerous lunatic, so that he could not be brought up without immediate danger to his own life or to others. If either his own life were to be put in peril, or the lives of those who are to bring him up or in whose custody he is to be placed, or, as Bayley, J., suggested, if it had been sworn that by continuing him in his present custody a little time longer he would be likely to recover, there might be room

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(1) *Kernott* v. *Norman*, 2 T. R. 390.
(2) *Cavenagh* v. *Collett*, 4 B. & Ald. 280.
(3) *Ex parte Dikes*, 8 Ves. 79 *a*.
(4) Lord Eldon, C., in *Ex parte Hastings*, 14 Ves. 182.
(5) Lord Eldon, C., in *Waters* v. *Taylor*, 2 V. & B. 299.
(6) *Ibbotson* v. *Galway*, 6 T. R. 133.

for consideration. But without any special circumstances to call for the exercise of our discretion, the duty of the Court in this case is clear and precise, and we must discharge the rule." (1)

Bail can obtain a *habeas corpus* against any private person detaining their principal as being *non compos mentis*, (2) but a total stranger to one confined in a lunatic asylum cannot, unauthorized by him, obtain a *habeas corpus* for his production. (3)

If an action is brought against an idiot found so by inquisition upon any bond or writing executed by him, the King may send a writ of *supersedeas* to the court in which the action is commenced. (4)

A bill (5) or claim (6) may be exhibited, or a petition (7) may be presented in the Court of Chancery against an idiot, lunatic, or person of unsound mind, but service of a subpœna to appear or writ of summons should be made on him personally; and if there be any likelihood of his being terrified thereby, the presence of his medical attendant will be proper. (8) Leave to serve him abroad may be obtained under the 33d General Order of May, 1845; but an appearance cannot be entered for him. (9) A bill cannot be taken *pro confesso* against him on his default to appear; (10) but such a defendant cannot open a decree except upon evidence of his being *non compos mentis* during all the proceedings, and his own evidence on that point is insufficient. (11) One *non compos mentis* cannot personally defend a suit or oppose a petition, (12) by guardian *ad litem* he may do so. (13)

If a suit be instituted against him, the committee of his estate

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(1) *Cock* v. *Bell*, 13 East, 355; and see *Fennell* v. *Tait*, 1 Cr. M. & R. 584.
(2) *Pillop* v. *Sexton*, 3 B. & P. 550.
(3) *Ex parte Child*, 15 C. B. 238.
(4) 4 *Rep.* 126 *b*.
(5) *Mitf. on Pleading*, 5*th ed.* 30.
(6) *Morgan* v. *Jones*, 26 Law T. 308.
(7) *Re Greaves*, 2 Eq. R. 516.
(8) *Morgan* v. *Jones*, 4 W. R. 381.
(9) *Biddulph* v. *Camoys*, 7 Beav. 581.
(10) *Swift* v. *Swift*, 11 Ir. Eq. R. 557.
(11) *Knight* v. *Young*, 2 V. & B. 187.
(12) *Toth.* 140; *Wy. Pr. Reg.* 292.
(13) *Westcomb* v. *Westomb*, 1 Dick. 233; *Sackville* v. *Aylworth*, 1 Vern. 106; *Lyon* v. *Mercer*, 1 S. & S. 356; *Howlett* v. *Wilbraham*, 5 Mad. 423; *Re Greaves*, 2 Eq. R. 516.

is a necessary party, (1) and such committee applies by motion or petition of course to be appointed his guardian *ad litem*. (2) If the person *non compos mentis* has no committee of his estate, (3) or if the committee has in the suit an adverse interest to him, another person will be appointed his guardian *ad litem*.(4) Where the committee of the person and estate of one *non compos mentis* filed a bill against him, an order for a commission to appoint a guardian *ad litem* was made by Lord Chancellor Truro upon the petition of the defendant himself; the petition was entitled in the suit and in the lunacy. (5) Lord Talbot said that if the interest in the suit of a defendant *non compos mentis* was considerable, and he had no committee of his estate, an inquisition and the appointment of such a committee should be obtained. (6) An application for the appointment of a guardian *ad litem* to a defendant idiot, lunatic, or of unsound mind, but not found so by inquisition, should be to the Court wherein the suit is instituted.(7) Prior to the 26th October, 1842, it was usual for the Court of Chancery to assign the senior six-clerk not towards the cause guardian *ad litem* of a defendant *non compos mentis* not found so by inquisition; (8) but by article 28 of the General Orders of the Court of Chancery, dated the 26th October, 1842, it was ordered, "That where according to the present practice it has been usual to assign a six-clerk guardian *ad litem* of a person of unsound mind the Court may appoint one of the solicitors of the court to be such guardian, and may direct that the costs to be incurred in the performance of the duties of such office shall be borne and paid either by the parties or some one or more of the parties to the suit in which such appointment shall be made, or out of any fund in court in which such person of unsound mind may be interested, and may give directions for the repayment or allowance

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(1) Lord St. Leonards, in *Stanton* v. *Percival*, 5 H. L. Ca. 284.

(2) *Dan. Ch. Pr.* 3*d ed.* 145; *Westcomb* v. *Westcomb*, Dick. 233. But see *Smith's Ch. Pr. ed.* 1855, *p.* 169.

(3) *Howlett* v. *Wilbraham*, 5 Madd. 423; *Wilson* v. *Grace*, 14 Ves. 172.

(4) *Snell* v. *Hyatt*, 1 Dick. 287. Lord Cranworth, C., in *Stanton* v. *Percival*, 5 H. L. Ca. 273.

(5) *Worth* v. *M'Kenzie*, 3 M. & Gor. 364.

(6) 3 *P. Wms.* 111 *n.*

(7) *Piddocke* v. *Smith*, 9 Hare, 395; *Patrick* v. *Andrews*, 1 W. R. 96.

(8) *Estcourt* v. *Ewington*, 9 Sim. 254.

of such costs as the justice and circumstances of the case may require." An appointment under this order may be obtained by the plaintiff on motion in the suit; (1) it was sought of Vice-Chancellor Sir G. J. Turner without a commission—he referred the plaintiff to Lord Chancellor Cranworth, who granted the application. (2) On such motion proof should be furnished of the defendant's state of mind, and of the fitness of the proposed guardian. (3) If the defendant does not appear on the motion, (4) proof should be given of the service on him of the subpœna to appear and notice of motion, (5) and the notice of motion should name the proposed guardian. (6) By the 32d Order of May, 1845, it is ordered that if upon default made by a defendant in not appearing to or not answering a bill in the Court of Chancery it appears to the Court that such defendant is a person of unsound mind not so found by inquisition, so that he is unable of himself to defend the suit, the Court may, upon the application of the plaintiff, order that one of the solicitors of the court be assigned guardian of such defendant, by whom he may appear to and answer, or may answer the bill and defend the suit; but no such order is to be made unless it appears to the Court on the hearing of such application that the subpœna to appear to and answer the bill was duly served, and that notice of such application was, after the expiration of the time allowed for appearing to or for answering the bill, and at least six days before the hearing of the application, served upon or left at the dwellinghouse of the person with whom or under whose care such defendant was at the time of serving such subpœna. (7)

The solicitor of the suitors' fund is appointed if no other more proper person can be found to undertake the defence; (8) the plaintiff's solicitor will not be appointed; (9) and if a husband lunatic or

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(1) *Howlett* v. *Wilbraham*, 5 Mad. 423; *Brooks* v. *Jobling*, 2 Hare, 155; *Needham* v. *Smith*, 6 Beav. 130; *M'Keverakin* v. *Cort*, 7 Beav. 347.
(2) *Piddocke* v. *Smith*, 9 Hare, 395.
(3) Previous case.
(4) Previous case.
(5) *Brooks* v. *Jobling*, 2 Hare, 155.
(6) *Brassington* v. *Brassington*, 2 Anstr. 369.
(7) *16th G. O., May*, 1845, *art.* 48.
(8) *Biddulph* v. *Lord Camoys*, 9 Beav. 548; *Moore* v. *Platel*, 7 Beav. 583; *M'Keverakin* v. *Cort*, 7 Beav. 347.
(9) *Biddulph* v. *Lord Camoys*, 9 Beav. 548.

of unsound mind and his wife are defendants, her solicitor will not be appointed his guardian *ad litem* without proof that the interest of the wife is not adverse to that of her husband. (1) According to Sir J. Romilly, M.R., no solicitor is eligible as guardian *ad litem* to a lunatic defendant. (2) Further, it is not the practice of the Court of Chancery to appoint as guardian *ad litem* a person out of its jurisdiction; but upon a motion in a suit in England against a defendant *non compos mentis*, found so by inquisition in Ireland and resident in Ireland, to obtain the appointment of his committee residing in Ireland to be his guardian in the suit, Lord Langdale, M.R., said that the parties should get the inquisition recorded in England under 1 *Wm.* 4, *c.* 65, *s.* 41, and then the defendant *non compos mentis* and his committee could answer together. (3) In a proceeding by summons in the Court of Chancery for the administration of an estate against an administratrix and her husband, the husband having become lunatic, the Court on motion *ex parte*, supported by affidavit of fitness, appointed a guardian *ad litem* to him. (4) It seems that a person of unsound mind cannot be proceeded against by serving his guardian *ad litem* with a copy of the bill under the General Orders of 26th August, 1841. (5) A guardian *ad litem* may be appointed in any stage of a suit, (6) and the answer put in by a guardian *ad litem* should be merely a submission to the Court of the case of the defendant *non compos mentis*. (7) The answer of a defendant *non compos mentis* (not found so by inquisition) by his guardian *ad litem* cannot be excepted to for insufficiency. (8) If, however, a guardian *ad litem* by his answer makes any allegations, these will bind him in any character he may subsequently acquire. (9)

On motion to take a bill *pro confesso* against the guardian *ad litem* of a person *non compos mentis*, it was ordered on the plain-

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(1) Previous case.
(2) *Patrick* v. *Andrews*, 1 W. R. 96.
(3) *Lady Hartland* v. *Atcherley*, 7 Beav. 53; and 16 & 17 *Vic. c.* 70, *s.* 52.
(4) *Osbaldiston* v. *Crowther*, 1 Sm. & Giff. App. xii.
(5) *Pemberton* v. *Langmore*, 8 Beav. 166.
(6) *Gason* v. *Garnier*, 1 Dick. 286.
(7) Lord Redesdale, C., in *Carew* v. *Johnston*, 2 Sch. & Lefr. 293.
(8) *Micklethwaite* v. *Atkinson*, 1 Coll. 173.
(9) Lord St. Leonards, C., in *Stanton* v. *Percival*, 5 H. L. Ca. 291.

tiff serving the guardian and the nearest relations of such person. (1)

On the death of the guardian *ad litem* of a lunatic or person of unsound mind not found so by inquisition, the application to appoint a new guardian should be special and supported by evidence of existing lunacy or unsoundness of mind; but it seems that the appointment may be obtained as of course if the lunatic or person of unsound mind has been found so by inquisition, and there has been no *supersedeas*. (2) On the motion of a plaintiff asking for an order on the committee of the estate of a defendant *non compos mentis* to put in an answer for such defendant within a specified period, Sir T. Sewell, M.R., said, "If the committee refused to answer, the proper course was to apply to the Great Seal to appoint a new committee of the estate." (3)

On the discharge or death after decree in a suit of the committee of an estate defending the suit, and the appointment of a new committee, an order may be obtained on the motion of such new committee, that he should be named as the committee in all the future proceedings in the suit, (4) but it has been held that if the death or discharge take place before decree a supplemental bill is necessary. (5)

If a husband *non compos mentis* and his wife are co-defendants the plaintiff may obtain an order for the wife to answer separately. (6)

Where, after an order for a commission to appoint a guardian *ad litem* to a defendant, the plaintiff, believing such defendant to be sane, moved to discharge the order on affidavit of the defendant's sanity, Sir Thomas Leach, V.C.E., directed a reference as to the defendant's state of mind. (7)

Lord Chancellor Cranworth and Lord St. Leonards differed in a case before the House of Lords, on the point whether the answer of a committee of the estate, or guardian *ad litem* of a defendant

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(1) *Crawford* v. *Kernaghan*, 1 Dru. & W. 195.
(2) *Needham* v. *Smith*, 6 Beav. 131.
(3) *Lloyd* v. ——, 2 Dick. 490.
(4) *Lyon* v. *Mercer*, 1 S. & S. 356; *Bryan* v. *Twigg*, 3 W. R. 42.
(5) *Rudd* v. *Speare*, 3 De G. & Sm. 374. See now 15 & 16 *Vic. c.* 86, *s.* 53; and *Order* 44 *of the Orders of 7th August*, 1852.
(6) *Estcourt* v. *Ewington*, 9 Sim. 254.
(7) *Lee* v. *Ryder*, 6 Madd. 294.

non compos mentis could be read against such defendant; it was admitted in the same case that it could be read for such defendant: (1) "Speaking generally upon the appointment of a guardian *ad litem*, Lord Eldon observed, The Court of Chancery imposes all the restraints of infancy on the *non compos mentis*, and he is bound by all the acts of the guardian so appointed." (2)

The doctrine that a person *non compos mentis* cannot personally resist a claim is recognized by 2 & 3 Wm. 4, c. 71, and 2 & 3 Wm. 4, c. 100.

A person confined for contempt will be released on his becoming *non compos mentis*. (3)

If in an administration suit a reference is directed solely for the benefit of a party *non compos mentis*, he of course pays the costs of such reference. (4)

In a suit for partition of land of which the tenant in tail in possession is *non compos mentis*, the person entitled next in remainder in tail is not an unnecessary or improper party, because a conveyance can be obtained from the other tenant only under the Trustee Act, 1850, and the power thereby given to the Lord Chancellor is discretionary. (5)

The committee of an heir *non compos mentis* may be served with a copy of a decree under 11 Geo. 4, and 1 Wm. 4, c. 36.

Lastly, "guardians *ad litem* appointed for persons of unsound mind, not found so by inquisition, who shall be served with notice of any decree or order, are to be appointed in like manner as guardians *ad litem* to answer and defend are now appointed in suits on bills filed." (6) And "at any time during the proceedings at any judge's chambers under any decree or order the judge may, if he shall think fit, require a guardian *ad litem* to be appointed for any person of unsound mind, not found so by inquisition, who has been served with notice of such decree or order." (7)

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(1) *Stanton* v. *Percival*, 5 H. L. Ca. 272, 283, 286. See also *Leving* v. *Caverly*, Pr. Ch. 229; *Wilds* v. *Davis*, 4 Jur. 715; and *Freeman* v. *Grady*, 8 Ir. Eq. R. 137.

(2) Lord Langdale, M.R., in *Nelson* v. *Duncombe*, 9 Beav. 231.

(3) 11 *Geo.* 4, *and* 1 *Wm.* 4, *c.* 36.

(4) *Winthrup* v. *Winthrup*, 15 Law T. N. S. Ch. 403.

(5) *Singleton* v. *Hopkins*, 4 W.R. 107.

(6) *Orders* 1*st June*, 1854, *art.* 6.

(7) *Orders* 1*st June*, 1854, *art.* 7.

CHAPTER IV.

As to the Criminal Responsibility of Idiots, Lunatics, and Persons of unsound mind.

HAVING, in the last chapter, treated of some of the more important questions arising from the civil incapacity of an idiot, lunatic, and person of unsound mind, we come now to consider his criminal responsibility. It is "a principle of natural justice and of our law, that, *actus non facit reum nisi mens sit rea*, the intent and the act must both concur to constitute crime." (1) Now, intent (which has been defined to be "the design, purpose, or fixed direction of the mind to some particular object") (2) implies mental capacity. Therefore it seems if a person *non compos mentis* has sufficient mental capacity fully to understand the nature of any act when committing it in violation of the criminal law, he is in respect of such act punishable as a criminal by that law; if he has not that degree of mental capacity, he is irresponsible criminally in respect of such act. It must always, however, be borne in mind that the legal maxim, *Ignorantia juris quod quisque scire tenetur neminem excusat*, applies to criminal cases. (3) The following questions were, in regard to McNaghten's case, proposed to the judges by the House of Lords, and the following answers were by them returned :— (4)

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(1) Lord Kenyon, C.J., in *Fowler* v. *Padget*, 7 T. R. 514.
(2) *Webster's Dict.*
(3) 4 *Bla. Com.* 27; 1 *Hale*, 42; and see *R.* v. *Barronet*, 1 Dearsl. 51; *R.* v. *Esop*, 7 C. & P. 456; *R.* v. *Bailey*, Russ. & Ry. 4.
(4) *McNaghten's case*, 8 Scott, N. R. 600, 603; and 1 C. & K. 134, 136; and 10 Cl. & Fin. 200.

Questions of the House of Lords.

1. What is the law respecting alleged crimes committed by persons afflicted with insane delusions in respect of one or more particular subjects or persons, as, for instance, where at the time of the commission of the alleged crime the accused knew he was acting contrary to law, but did the act complained of with a view, under the influence of insane delusion, of redressing or avenging some supposed grievance or injury, or of producing some supposed public benefit?

2. What are the proper questions to be submitted to the jury when a person alleged to be afflicted with insane delusion respecting one or more particular subjects or persons is charged with the commission of a crime (murder for example) and insanity is set up as a defence?

3. In what terms ought the question to be left to the jury as to the prisoner's state of mind at the time when the act was committed?

Joint answers of all the judges, with the exception of Maule, J., who gave a separate answer.

1. Assuming that your Lordships' inquiries are confined to those persons who labour under such partial delusions only, and are not in any other respects insane, we are of opinion that, notwithstanding the party accused did the act complained of with a view, under the influence of insane delusion, of redressing or revenging some supposed grievance or injury, or of producing some public benefit, he is nevertheless punishable according to the nature of the crime committed if he knew at the time of committing such crime that he was acting contrary to law, by which expression we understand your Lordships to mean the law of the land.

2, 3. As these two questions appear to us to be more conveniently answered together, we have to submit our opinion to be, that the jury ought to be told in all cases that every man is presumed to be sane and to possess a sufficient degree of reason to be responsible for his crimes until the contrary be proved to their satisfaction; and that to establish a defence on the ground of insanity, it must be clearly proved that at the time of committing the act the

party accused was labouring under such a defect of reason from disease of the mind as not to know the nature and quality of the act he was doing, or if he did know it, that he did not know he was doing what was wrong. The mode of putting the latter part of the question to the jury on these occasions has generally been whether the accused at the time of the doing of the act knew the difference between right and wrong, (1) which mode, though rarely if ever leading to any mistake with the jury, is not, as we conceive, so accurate when put generally and in the abstract as when put with reference to the party's knowledge of right and wrong in respect to the very act with which he is charged. If the question were to be put as to the knowledge of the accused solely and exclusively with reference to the law of the land, it might tend to confound the jury, by inducing them to believe that an actual knowledge of the law of the land was essential in

(1) Tracey, J., in *Arnold's case*, 16 St. Tr. 764; *R.* v. *Lord Ferrers*, 19 St. Tr. 764. Le Blanc, J., in *Bowler's case*, Shelf on Lun. 2d ed. 590. Lord Mansfield, C.J., in *Bellingham's case*, ibid. 592. Lord Lyndhurst, C.B., in *R.* v. *Offord*, 5 C. & P. 168. Lord Denman, C.J., in *R.* v. *Oxford*, 9 C. & P. 547. See also observations in judgments in *Clift* v. *Schwabe*, 3 C. B. 475; *Borradaile* v. *Hunter*, 5 M. & Gr. 639; and *Dormey* v. *Borradaile*, 5 C. B. 380.

order to lead to a conviction; whereas the law is administered upon the principle that every one must be taken conclusively to know it, without proof that he does not know it. If the accused was conscious that the act was one which he ought not to do, and if that act was at the same time contrary to the law of the land, he is punishable; and the usual course therefore has been to leave the question to the jury, whether the party accused had a sufficient degree of reason to know that he was doing an act that was wrong, and this course we think is correct accompanied with such observations and explanations as the circumstances of each particular case may require.

4. If a person under an insane delusion as to existing facts commits an offence in consequence thereof, is he thereby excused?

4. The answer must of course depend on the nature of the delusion; but making the same assumption as we did before, namely, that he labours under such partial delusion only, and is not in other respects insane, we think he must be considered in the same situation as to responsibility as if the facts with respect to which the delusion exists were real. For example, if under the influence of his delusion he supposes another man to be in the act of attempting to take away his life, and he

kills that man as he supposes in self defence, he would be exempt from punishment. If his delusion was, that the deceased had inflicted a serious injury to his character and fortune, and he killed him in revenge for such supposed injury, he would be liable to punishment.

5. Can a medical man conversant with the disease of insanity, who never saw the prisoner previously to the trial, but who was present during the whole trial and the examination of all the witnesses, be asked his opinion as to the state of the prisoner's mind at the time of the commission of the alleged crime, or his opinion whether the prisoner was conscious at the time of doing the act that he was acting contrary to law, or whether he was labouring under any and what delusion at the time? (1)

5. We think the medical man under the circumstances supposed cannot in strictness be asked his opinion in the terms above stated, because each of these questions involves the determination of the truth of the facts deposed to, which it is for the jury to decide, and the questions are not mere questions of a matter of science, in which case such evidence is admissible. But where the facts are admitted or not disputed, and the question becomes substantially one of science only, it may be convenient to allow the question to be put in that general form, though the same cannot be insisted on as a matter of right. (2)

The separate answer of J. Maule.

I feel great difficulty in answering the questions put by your Lordships on this occa-

(1) *R. v. Wright*, R. & R. 457. See also *Lake v. People*, Parker's Cr. Ca. 495; *People v. Robinson*, ibid. 649.

(2) But see *R. v. Scarle*, 1 Moo. & Ro. 75, where it was laid down that a medical witness may be asked whether the facts proved show *symptoms* of insanity.

sion:—First, because they do not appear to arise out of and are not put with reference to a particular case or for a particular purpose, which might explain or limit the generality of their terms, so that full answers to them ought to be applicable to every possible state of facts not inconsistent with those assumed in the questions —this difficulty is the greater, from the practical experience both of the Bar and the Court being confined to questions arising out of the facts of particular cases; Secondly, because I have heard no argument at your Lordship's bar or elsewhere on the subject of these questions, the want of which I feel the more the greater are the number and extent of questions which might be raised in argument; and, Thirdly, from a fear, of which I cannot divest myself, that as these questions relate to matters of criminal law of great importance and frequent occurrence, the answers to them by the judges may embarrass the administration of justice when they are cited in criminal trials. For these reasons I should have been glad if my learned brethren would have joined me in praying your Lordships to excuse us from answering these

questions; but as I do not think they ought to induce me to ask that indulgence for myself individually, I shall proceed to give such answers as I can after the very short time which I have had to consider the questions and under the difficulties I have mentioned, fearing that my answers may be as little satisfactory to others as they are to myself.

The first question, as I understand it, is in effect—What is the law respecting the alleged crime when, at the time of the commission of it, the accused knew he was acting contrary to the law, but did the act with a view, under the influence of insane delusion, of redressing or revenging some supposed grievance or injury, or of producing some supposed public benefit? If I were to understand the question according to the strict meaning of its terms, it would require, in order to answer it, a solution of all questions of law which could arise on the circumstances stated in the question, either by explicitly stating and answering such questions, or by stating some principles or rules which would suffice for their solution. I am quite unable to do so, and indeed doubt whether it be possible to be done, and therefore

request to be permitted to answer the question only so far as it comprehends the question, whether a person, circumstanced as stated in the question, is, for that reason only, to be found not guilty of a crime respecting which the question of his guilt has been duly raised in a criminal proceeding? And I am of opinion that he is not. There is no law that I am aware of that makes persons in the state described in the question not responsible for their criminal acts. To render a person irresponsible for crime on account of unsoundness of mind, the unsoundness should, according to the law as it has long been understood and held, be such as rendered him incapable of knowing right from wrong. The terms used in the question cannot be said (with reference only to the usage of language) to be equivalent to a description of this kind and degree of unsoundness of mind. If the state described in the question be one which involves or is necessarily connected with such an unsoundness, this is not a matter of law, but of physiology, and not of that obvious and familiar kind as to be inferred without proof.

Second, the questions necessarily to be submitted to the

jury are those questions of fact which are raised on the record. In a criminal trial, the question commonly is, whether the accused be guilty or not guilty; but, in order to assist the jury in coming to a right conclusion on this necessary and ultimate question, it is usual and proper to submit such subordinate or intermediate questions as the course which the trial has taken may have made it convenient to direct their attention to. What those questions are, and the manner of submitting them, is a matter of discretion for the judge—a discretion to be guided by a consideration of all the circumstances attending the inquiry. In performing this duty, it is sometimes necessary or convenient to inform the jury as to the law; and if, on a trial such as is suggested in the question, he should have occasion to state what kind and degree of insanity would amount to a defence, it should be stated conformably to what I have mentioned in my answer to the first question as being in my opinion the law on this subject.

Third, there are no terms which the judge is by law required to use. They should not be inconsistent with the law as above stated, but should be such as, in the discretion of the

judge, are proper to assist the jury in coming to a right conclusion as to the guilt of the accused.

Fourth, the answer which I have given to the first question is applicable to this.

Fifth, whether a question can be asked depends not merely on the questions of fact raised on the record, but on the course of the cause at the time it is proposed to ask it; and the state of an inquiry as to the guilt of a person charged with a crime, and defended on the ground of insanity, may be such that such a question as either of those suggested is proper to be asked and answered, though the witness has never seen the person before the trial, and though he has merely been present and heard the witnesses—these circumstances, of his never having seen the person before and of his having merely been present at the trial, not being necessarily sufficient, as it seems to me, to exclude the lawfulness of a question which is otherwise lawful; though I will not say that an inquiry might not be in such a state as that these circumstances should have such effect.

Supposing there is nothing else in the state of the trial to make the questions suggested

proper to be asked and answered except that the witness had been present and heard the evidence, it is to be considered whether that is enough to sustain the question. In principle it is open to this objection, that as the opinion of the witness is founded on those conclusions of fact which he forms from the evidence, and as it does not appear what those conclusions are, it may be that the evidence he gives is on such an assumption of facts as makes it irrelevant to the inquiry; but such questions have been very frequently asked, and the evidence to which they are directed has been given, and has never, that I am aware of, been successfully objected to. Evidence most clearly open to this objection, and on the admission of which the event of a most important trial probably turned, was received in the case of the *Queen* v. *M'Naghten*, tried at the Central Criminal Court in March last, before the Lord Chief Justice, Mr. Justice Williams, and Mr. Justice Coleridge, in which counsel of the highest eminence were engaged on both sides; and I think the course and practice of receiving such evidence, confirmed by the very high authority of these judges, who

not only received it, but left it, as I understand, to the jury without any remark derogating from its weight, ought to be held to warrant its reception, notwithstanding the objection in principle to which it may be open. In cases even where the course of practice in criminal law has been unfavourable to parties accused, and entirely contrary to the most obvious principles of justice and humanity as well as those of law, it has been held that such practice constituted the law, and could not be altered without the authority of Parliament.

The opinions above stated are in practice generally referred to as containing the most authentic statement of the law on this subject; although it is but right to observe, that the answers of the judges above given have been supposed by some to be of imperfect applicability in many cases where responsibility or non-responsibility is the issue, moreover, that to some the present condition of the law as there stated appears not quite satisfactory, but rather fluctuating in its character and irregular in its operation.

Those who wish to investigate this subject more fully must do so in works which treat of medical jurisprudence. (1)

It may be well here to observe that it is unnecessary to prove the mental condition of a person at the very moment of his commission of a criminal act, for in a well known trial for treason by shooting at his late Majesty King George the Third, wherein the

(1) See especially *Dr. Taylor's Treatise on Medical Jurisprudence.* A very able and suggestive little treatise on *Medical Testimony and Evidence in cases of Lunacy*, by Dr. Thos. Mayo, the president of the College of Physicians, should also be consulted by the student. Very dangerous doctrines, which if adopted and applied would result in universal non-responsibility and impunity for almost all criminals, are from time to time promulgated, and philanthropists have sometimes endeavoured to confuse vice with lunacy and unsoundness of mind.

conduct of the prisoner immediately previous to the act was proved to have been extravagantly irrational, but no proof was adduced of his state of mind at the moment of the act, Lord Kenyon, C.J., directed the acquittal of the prisoner on the ground of his insanity. (1)

If a person is lunatic or of unsound mind when arraigned he cannot be called on to plead, because he is unable to plead properly; and if a prisoner having pleaded becomes lunatic or of unsound mind, his trial cannot proceed because he is unable to make a proper defence. So if after verdict of guilty against him, but before judgment thereon, a prisoner becomes lunatic or of unsound mind, the judgment cannot be pronounced, or if a prisoner becomes lunatic or of unsound mind immediately after judgment on him execution must be stayed, because such prisoner might if sane have alleged something in stay of judgment or execution. (2)

The insanity of a prisoner on trial is ascertained either by evidence given on his trial, or by impannelling a jury on his arraignment to try the fact. (3)

One rather remarkable case occurred in the defence of a prisoner for insanity which it is worth while to refer to. On a trial for murder, and at the conclusion of the address of the prisoner's counsel, who had pleaded the prisoner's insanity, the prisoner said that he wished some witnesses to be called for the purpose of proving that he was not insane. Bosanquet, J., replied: "If the prisoner wishes to have any witnesses called I will call them, and put such questions to them as the prisoner wishes if they are proper questions. This case cannot be conducted in two ways, first by the prisoner's counsel and then by the prisoner himself; but at his suggestion I can call a witness and examine him." Several witnesses were then called, but so far from their testimony proving that the prisoner was not insane, it went directly to establish the contrary position. (4)

By 39 & 40 Geo. 3, c. 94, s. 1, (5) it is enacted that in all

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(1) *Hadfield's case*, 27 St. Tr. 1281, 1353.
(2) 1 *Hale P. C.* 34; *Frith's case*, 22 St. Tr. 307.
(3) 4 *Bl. Com. by Kerr*, 25.
(4) *R. v. Pearce*, 9 C. & P. 670.
(5) 16 & 17 *Vic. c.* 96, *s.* 38.

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 Her Majesty's pleasure shall be known; and it shall thereupon be lawful for Her Majesty to give such order for the safe custody of such person during her pleasure, and in such manner as to Her Majesty shall seem fit.

The judges considered that this section extended to the case of a person charged with a misdemeanour; (1) the Legislature has however since expressly extended the provision to misdemeanour. (2)

If an insane person charged with an offence is acquitted on the ground of insufficient evidence of his having committed the offence, he cannot, it seems, be dealt with under 39 & 40 Geo. 3, c. 94, s. 1. (3)

Even at common law persons acquitted on the ground of insanity were liable to be detained in custody during the sovereign's pleasure.

By 39 & 40 Geo. 3, c. 94, s. 2, it is also enacted: "If any person indicted for any offence shall be insane, and shall upon arraignment be found so to be by a jury impannelled 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,—the Court before whom any such person shall be brought to be arraigned or tried as aforesaid may direct such finding to be recorded, and may thereupon order such person to be kept in

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(1) *R.* v. *Little*, R. & Ry. 430.
(2) 3 & 4 *Vic. c.* 54, *s.* 3.
(3) *R.* v. *Oxford*, 9 C. & P. 525; s. c. 1 R. C. & M. 16; *Hadfield's case*, 27 St. Tr. 1353.

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, the Court may order a jury to be impannelled to try the sanity of such person; and if the jury so impannelled shall find such person to be insane, the Court may order such person to be kept in strict custody, in such place and in such manner as to such Court shall seem meet, until His Majesty's pleasure shall be known; and in all cases of insanity so found his Majesty may 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." (1)

A jury may, upon arraignment or trial of a prisoner, find a prisoner insane on the bare evidence of his demeanour before them. (2)

The question for the jury upon the arraignment is whether the person charged with the offence has sufficient mental capacity to understand the nature of the proceedings against him so as to make a proper defence. (3)

By 3 & 4 Vic. c. 54, it is enacted, s. 1: "That if any person while imprisoned in any prison or other place of confinement under any sentence of death, transportation, or imprisonment, or under a charge of any offence, or for not finding bail for good behaviour or to keep the peace or to answer a criminal charge, or in consequence of any summary conviction or order by any justice or justices of the peace, or under any other than civil process, shall appear to be insane, it shall be lawful for any two justices of the peace of the county, city, borough, or place where such person is imprisoned, to inquire with the aid of two physicians or surgeons as to the insanity of such person; and if it shall be duly certified by such justices and such physicians or surgeons that such person is insane, it shall be lawful for one of Her Majesty's principal Secretaries of State, upon receipt of such certificate, to

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(1) As to a grand jury ignoring a bill on the ground of insanity of the accused: see *R.* v. *Hodges*, 8 C. & P. 195; see also 3 & 4 *Vic. c.* 54, *s.* 1.

(2) *R.* v. *Goode*, 7 A. & E. 536.

(3) Alderson, B., in *R.* v. *Pritchard*, 7 C. & P. 303. Parke, B., in *R.* v. *Dyson*, 7 C. & P. 305 n.; s. c. 1 Lewin, 64.

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 the said Secretary of State may judge proper and appoint; and every person so removed under this Act, or already removed, or in custody under any former Act relating to insane prisoners, shall remain under confinement (1) in such county 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, or may have been already removed, or in which he may be in custody by virtue of any like order, until it shall be duly certified unto one of Her Majesty's principal Secretaries of State by two physicians or surgeons that such person has became of sound mind; whereupon the 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 asylum or receptacle as aforesaid, directing that such person shall be removed back from thence to the prison or other place of confinement from whence he or she shall have been taken, or if the period of imprisonment or custody of such person shall have expired, that he or she shall be discharged."

Section 2: "That in all such cases as aforesaid, unless one of Her Majesty's principal Secretaries of State shall otherwise direct, it shall be lawful for such two justices or any other two justices of the peace of the county, city, borough, or place where such person is imprisoned, to inquire into and ascertain, by the best evidence or information that can be obtained under the circumstances, of the personal legal disability of such insane person, the place of the last legal settlement, and the pecuniary 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 be lawful for such two justices by order under their hands to direct the overseers of the parish where they adjudge him or her to be lawfully settled, or in case such parish be comprised in a union declared by the Poor Law Commissioners, or shall be under the management of a board of

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(1) See 1 & 2 *Vic. c.* 27; *Re Flanaghan*, 2 J. & Lat. 344.

guardians established by the Poor Law Commissioners, then the guardians of such union or of such parish (as the case may be) to pay on behalf of such parish, in the case of any person removed under this Act, all reasonable charges for inquiring into such person's insanity, and for conveying him or her to such county lunatic asylum or receptacle for insane persons, and to pay such weekly sum as they or any two justices shall, by writing under their hands, from time to time direct for his or her maintenance in such asylum or receptacle in which he or she shall be confined; and in the case of any person removed under any former Act relating to insane persons, to pay such weekly sum as they or any two such justices as aforesaid shall, by writing under their hands, from time to time direct for his or her maintenance in the asylum or receptacle in which he or she is confined, and when the place of settlement cannot be ascertained, such order shall be made upon the treasurer of the county, city, borough, or place where such person shall have been imprisoned; but if it shall appear, upon inquiry to the said or any other two justices of the county, city, borough, or place where such person is in prison, that any such person is possessed of property, such property shall be applied for or towards the expenses incurred or to be hereafter incurred on his or her behalf, and they shall from time to time, by order under their hands, direct the overseers of any parish where any money or securities for money, goods, chattels, lands, or tenements of such person shall be, to seize so much of the same money, or to seize and sell so much of the said goods and chattels, or receive so much of the annual rents of the lands or tenements of such person as may be necessary to pay the charges if any of inquiring into such person's insanity and of removal, and also the charges of maintenance, clothing, medicine, and care of any such insane person, accounting for the same at the next petty sessions of the division, city, or borough in which such order shall have been made—such charges having been first made to the satisfaction of such justices, and the amount thereof being set forth in such order." As to the course of proceeding under 3 & 4 Vic. c. 54, s. 1, see *R.* v. *Dwerryhouse*, 2 Cox Cr. Ca. 291, 446.

An order by justices, under 3 & 4 Vic. c. 54, s. 2, directing a weekly payment by guardians of a union for the maintenance

of a person acquitted on the ground of insanity whose settlement is adjudged to be in a parish of such union, need not direct the payment to be made "on behalf of such parish;" if the order recites facts which establish the liability of such parish, that is deemed sufficient. (1) The following case has also been decided under the same section:—A mortgagor was tried for murder, acquitted on the ground of insanity, and ordered to be confined during Her Majesty's pleasure. Three days before his trial, and whilst he was a prisoner, he conveyed his equity of redemption to trustees in trust for sale. Subsequently the mortgagee under a power in the mortgage deed sold the property mortgaged, and after satisfaction of the mortgage debt and costs a balance remained in his hands. A rule calling on the mortgagee to show cause why a writ of *mandamus* should not issue commanding him to pay over the balance to the overseers of the parish in which the mortgagor was adjudged to be settled, and who had maintained him, was refused. (2)

By the same Act it is also enacted, s. 4: "If any person shall feel aggrieved by any order of any 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, city, borough, or place where the matter of appeal shall have arisen, the person so appealing having given to the justices against whose order 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 shall and may also award such further satisfaction to the party injured or such costs to either of the parties as they shall judge reasonable and proper, and every such determination shall be final and conclusive to all intents and purposes whatsoever, and no *certiorari* shall be allowed."

Sec. 5: "The overseers of the parish in which the justices shall adjudge any insane person to be settled, or in case such parish be comprised in a union, or be under the management of

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(1) *R.* v. *Berkshire Justices*, 3 N. S. Ca. 473.
(2) *R.* v. *Langhorn*, 17 Q. B. 77.

a board of guardians, then either the guardians of such parish or union (as the case may be), or the overseers of such parish, may appeal against such order to the general quarter sessions of the peace to be holden for the county, city, borough, or place 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, city, borough, or place, 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."

For the better prevention of crimes, it was also enacted by 39 & 40 Geo. 3, c. 94, s. 3: "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 of his Majesty's courts in Westminster Hall, or by the Lord Chancellor, Lord Keeper, or Commissioners of the Great Seal."

A warrant stating "that the committed person had been discovered and apprehended under circumstances that denoted a derangement of mind and a purpose of committing a crime 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," was held sufficiently to express the cause of commitment. (1)

Sec. 3 of 39 & 40 Geo. 3, c. 94, has been repealed by 1 & 2 Vic. c. 14; and by the later Act it is enacted, sec. 2:

(1) *Ex parte Gourlay*, 7 B. & C. 669.

"That in all cases where any person shall be in custody at the time of the passing of this Act under or by virtue of any warrant for commitment made or issued by any of Her Majesty's justices of the peace, under the authority of (39 & 40 Geo. 3, c. 94, s. 3), and if at any time after the passing of this Act 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, it shall and may be lawful for any two justices of the peace of the county, city, borough, or place where such person shall be so kept in custody or apprehended to call to their assistance a physician, surgeon, or apothecary; and if, upon view and examination of the said person so in custody or apprehended or from other proof, the said justices shall be satisfied that such person is insane or a dangerous idiot, the said justices, if they shall so think fit, by an order under their hands and seals, directed to the keeper of the gaol or house of correction if in custody at the time of passing this Act, or if hereafter apprehended to the constable or overseers of the poor of the parish, township, or place where such person shall be apprehended, shall cause the said person to be conveyed to and placed in the county lunatic asylum, provided there be one situated within or belonging to the county in which such person shall be in custody at the time of passing this Act, or shall be hereafter apprehended; and if there be no such asylum, then to some public hospital, or some house duly licensed for the reception of insane persons; and it shall be lawful for the said justices 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 or dangerous idiot, the place of the last legal settlement of such person; and it shall and may be lawful for such two justices to make an order under their hands and seals upon the overseers or churchwardens of such parish, township, or place where they adjudge him or her to be legally settled, to pay all reasonable charges of examining such person and conveying him or her to such county lunatic asylum, public hospital, or licensed house, and to pay such weekly sum for his or her maintenance in such place of custody as they or any two justices

shall by writing under their hands 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, city, borough, or place where such person shall have been in custody or apprehended: Provided always, that nothing herein contained shall be construed to extend to restrain or prevent any relation or friend from taking such insane person or dangerous idiot under their own care and protection, if he shall enter into sufficient recognizance for his or her peaceable behaviour or safe custody before two justices of the peace, or the Court of quarter sessions, or one of the judges of Her Majesty's courts in Westminster Hall: Provided always, that the churchwardens and overseers of the parish in which the justices shall adjudge any insane person or dangerous idiot to be settled may appeal against any such order to the next 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 the county, riding, or division, or to the town clerk of the city, borough, or place, as the case may be, upon whose rates the burden of maintaining such insane person or dangerous idiot might fall if such order should be invalid; and such clerk of the peace or town clerk 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." The magistrates have power to inquire into and adjudicate upon the settlement after they have removed the person to the asylum, and the analogy with respect to orders of removal under the poor law is to be followed as far as possible. (1)

By the 3d section it is enacted: "That if upon examination it shall appear to the physician, surgeon, or apothecary present at the examination of any person in custody at the time of passing this Act, as aforesaid, that he or she is not an insane

(1) *R.* v. *Elsley*, 15 Q. B. 1025.

person or a dangerous idiot, and that such person may be suffered to go at large with safety, it shall and may be lawful for such medical person, and he is hereby required to give a certificate to that effect, signed by him, to the visiting justices of the gaol or house of correction in which such person is in custody, who are hereby required to transmit the same forthwith to Her Majesty's principal Secretary of State for the Home Department, who, if he shall so think fit, shall order the liberation of such person from custody."

By the 4th section it is enacted: "That nothing herein contained, except where otherwise expressly mentioned, shall alter the laws relating to the discharge of persons who may cease to be insane or dangerous idiots from any county lunatic asylum, public hospital, or house duly licensed for the reception of insane persons, nor authorize the removal by any parish officer of any poor person from such asylum, public hospital, or licensed 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."

In the Act for establishing a prison at Pentonville, [1] provision is made for the removal to a lunatic asylum of any prisoner therein *non compos mentis;* for by sec. 23 it is enacted "that if any convict confined in the said prison shall become or be found to be insane during such confinement, and be so reported by the commissioners to one of Her Majesty's principal Secretaries of State, it shall be lawful for such Secretary of State by warrant under his hand to order that such insane convict shall be forthwith removed to such lunatic asylum as the said Secretary of State may judge proper, and every convict so removed shall remain under confinement in such asylum, or in any other lunatic asylum to which such convict may be lawfully removed, until it shall be duly certified to one of Her Majesty's principal Secretaries of State, by two physicians or surgeons, that such convict has become of sound mind; whereupon, if the time for which

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[1] 5 & 6 *Vic. c.* 29.

such convict was sentenced to be imprisoned shall not have expired, the Secretary of State shall issue his warrant to the governor or other person having the care of such asylum, ordering that such convict be remanded to the Pentonville prison, or if the period of imprisonment of such convict shall have expired that he be discharged."

A lunatic found so by inquisition was, after such finding, committed for murder to gaol, tried and acquitted, on the ground of his lunacy, but the judge ordered him to be detained in gaol as a dangerous lunatic. On the petition of his committee for the allowance out of his estate of certain small sums for his support, and the expense of his defence on the trial, and *also for his removal to a lunatic asylum*, Lord Chancellor Eldon said "there was a difficulty in the way;" but after consideration he ordered the sums to be paid, with liberty for the committee to make any application he thought proper respecting his custody to the King in Council. (1)

Where a person possessed of £600 was confined in a lunatic asylum as a dangerous lunatic, under 39 & 40 Geo. 3, c. 94, and Lord Chancellor Lyndhurst thought that his comfort in the asylum might be increased by an application of his little property, a commission issued, the Lord Chancellor remarking: "The Act says that the party is to be confined during the pleasure of the Crown, and the discretion of the Crown is exercised through the Secretary of State, and *not through the Chancellor, in lunacy*. I have power to issue a commission, and institute any inquiries under that; but if the jury find Mr. Pearce sane, I cannot order him to be discharged. I think it is my duty, and I consider it for the benefit of the lunatic, to issue a commission. The little property he has ought to be applied, if it can be, to increase his comforts, and I do not think the expense of a commission will be so great as is supposed. If he should be found of sane mind, my jurisdiction will certainly cease; but if he be found insane, then I must make such order as will be most for his benefit." (2)

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(1) *Ex parte Hill*, Coop. C. C. 54.
(2) *Re Pearce*, 8 Jur. 89.

CHAPTER V.

The Protection afforded by the Law to Idiots, Lunatics, and Persons of unsound mind.

It seems almost unnecessary to preface any observations on this subject with the remark that the protection afforded by the law of England to all within its jurisdiction is not withheld from those whose mental condition specially demands such protection alike in their persons and in their property, for a contrary doctrine would be repugnant to reason. A Court of law has even interfered to prevent the commission of a fraud on a woman peculiarly liable thereto by reason of the state of her mind; (1) and to pretend that a person is mad, in justification of a violent and cruel act towards him, is of course only an aggravation of the cruel treatment; (2) but the legal obligation to maintain a relation *non compos mentis* comprehends only the relations named in the Poor Law Statutes. (3) Where a person *undertook* to supply with the necessaries of life a woman very weak in mind and body, and by reason of his neglect to supply them she died, he was held criminally responsible. (4)

In a case of rape, it appears that the protection accorded to female children is not extended to adult female idiots; for on a trial for rape on an adult idiot Baron Platt interrogated the father of the idiot whether her general habits were those of decency and propriety (an answer in the affirmative was returned), and in summing up he said, "The question is, did the connection take place with her consent. It seems that she was in a condition

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(1) *R.* v. *Peter Wright*, Burr. 1099, 1100.

(2) *R.* v. *Fellows*, Fort. 166. See, as to the frame of indictment for neglect of an idiot bastard by his mother, *R.* v. *Pelham*, 8 Q. B. 959.

(3) *R.* v. *Smith*, 2 C. & P. 451: note, that in this case the idiot was not proved to have been detained.

(4) *R.* v. *Marriott*, 8 C. & P. 425, 433. See also *R.* v. *Bubb*, 4 Cox Cr. Ca. 455.

incapable of judging; and it is important to consider whether a young person in such a state of incapacity was likely to consent to the embraces of this man, because if her habits, however irresponsible she might be, were loose and indecent, then there might be a probability of such consent being given, and a jury might not think it safe to conclude that she was not a willing party; but here the presumption is, that the young woman would not have consented." (1)

To secure the proper treatment of persons *non compotes mentis*, as well as to prevent the confinement of any person on a false pretence of his insanity, it has been provided by statutory enactments that every house kept for the reception of idiots, lunatics, or persons of unsound mind, shall be previously licensed for that purpose, and that every hospital in which they may be received shall be previously registered: these enactments subject every such house and hospital to the jurisdiction and visits of officers appointed in that behalf, make a medical certificate in a prescribed form necessary to the reception there of any person *non compos mentis*, declare that no person (except one deriving no profit from the charge, or a committee appointed by the Lord Chancellor) shall without a similar certificate receive, to board or lodge in any unlicensed house, or take the care or charge of, even a single individual as an idiot, lunatic, or person of unsound mind, and specially provide for the prosecution of any party to the unlawful taking or confinement of any person being an English subject and *non compos mentis*, likewise for the prosecution by the sovereign of any party to the neglect or ill-treatment of a person so confined. The law on this subject has been consolidated by the Act 8 & 9 Vic. c. 100, amended by the Acts 16 & 17 Vic. c. 96, and 18 & 19 Vic. c. 105: these Acts I propose to set forth *in extenso*, being of opinion that no analysis of their contents, however accurate, would supersede the necessity of a reference to the statutory language itself.

The Act 8 & 9 Vic. c. 100, which is entitled, "An Act for the Regulation and Treatment of Lunatics," is couched in the following language:—

Sec. I. From and after the passing of this Act, an Act passed in the session of Parliament holden in the 2d and 3d years of the reign of his late Majesty King William the Fourth, intituled "An Act for regu-

(1) *R.* v. *Ryan*, 2 Cox Cr. Ca. 115.

lating 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 an Act passed in the session of Parliament holden in the 3d and 4th years of the reign of his said late Majesty, intituled "An Act to amend an Act of the 2d and 3d year of his present Majesty, for regulating the Care and Treatment of Insane Persons in England," and an Act passed in the session of Parliament holden in the 5th and 6th years of the reign of his said late Majesty, intituled "An Act to continue for three years, and from thence to the end of the then next session of Parliament, two Acts of the 2d and 3d year and the 3d and 4th year of his present Majesty, relating to the Care and Treatment of Insane Persons in England," and an Act passed in the session of Parliament holden in the 1st and 2d years of the reign of her present Majesty, intituled "An Act to continue for three years, and from thence to the end of the then next session of Parliament, two Acts relating to the Care and Treatment of Insane Persons in England," and an Act passed in the session of Parliament holden in the 5th year of the reign of her said present Majesty, intituled "An Act to continue for three years, and from thence to the end of the then next session of Parliament, two Acts relating to the Care and Treatment of Insane Persons in England," and an Act passed in the session of Parliament holden in the 5th and 6th years of the reign of her said present Majesty, intituled "An Act to amend and continue for three years, and from thence to the end of the next session of Parliament, the Laws relating to Houses licensed by the Metropolitan Commissioners and Justices of the Peace for the reception of Insane Persons, and for the inspection of County Asylums and Public Hospitals for the reception of Insane Persons," shall be and the same are hereby repealed save and except so far as they or any of them repeal any other Act: Provided always, that until the appointment for any jurisdiction of visitors and their clerk under the provisions of this Act, the visitors and clerk appointed for such jurisdiction under the said repealed Acts, or any of them, shall respectively have and perform the powers, authorities, and duties which they would have respectively had or performed if appointed under this Act: Provided also, that all licences heretofore granted shall remain in force for the period for which they were respectively granted unless revoked as hereinafter provided; and that all orders, matters, and things which have been granted, made, done, or directed to be done, in pursuance of the said repealed Acts or any of them, shall be and remain as good, valid, and effectual to all intents and purposes as if the said repealed Acts had not been repealed, except so far as such orders, matters, or things are expressly made void or affected by this Act; and that all fees, charges, and expenses which have become payable under the said repealed Acts, or any of them, shall be payable in the same manner, and from the same funds, as would have been applicable thereto in case such Acts had not been repealed.

Although 8 & 9 Vic. c. 100, repeals 2 & 3 Wm. 4, c. 107, it has been held unnecessary to obtain an order under 8 & 9 Vic. c. 100, to justify the detainer of a person confined in a lunatic asylum under 2 & 3 Wm. 4, c. 107. (1)

(1) *Re Fell*, 3 Dowl. & L. 373.

Sec. II. The persons already appointed and hereafter to be appointed under an Act passed in the session of Parliament holden in the 5th and 6th years of the reign of her present Majesty, intituled "An Act to alter and amend the Practice and Course of Proceeding under Commissions in the nature of Writs *de lunatico inquirendo*," whereby the Lord Chancellor is empowered to appoint two persons, to be called "The Commissioners in Lunacy," shall henceforth be and be called "The Masters in Lunacy," and shall take the same rank and precedence as the Masters in Ordinary of the High Court of Chancery.

Sec. III. The Right Honourable Lord Ashley,(1) the Right Honourable Lord Seymour, the Right Honourable Robert Vernon Smith, Robert Gordon of Lewiston in the county of Dorset, Esquire, Francis Barlow of Montagu Square, Esquire, Thomas Turner of Curzon Street, Esquire, Henry Herbert Southey of Harley Street, Esquire, John Robert Hume of Curzon Street aforesaid, Esquire, Bryan Waller Procter of Gray's Inn, Esquire, James William Mylne of Lincoln's Inn, Esquire, and John Hancock Hall of the Middle Temple, Esquire (which said Thomas Turner, Henry Herbert Southey, and John Robert Hume, and no other of the said persons, are physicians, and which said Bryan Waller Procter, James William Mylne, and John Hancock Hall, and no other of the said persons, are practising barristers at law of ten years standing at the bar and upwards), and their respective successors, to be appointed as hereinafter provided, shall be commissioners for the purposes of this Act, to be called "The Commissioners in Lunacy;"(2) and such commissioners for the time being shall respectively hold their offices during good behaviour, and shall not, so long as they shall remain such commissioners, and receive any salary under this Act, accept, hold, or carry on any other office or situation, or any profession or employment, from which any gain or profit shall be derived; and that there shall be paid to each of the six commissioners for the time being who shall be physicians, surgeons, or barristers of five years standing and upwards,(3) out of the monies or funds hereinafter mentioned, over and above their respective travelling and other expenses whilst employed in visiting any houses, hospitals,(4) asylums,(5) gaols, workhouses, or other places, in pursuance of this Act, the yearly salary of £1500, by four equal quarterly payments, on the 29th day of September, the 25th day of December, the 25th day of March, and the 24th day of June in every year, the first of each such payments (or a proportionate part thereof, to be computed, in the case of the commissioners appointed by this Act, from the passing of the Act, and in case of the commissioners to be appointed as hereinafter provided, from the time of the respective appointments of such commissioners), to be made to such commissioners respectively on such of the same days of payment as

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(1) Now Earl of Shaftesbury.

(2) The present Commissioners in Lunacy are—the Rt. Hon. the Earl of Shaftesbury; the Rt. Hon. Robert Vernon Smith, Esq.; Robert Gordon, Esq.; Francis Barlow, Esq.; Lieut.-Col. Henry Morgan Clifford; Wm. Geo. Campbell, Esq.; Bryan Waller Procter, Esq.; Robert Wilfred Skeffington Lutwidge, Esq.; Samuel Gaskell, Esq., F.R.C.S.; James Wilkes, Esq., F.R.C.S.; and Robert Nairne, M.D.

(3) *Sec.* 114. (4) *Sec.* 114. (5) *Sec.* 114.

shall first happen after the passing of this Act, or after the dates of their respective appointments, as the case may be.

Sec. IV. As often as any commissioner appointed by this Act or to be appointed under this present provision shall die, or be removed for ill-behaviour, or be disqualified, or resign, or refuse to act, or become unable by illness or otherwise to perform the duties or exercise the powers of this Act, the Lord Chancellor (1) shall appoint a person to be a commissioner in the room of the commissioner who shall die, or be removed, or be disqualified, or resign, or refuse or become unable to act as aforesaid, but so that every person so appointed in the room of a physician shall be a physician or surgeon, (2) and every person so appointed in the room of a barrister of five years' standing at the bar and upwards shall be a practising barrister of not less than five years' standing at the bar, (3) and every person appointed in the room of any other commissioner shall be neither a physician nor a surgeon, nor a practising barrister; and until such appointment it shall be lawful for the continuing commissioners or commissioner to act as if there were no such vacancy.

Sec. V. Any superannuation allowance to be granted to any commissioner appointed or to be appointed under this Act, shall be granted only in respect of services performed under this Act, and shall be subject to the provisions of an Act passed in the 4th and 5th years of his late Majesty King William the Fourth, intituled "An Act to alter, amend, and consolidate the Laws for regulating the Pensions, Compensation, and Allowances, to be made to Persons in respect of their having held Civil Offices in his Majesty's Service," so far as such provisions relate to officers and clerks who had entered or might enter the public service subsequent to the 4th day of August, 1829.

Sec. VI. Every person hereby or hereafter appointed a commissioner under this Act shall, before he acts in the execution of his duty as a commissioner, take an oath (4) to the following effect, that is to say—

> 'I, A. B., do swear that I will discreetly, impartially, and 'faithfully execute all the trusts and powers committed unto me 'by virtue of an Act of Parliament made in the 9th year of the 'reign of Her Majesty Queen Victoria, intituled [*here insert the 'title of the Act*], 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, (6) 'or so far as I shall feel myself called upon to do so for the 'better execution of the duty imposed on me by the said Act).
>
> 'So help me God.'

Which oath it shall be lawful for the Lord Chancellor (5) to administer to every such commissioner; and any three of the commissioners who shall have previously taken the oath are hereby authorized to administer such oath to any other commissioner.

Sec. VII. The commissioners shall cause to be made a seal of the

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(1) *Sec.* 114. (2) 16 & 17 *Vic. c.* 96, *s.* 36. (3) 16 & 17 *Vic. c.* 96, *s.* 39.
(4) *Sec.* 114. (5) *Sec.* 114. (6) *Hill* v. *Philp*, 7 Exch. 232.

commission, and shall cause to be sealed or stamped therewith all licences, orders, and instruments granted or made or issued or authorized by the commissioners in pursuance of this Act, except such orders or instruments as are hereinafter required or directed to be given or signed and sealed by one commissioner or two commissioners, and all such licences, orders, and instruments, or copies thereof, purporting to be sealed or stamped with the seal of the commission, shall be received as evidence of the same respectively, and of the same respectively having been granted, made, issued, or authorized by the commissioners, without any further proof thereof; and no such licence, order, or instrument, or copy thereof, shall be valid, or have any force or effect, unless the same shall be so sealed or stamped as aforesaid. (1)

Sec. VIII. The commissioners or any five of them shall, as soon as may be after the passing of this Act, meet at the usual office or place of business now occupied or used by the Metropolitan Commissioners in Lunacy, or at such other place as the Lord Chancellor (2) shall direct, and elect one of the same commissioners (not being a physician or a barrister (3) receiving any salary by virtue of this Act) to be the permanent chairman of the commission; and in case such permanent chairman, or any other permanent chairman who shall thereafter be elected in pursuance of this provision, shall die or decline or become incapable to act as chairman, or shall cease to be a commissioner, then and as often as the same shall happen the commissioners for the time being, or any five of them, at any meeting to be specially summoned for that purpose, shall elect another person to be the permanent chairman of the commission in the place of the chairman who shall so die or decline or become incapable to act or cease to be a commissioner as aforesaid; and in case the permanent chairman for the time being shall be absent from any meeting it shall be lawful for the majority of the commissioners present at any such meeting to elect a chairman for that meeting; and in all cases every question shall be decided by a majority of voters (the chairman, whether permanent or temporary, having a vote), and in the event of an equality of votes the chairman for the time being shall have an additional or casting vote.

Sec. IX. Robert Wilfred Skeffington Lutwidge, of Lincoln's Inn, Esquire, shall be the secretary to the commissioners; and the said Robert Wilfred Skeffington Lutwidge, and every secretary to be hereafter appointed, (4) shall be removable from his office by the Lord Chancellor on the application of the commissioners; and as often as the said Robert Wilfred Skeffington Lutwidge, or any secretary to be appointed under this present provision, shall die or resign or be removed from his office, the commissioners, with the approbation of the Lord Chancellor, shall appoint a person to be secretary in the room of the said Robert Wilfred Skeffington Lutwidge, or other the secretary who shall die or resign or be removed as aforesaid; and the secretary for the time being shall, in the performance of all his duties, and in all respects, be subject to the inspection, direction, and control of the commissioners; and there shall be paid to the secretary for the time

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(1) 8 & 9 *Vic. c.* 113. (2) *Sec.* 114. (3) See *Sec.* 70, *post.*
(4) John Forster, Esq., is the present secretary.

being, out of the monies and funds hereinafter (1) mentioned, the yearly salary of £800, by four equal quarterly payments, on the 29th day of September, the 25th day of December, the 25th day of March, and the 24th day of June in every year, the first of such payments (or a proportionate part thereof, to be computed, in the case of the said Robert Wilfred Skeffington Lutwidge, from the passing of this Act, and in case of every other secretary from the time of his appointment) to be made to the said Robert Wilfred Skeffington Lutwidge on such of the same days of payment as shall first happen after the passing of this Act, and to every other secretary for the time being on such of the same days of payment as shall first happen after his appointment.

Sec. X. Any superannuation allowance to be granted to any secretary appointed or to be appointed under this Act shall be granted only in respect of services performed under this Act, and shall be subject to the provisions of an Act passed in the fourth and fifth years of his late majesty King William the Fourth, intituled "An Act to alter, amend, and consolidate the laws for regulating the pensions, compensation, and allowances to be made to persons in respect of their having held civil offices in his Majesty's service," so far as such provisions relate to officers and clerks who had entered or might enter the public service subsequent to the 4th day of August, 1829.

Sec. XI. It shall be lawful for the commissioners to appoint, during pleasure, any two persons as clerks to the commissioners, and to allow to such two clerks any such yearly or other salaries (not exceeding in the whole the yearly sum of £200 for such two clerks) as the commissioners shall think proper; and further, it shall be lawful for the commissioners at any time hereafter, in case they shall find it expedient so to do for the due performance of the business of the commission, with the consent of the Lord High Treasurer or of the Commissioners of Her Majesty's Treasury or of any three or more of them, to appoint one or two clerks (in addition to the two clerks firstly hereinbefore mentioned), and to allow to such one or two additional clerk or clerks any such yearly or other salaries as the commissioners shall think fit (not exceeding in the whole the yearly sum of £200), and such salaries shall be paid out of the monies or funds hereinafter (2) mentioned.

Sec. XII. Every person appointed to be secretary or clerk as aforesaid shall, before he shall act as such secretary or clerk, take the following oath, (3) to be administered by any one of the commissioners:—

> 'I, A. B., do swear that I will faithfully execute all such trusts
> 'and duties as shall be committed to my charge as secretary to the
> 'Commissioners in Lunacy [or as clerk to the commissioners in
> 'lunacy, *as the case may be*], 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 au-
> 'thority). (4)
>
> 'So help me God.'

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(1) See *Secs.* 33, 35, *post.* (2) *Secs.* 33, 35. (3) *Sec.* 114.
(4) *Hill* v. *Philp,* 7 Exchcq. 235. See *post,* p. 85.

Sec. XIII. Immediately after the passing of this Act the clerk to the Metropolitan Commissioners in Lunacy, appointed under the said Act of the 2d and 3d years of the reign of his late majesty King William the Fourth, or under any other of the Acts hereby repealed, shall forthwith deliver up every book, paper, and document, and all goods, property, and effects which may be in his possession by virtue of his said office, or in consequence thereof, or connected with the business thereof to the Commissioners in Lunacy hereby appointed; and every book, paper, and document, and all goods, property, and effects respectively, which shall be so delivered unto, or shall hereafter come into the possession of the Commissioners in Lunacy by virtue of their office, shall thereupon be vested in and shall be deemed to be the property of the Commissioners in Lunacy for the time being.

Sec. XIV. It shall be lawful for the commissioners (if and when they shall think fit) to grant a licence to any person to keep a house for the reception of lunatics (1) or of any sex or class of lunatics within the places following (that is to say): the cities of London and Westminster, the county of Middlesex, the borough of Southwark, and the several parishes and places hereinafter mentioned (that is to say): Brixton, Battersea, Barnes, Saint Mary Magdalen Bermondsey, Christ Church Clapham, Saint Giles Camberwell, Dulwich, Saint Paul Deptford, Gravenay, 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 also within every other place (if any) within the distance of seven miles from any part of the said cities of London or Westminster, or of the said borough of Southwark; all which cities, county, borough, parishes, and places aforesaid shall be and are hereafter referred to as the immediate jurisdiction of the commissioners.

Sec. XV. The commissioners or some five of them shall meet at the usual office or place of business which shall for the time being be occupied or used by the said commissioners, or at such other place as the Lord Chancellor (2) may direct, on the first Wednesday in the months of February, May, July, and November in every year, in order to receive applications from persons requiring houses to be licensed for the reception of lunatics (3) within the immediate jurisdiction of the commissioners, and (if they shall think fit) to license the same; and in case on any such occasion five commissioners shall not be present the meeting shall take place on the next succeeding Wednesday, and so on weekly until five commissioners shall be assembled; and the 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: Provided always, nevertheless, that it shall be lawful for any five of the commissioners at any other time, at any meeting

(1) *Sec.* 114. (2) *Sec.* 114. (3) *Sec.* 114.

duly summoned under the provisions in that behalf hereinafter (1) contained, to receive applications from persons requiring houses to be licensed as aforesaid, and, if they shall think fit, to license the same.

Sec. XVI. When so often as any commissioner shall by writing under his hand require the secretary to convene a meeting of the commissioners for a purpose or purposes specified in such writing, or for the general despatch of business, such secretary is hereby required to convene such meeting by summons to the other commissioners, or such of them as shall be then in England, and shall have an address known to the secretary, and to give them, as far as circumstances will admit, not less than 24 hours' notice of the place, day, and hour where and on and at which such meeting is intended to be held, and also to state in the summons the purpose or purposes of such meeting, as specified by the commissioner requiring the same to be convened; and then and in every such case it shall be lawful for any three of the commissioners to assemble themselves to consider, and (if they shall think fit) to execute the purpose or purposes of such meeting: Provided always, nevertheless, that nothing shall be done at any such meeting, at which less than five commissioners shall be present, which by this Act is required to be done by five commissioners: Provided also that every such meeting shall as far as circumstances will admit be held at the usual office or place of business of the commissioners.

Sec. XVII. In all places not being within the immediate jurisdiction of the commissioners, the justices(2) for the county,(3) or borough,(4) assembled in general or quarter sessions, shall have the same authority within their respective counties, or boroughs, to license houses for the reception of lunatics, (5) as the commissioners within their immediate jurisdiction, and the said justices shall at the Michaelmas general or quarter sessions, in every year appoint three or more justices, and also one physician, surgeon, or apothecary, or more to act as visitors of every or any house or houses licensed for the reception of lunatics within the said counties or boroughs respectively, and such visitors shall at their first meeting take the oath (6) required by this Act to be taken by the commissioners *mutatis mutandis*, such oath to be administered by a justice.

Sec. XVIII. In case at any time of the death, inability, disqualification, resignation, or refusal to act of any person so appointed a visitor as aforesaid, it shall be lawful for the justices (7) of the county (8) or borough (9) at any general or quarter sessions, to appoint a visitor in the room of the person who shall die, or be unable, or be disqualified, or resign, or refuse to act as aforesaid.

Sec. XIX. A list of the names, places of abode, occupations, or professions of all visitors appointed as hereinbefore is directed, shall within 14 days from the date of their respective appointments be published by the clerk of the peace (10) of the county (11) or borough (12) for which they shall be respectively appointed in some newspaper commonly circulated within the same county or borough, and shall within three days from the date of their respective appointments be

(1) *Sec.* 16. (2) *Sec.* 114. (3) *Sec.* 114. (4) *Sec.* 114.
(5) *Sec.* 114. (6) *Sec.* 114. (7) *Sec.* 114. (8) *Sec.* 114.
(9) *Sec.* 114. (10) *Sec.* 114. (11) *Sec.* 114. (12) *Sec.* 114.

sent by the clerk of the peace to the commissioners, and every clerk of the peace making default in either of the respects aforesaid, shall for every such default forfeit a sum not exceeding £2. (1)

Sec. XX. Every such visitor as aforesaid being a physician, surgeon, or apothecary, shall be paid out of the monies or funds hereinafter (2) mentioned, for every day during which he shall be employed in executing the duties of this Act, such sum as the justices (3) of the county or borough shall in general or quarter sessions direct.

Sec. XXI. The clerk of the peace (4) or some other person to be appointed by the justices (5) for the county (6) or borough (7) in general or quarter sessions, shall act as clerk to the visitors so appointed as aforesaid, and such clerk shall summon the visitors to meet at such time and place for the purpose of executing the duties of this Act as the said justices in general or quarter sessions shall appoint; and every such appointment, summons, and meeting shall be made and held as privately as may be, and in such manner that no proprietor, (8) superintendent, or person interested in or employed about or connected with any house to be visited shall have notice of such intended visitation; and such clerk to the visitors shall, at their first meeting, take the oath required by this Act to be taken by the secretary of the commissioners *mutatis mutandis*, such oath to be administered by one of the visitors being a justice; and the name, place of abode, occupation, and profession of the clerk to the visitors (whether the same shall be the clerk of the peace or any other person) shall within 14 days after the appointment be published by the clerk of the peace for the county or borough in some newspaper commonly circulated therein, and within three days from the date of the appointment be communicated by the said clerk of the peace to the commissioners; and every clerk of the peace making default in either of the respects aforesaid shall for every such default forfeit a sum not exceeding £2; (9) and every such clerk to the visitors shall be allowed such salary or remuneration for his services (to be paid out of the monies or funds hereinafter (10) mentioned) as the justices for the county or borough shall in general or quarter sessions direct.

Sec. XXII. If the clerk of any visitors shall at any time desire to employ an assistant in the execution of the duties of his office, such clerk shall certify such desire and the name of such assistant to one of the visitors being a justice; and if such visitor shall approve thereof he shall administer the following oath (11) to such assistant:

> '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 to the clerk of the 'visitors appointed for the county [*or* borough] of by 'virtue of an Act of Parliament passed in the 9th year of the 'reign of Her Majesty Queen Victoria, intituled [*here insert the 'title of the Act*], unless required to divulge the same by legal 'authority.
>
> 'So help me God.'

And such clerk may thereafter, at his own cost, employ such assistant.

(1) *Sec.* 106. (2) *Secs.* 33, 35. (3) *Sec.* 114. (4) *Sec.* 114.
(5) *Sec.* 114. (6) *Sec.* 114. (7) *Sec.* 114. (8) *Sec.* 114.
(9) *Sec.* 106. (10) *Secs.* 33, 35. (11) *Sec.* 114.

Sec. XXIII. No person shall be or act as a commissioner, or visitor, or secretary, or clerk to the commissioners, or clerk or assistant clerk to any visitors, or act in granting any licence, who shall then be, or shall within one year then next preceding have been, directly or indirectly interested in any house licensed for the reception of lunatics,(1) or the profits of such reception; and no physician or surgeon (being a commissioner), and no physician, surgeon, or apothecary (being a visitor), shall sign any certificate for the admission of any patient into any licensed house or hospital, or shall professionally attend upon any patient in any licensed house or hospital, unless he be directed to visit such patient by the person upon whose order such patient has been received into such licensed house or hospital, or by the Lord Chancellor (2) or Her Majesty's principal Secretary of State for the time being for the Home Department, or by a committee appointed by the Lord Chancellor; and if any such commissioner, or visitor, or secretary, or clerk to the commissioners, or clerk or assistant clerk to any visitors, shall after his appointment be or become so interested in any house licensed for the reception of lunatics, or the profits of such reception, such commissioner, visitor, secretary, or clerk or assistant clerk, as the case may be, shall immediately thereupon be disqualified from acting and shall cease to act in such capacity, and if any person being disqualified as aforesaid, shall take the office of commissioner, visitor, secretary, clerk or assistant clerk, or being a commissioner, visitor, secretary, clerk, or assistant clerk, shall become disqualified as aforesaid, and shall afterwards continue to act in such capacity, such person shall be guilty of a misdemeanor, and if any physician or surgeon (being a commissioner) or any physician, surgeon, or apothecary (being a visitor) shall sign any certificate for the admission of any patient into a licensed house or hospital, or shall professionally attend any patient in any licensed house or hospital (except as aforesaid) such physician, surgeon, or apothecary (as the case may be), shall for each offence against this provision forfeit the sum of £10. (3)

Sec. XXIV. Every person who shall desire to have a house licensed for the reception of lunatics, shall give a notice if such house be situate within the immediate jurisdiction of the commissioners to the commissioners, and if elsewhere to the clerk of the peace (4) for the county (5) or borough (6) in which such house is situate fourteen clear days at the least prior to some quarterly or other meeting of the commissioners, or to some general or quarter sessions for such county or borough, as the case may be, and such notice shall contain the true christian and surname, place of abode, and occupation of the person to whom the licence is desired to be granted, and a true and full description of his estate or interest in such house, and in case the person to whom the licence is desired to be granted does not purpose to reside himself in the licensed house (7) the true christian and surname and 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 (8) of 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

(1) *Sec.* 114. (2) *Sec.* 114. (3) *Sec.* 106. (4) *Sec.* 114.
(5) *Sec.* 114. (6) *Sec.* 114. (7) *Sec.* 114. (8) 16 & 17 *Vic. c.* 96, *s.* 1.

reference by a figure or letter to every room and apartment therein, and a statement of the quantity of land not covered by any building annexed to such house, and appropriated to the exclusive use, exercise, and recreation of the patients proposed to be received therein, and also a statement of the number of patients proposed to be received into such house, and whether the licence so applied for is for the reception of male or female patients, or of both, and if for the reception of both of the number of each sex proposed to be received into such house, and of the means by which the one sex may be kept distinct and apart from the other, and such notice, plan, and statement, when sent to the clerk of the peace, shall be laid by him before the justices (1) of the county or borough, at such time as they shall take into their consideration the application for such licence: Provided always, that it shall be lawful for any person to whom a licence shall be granted to remove the superintendent named in the notice, and at any time or times to appoint another superintendent upon giving a notice containing the true christian name and surname and occupation of the new superintendent to the commissioners, or the visitors of the house, as the case may require: Provided always, that all plans heretofore delivered shall be deemed sufficient for the purposes of this Act, if the commissioners or justices, as the case may be, shall so think fit.

Sec. XXV. (2) (repealed).

Sec. XXVI. No addition or alteration shall be made to, in, or about any licensed house,(3) or the appurtenances, unless previous notice in writing of such proposed addition or alteration, accompanied with a plan of such addition or alteration, to be drawn upon the scale aforesaid, and to be accompanied by such description as aforesaid, shall have been given by the person to whom the licence shall have been granted to the commissioners or to the clerk of the peace, (4) as the case may be, and the consent in writing of the commissioners, or of two of the visitors, as the case may be, shall have been previously given.

Sec. XXVII. If any person shall wilfully give an untrue or incorrect notice, plan, statement, or description of any of the things hereinbefore required to be included in any notice, plan, or statement, he shall be guilty of a misdemeanor.

Sec. XXVIII. In every case in which a licence for the reception of lunatics (5) shall after the passing of this Act be granted by any justices, (6) the clerk of the peace (7) for the county (8) or borough (9) shall, within 14 days after such licence shall have been granted, send a copy thereof to the commissioners; and any clerk of the peace omitting to send such copy within such time shall for every such omission forfeit a sum not exceeding £2. (10)

Sec. XXIX. In every case in which any person shall apply for the renewal of a licence already granted or hereafter to be granted, such person, if applying to the commissioners, shall with such application transmit to the commissioners, and if applying to any justices shall with such application transmit to the clerk of the peace (11) for the county (12) or borough,(13) and also at the same time to the commissioners,

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(1) *Sec.* 114. (2) 16 & 17 *Vic. c.* 96, *s.* 1. (3) *Sec.* 114.
(4) *Sec.* 114. (5) *Sec.* 114. (6) *Sec.* 114. (7) *Sec.* 114.
(8) *Sec.* 114. (9) *Sec.* 114. (10) *Sec.* 106. (11) *Sec.* 114.
(12) *Sec.* 114. (13) *Sec.* 114.

a statement signed by the person so applying, containing the names and number of the patients of each or either sex then detained in such house, and distinguishing whether such patients respectively are private (1) or pauper (2) patients; and any person who shall hereafter obtain the renewal of a licence without making such return or returns shall for every such offence forfeit the sum of £10; (3) and any person who shall make any such return untruly shall be guilty of a misdemeanor.

Sec. XXX. Every licence shall, as nearly as conveniently may be, be according to the form in the Schedule (A) annexed to this Act, and shall be stamped with a 10s. stamp, and shall be under the seal of the commissioners, if granted by them, and if by any justices (4) under the hands and seals of three or more such justices in general or quarter sessions assembled, and shall be granted for such period, not exceeding 13 calendar months, as the commissioners or justices, as the case may be, shall think fit.

Sec. XXXI. No licence shall be granted or visitor or clerk appointed by the justices (5) for any borough without the consent in writing of the recorder of the borough to such grant or appointment. (6)

Sec. XXXII. For every licence to be hereafter granted there shall be paid to the secretary of the commissioners, or to the clerk of the peace, (7) according as the licence shall be granted by the commissioners or justices (exclusive of the sum to be paid for the stamp), the sum of 10s. and no more for every patient not being a pauper, (8) and the sum of 2s. 6d. and no more for every patient being a pauper proposed to be received into such house, and if the total amount of such sums of 10s. and 2s. 6d. shall not amount to £15, then so much more as shall make up the sum of £15, and no such licence shall be delivered until the sum payable for the same shall be paid: Provided always, that if the period for which a licence shall be granted be less than 13 calendar months, it shall be lawful for the commissioners or the justices as the case may be to reduce the payment to be made on such licence to any sum not less than £5.

Sec. XXXIII. All monies received for licences granted by the commissioners, and for searches made in pursuance of the provision for that purpose hereinafter (9) contained, shall be retained by the secretary of the commissioners, and be applied by him in or towards the payment of the salaries and travelling and other expenses of the commissioners and of their secretary and clerks, and in or towards the payment or discharge of all or any costs, charges, and expenses incurred by or under the authority of the commissioners in the execution of or under or by virtue of this Act. (10)

Sec. XXXIV. The secretary of the commissioners shall make out an account of all monies received and paid by him as aforesaid, and of all monies otherwise received and paid by him, and of all charges and expenses incurred under or by virtue of or in the execution of this Act; and such account shall be made up to the 1st day of August in each year, and shall be signed by five at least of the commissioners;

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(1) *Sec.* 114. (2) *Sec.* 114. (3) *Sec.* 106. (4) *Sec.* 114.
(5) *Sec.* 114. (6) *Sec.* 115; and 5 & 6 *Wm.* 4, *c.* 76, *s.* 105.
(7) *Sec.* 114. (8) *Sec.* 114. (9) *Sec.* 84. (10) *Secs.* 101, 106, 109.

and such account shall specify the several heads of charge and expenditure, and shall be transmitted to the Lord High Treasurer or to the Commissioners of Her Majesty's Treasury, who shall thereupon audit such account, and if he or they shall deem it expedient, direct the balance (if any) remaining in the hands of the said secretary to be paid into the Exchequer to the account of the Consolidated Fund; and such accounts shall be laid before Parliament on or before the 25th day of March in each year if Parliament be then sitting, or if Parliament be not then sitting then within one month after the then next sitting of Parliament.

Sec. XXXV. It shall be lawful for the Lord High Treasurer, or the Commissioners of Her Majesty's Treasury, or any three or more of them, and they are hereby directed and empowered, from time to time (on an application to them, agreed to at some quarterly or other meeting of the commissioners, attended by five at least of the commissioners, and certified under their hands), to cause to be issued and paid out of the Consolidated Fund to the secretary of the commissioners such a sum of money as the commissioners shall in such application have certified to be requisite to pay and discharge so much of the salaries, costs, charges, and expenses hereinbefore (1) directed to be paid out of the monies received by the said secretary for licences and otherwise as aforesaid as such monies shall be inadequate to pay, and the said secretary shall thereupon apply such money in or towards the payment or discharge of such salaries, costs, charges, and expenses respectively; and it shall be lawful for the Lord High Treasurer or the Commissioners of Her Majesty's Treasury, or any three or more of them, from time to time to advance by way of imprest to the said secretary such sum or sums of money as to such Lord High Treasurer or Commissioners of Her Majesty's Treasury may appear requisite and reasonable, for or towards the payment or discharge of all or any such salaries, costs, charges, or expenses as aforesaid, such sum or sums to be accounted for by the said secretary in his then next account.

Sec. XXXVI. All monies to be received for licences granted by any justices (2) shall be applied by the clerk of the peace (3) for the county (4) or borough (5) in or towards the payment of the salary or remuneration of the clerk to the visitors for such county or borough, and in or towards the remuneration of such of the same visitors as are hereinbefore (6) directed to be remunerated, and in or towards the payment or discharge of all costs, charges, and expenses incurred by or under the authority of the same justices or visitors in the execution of or under or by virtue of this Act.

Sec. XXXVII. The clerk of the peace (7) for every county (8) or borough (9) shall keep an account of all monies received and paid by him as aforesaid, and of all monies otherwise received or paid by him under or by virtue of or in the execution of this Act; and such account shall respectively be made up to the 1st day of August in each year, and shall be signed by two at least of the visitors for the county or

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(1) *Sec.* 33. (2) *Sec.* 114. (3) *Sec.* 114. (4) *Sec.* 114.
(5) *Sec.* 114. (6) *Sec.* 20. (7) *Sec.* 114. (8) *Sec.* 114.
(9) *Sec.* 114.

borough; and every such account shall be laid by the clerk of the peace before the justices (1) at the Michaelmas general or quarter sessions, who shall thereupon direct the balance (if any) remaining in the hands of the clerk of the peace to be paid into the hands of the treasurer for such county or borough in aid and as part of the county or borough rate. (2)

Sec. XXXVIII. It shall be lawful for the justices for any county (3) or borough (4) in general or quarter sessions assembled, if they shall think fit, to order to be paid to the clerk of the peace (5) of such county or borough out of the rates or funds thereof such sum or sums of money as they shall on examination deem to be necessary to pay and discharge so much of the salary, remuneration, costs, charges, and expenses hereinbefore directed to be paid out of the monies received by such clerk of the peace for licences and otherwise as aforesaid as such monies shall be inadequate to pay; and also it shall be lawful for the justices in general or quarter sessions assembled, if they shall think fit, (6) from time to time to order to be advanced out of the rates or funds of such county or borough to the clerk of the peace such sum or sums of money as to such justices may appear requisite and reasonable for or towards the payment or discharge of any such salary, remuneration, costs, charges, or expenses as last aforesaid; and every such sum of money as aforesaid shall be paid and advanced out of the rates or funds of such county or borough by the treasurer thereof, and shall be allowed in his accounts on the authority of the aforesaid order by the justices for the payment or advance thereof.

Sec. XXXIX. If any person to whom a licence shall have been granted under this Act or under any of the Acts hereinbefore repealed shall, by sickness or other sufficient reason, become incapable of keeping the said licensed house, or shall die before the expiration of the licence, it shall be lawful for the commissioners or for any three justices (7) of the county (8) or borough, (9) as the case may be, if they shall respectively think fit, by writing endorsed on such licence under the seal of the commissioners, or under the hands of such three justices, to transfer the said licence with all the privileges and obligations annexed thereto for the term then unexpired to such person as shall at the time of such incapacity or death be the superintendent of such house or have the care of the patients therein, or to such other person as the commissioners or such justices respectively shall approve; and in the meantime such licence shall remain in force and have the same effect as if granted to the superintendent of the house; and in case a licence has been or shall be granted to two or more persons, and before the expiration thereof any or either of such persons shall die leaving the other or others surviving, such licence shall remain in force and have the same effect as if granted to such survivors or survivor.

Sec. XL. If any licensed house (10) shall be pulled down or occupied under the provisions of any Act of Parliament, or shall, by fire, tempest, or other accident, be rendered unfit for the accommodation of lunatics, (11) or if the person keeping such house shall desire to transfer the patients (12) to another house, it shall be lawful for the commissioners (if the new

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(1) *Sec.* 114. (2) *Sec.* 114. (3) *Sec.* 114. (4) *Sec.* 114.
(5) *Sec.* 114. (6) *Sec.* 115. (7) *Sec.* 114. (8) *Sec.* 114.
(9) *Sec.* 114. (10) *Sec.* 114. (11) *Sec.* 114. (12) *Sec.* 114.

house shall be within their immediate jurisdiction), at any quarterly or other meeting, or for any two or more of the visiting justices (1) for the county(2) or borough(3) within which the new house is situate, as the case may be, upon the payment to the secretary of the commissioners or the clerk of the peace,(4) as the case may be, of not less than £1 for the licence (exclusive of the sum to be paid for the stamp), to grant to the person whose house has been so pulled down, occupied, or so rendered unfit, or who shall desire to transfer his patients as aforesaid, a licence to keep such other house for the reception of lunatics, for such time as the commissioners or the said justices, as the case may be, shall think fit: Provided always, that the same notice of such intended change of house, and the same plans and statements and descriptions of and as to such intended new house, shall be given as are required when application is first made for a licence for any house, and shall be accompanied by a statement in writing of the cause of such change of house; and that, except in cases in which the change of house is occasioned by fire or tempest, seven clear days' previous notice of the intended removal shall be sent, by the person to whom the licence for keeping the original house shall have been granted, to the person who signed the order for the reception of each patient not being a pauper, (5) or the person by whom the last payment on account of such patient shall have been made, and to the relieving officer or overseer of the union or parish to which each patient being a pauper is chargeable, or the person by whom the last payment on account of such patient shall have been made.

Sec. XLI. If a majority of the justices(6) of any county(7) or borough(8) in general or quarter sessions assembled (9) shall recommend to the Lord Chancellor (10) that any licence granted by the justices for such county or borough, either before or after the passing of this Act, shall be revoked, it shall be lawful for the Lord Chancellor to revoke the same by an instrument under his hand and seal, such revocation to take effect at a period to be named in such instrument not exceeding two calendar months from the time a copy or notice thereof shall have been published in the *London Gazette;* and a copy or notice of such instrument of revocation shall be published in the *London Gazette,* and shall before such publication be transmitted to the person to whom such licence shall have been granted, or to the resident superintendent of the licensed house,(11) or be left at the licensed house: Provided always, that in case of any such revocation being recommended to the Lord Chancellor, notice thereof in writing shall seven clear days previously to the transmission of such recommendation to the Lord Chancellor be given to the person the revocation of whose licence shall be recommended, or to the resident superintendent of the licensed house, or shall be left at the licensed house.

Sec. XLII. If the commissioners shall recommend to the Lord Chancellor (12) that any licence granted either by the commissioners or by any justices, (13) either before or after the passing of this Act, shall be revoked or shall not be renewed, it shall be lawful for the Lord Chancellor by an instrument under his hand and seal to revoke or

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(1) *Sec.* 114. (2) *Sec.* 114. (3) *Sec.* 114. (4) *Sec.* 114.
(5) *Sec.* 114. (6) *Sec.* 114. (7) *Sec.* 114. (8) *Sec.* 114.
(9) *Sec.* 115. (10) *Sec.* 114. (11) *Sec.* 114. (12) *Sec.* 114.
(13) *Sec.* 114.

prohibit the renewal of such licence; and in the case of a revocation the same shall take effect at a period to be named in such instrument not exceeding two calendar months from the time a copy or notice thereof shall have been published in the *London Gazette*, and a copy or notice of such instrument of revocation shall be published in the *London Gazette*, and shall before such publication be transmitted to the person to whom such licence shall have been granted, or to the resident superintendent of the licensed house, or shall be left at the licensed house: (1) Provided always, that in case of any such revocation or prohibition to renew being recommended to the Lord Chancellor, notice thereof in writing shall seven clear days previously to the transmission of such recommendation to the Lord Chancellor be given to the person the revocation or prohibition of renewal of whose licence shall be recommended, or to the resident superintendent of the licensed house, or shall be left at the licensed house.

Sec. XLIII. The regulations as to lunatics (2) of every hospital (3) in which lunatics are or shall be received shall be printed, and complete copies thereof shall be sent to the commissioners, and also kept hung up in the visitors' room of such hospital; and every such hospital shall have a physician, surgeon, or apothecary (4) resident therein, as the superintendent and medical attendant thereof; and such superintendent shall immediately after the passing of this Act (or immediately after the establishment of such hospital, as the case may be) apply to the commissioners to have such hospital registered, and thereupon such hospital shall be registered in a book to be kept for that purpose by the commissioners; and in case the superintendent of any such hospital shall at any time omit to have copies of such regulations sent or hung up as aforesaid, or to apply to have such hospital registered as aforesaid, he shall for every such omission forfeit a sum not exceeding £20. (5)

Sec. XLIV. After the passing of this Act it shall not be lawful for any person to receive two or more lunatics (6) into any house, unless such house shall be an asylum (7) or an hospital (8) registered under this Act, or a house for the time being duly licensed under this Act, or one of the acts hereinbefore repealed; and any person who shall receive two or more lunatics into any house other than a house for the time being duly licensed as aforesaid, or an asylum, or an hospital duly registered under this Act, shall be guilty of a misdemeanor.

Sec. XLV.
Sec. XLVI.
Sec. XLVII.
Sec. XLVIII.
Sec. XLIX.
} (9) repealed.

Sec. L. Every proprietor (10) or superintendent who shall receive any patient (11) into any licensed house (12) or any hospital (13) shall, within two days after the reception of such patient, make an entry with respect to such patient in a book to be kept for that purpose to be called "The Book of Admissions," (14) according to the form and containing the particu-

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(1) *Sec.* 114. (2) *Sec.* 114. (3) *Sec.* 114.
(4) 16 & 17 *Vic. c.* 96, *s.* 36. (5) *Sec.* 106. (6) *Sec.* 114.
(7) *Sec.* 114. (8) *Sec.* 114. (9) 16 & 17 *Vic. c.* 96. *s.* 3.
(10) *Sec.* 114. (11) *Sec.* 114. (12) *Sec.* 114. (13) *Sec.* 114.
(14) *Hill* v. *Philp*, 7 Excheq. 235.

lars required in Schedule (E) annexed to this Act, so far as he can ascertain the same, except as to the form of the mental disorder, and except also as to the discharge or death of the patient,(1) which shall be made when the same shall happen; and every person who shall so receive any such patient, and shall not within two days thereafter make such entry as aforesaid (except as aforesaid), shall forfeit a sum not exceeding £2; (2) and every person who shall knowingly and willingly in any such entry untruly set forth any of the particulars shall be guilty of a misdemeanor.

In an action against the proprietor of an asylum licensed under 8 & 9 Vic. c. 100, for alleged improper treatment of the plaintiff whilst a patient in the asylum, the plaintiff may obtain an order, under 14 & 15 Vic. c. 99, s. 6, for his inspection, in the presence of a Master, of such portions of the Book of Admission, and other books kept at the asylum (see ss. 54, 59, 60, 66), as relate to his case, also for the inspection of the licence of the asylum, of the order and medical certificate under which he was confined, and of all letters by the Commissioners of Lunacy to the defendant relating to the plaintiff. (3)

Sec. LI. The form of the mental disorder of every patient (4) received into any licensed house(5) or any hospital(6) shall within seven days after his reception be entered in the said book of admissions by the medical attendant(7) of such house or hospital; and every such medical attendant who shall omit to make any such entry within the time aforesaid shall for every such offence forfeit a sum not exceeding £2. (8)

Sec. LII. The proprietor (9) or resident superintendent of every licensed house (10) (whether licensed by the commissioners or by any justices) (11) and the superintendent of every hospital (12) shall, after two clear days and before the expiration of seven clear days from the day on which any patient (13) shall have been received into such house or hospital, transmit a copy of the order and medical certificates or certificate on which such person shall have been received, and also a notice and statement according to the form in schedule (F) annexed to this Act, to the commissioners; and the proprietor (14) or resident superintendent of every house licensed within the jurisdiction of any visitors shall also within the same period transmit another copy of such order and certificates or certificate, and a duplicate of such notice and statement to the clerk of the visitors; and every proprietor or superintendent of any such house or hospital who shall neglect to transmit such copy, notice, or statement to the commissioners, or (where the same is required) to the clerk of the visitors, shall be guilty of a misdemeanor.

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(1) *Sec.* 114. (2) *Sec.* 106. (3) See *Hill* v. *Philp*, 7 Exch. 235.
(4) *Sec.* 114. (5) *Sec.* 114. (6) *Sec.* 114. (7) *Sec.* 114.
(8) *Sec.* 106. (9) *Sec.* 114. (10) *Sec.* 114. (11) *Sec.* 114.
(12) *Sec.* 114. (13) *Sec.* 114. (14) *Sec.* 114.

Sec. LIII. Whenever any patient (1) shall escape from any licensed house(2) or any registered hospital,(3) the proprietor(4) or superintendent of such house or hospital, shall within two clear days next after such escape transmit a written notice thereof to the commissioners, and if such house be within the jurisdiction of any visitors, then also to the clerk of such visitors ; and such notice shall state the christian and surname of the patient who has so escaped, and his then state of mind, and also the circumstances connected with such escape; and if such patient shall be brought back to such house or hospital, such proprietor or resident superintendent shall, within two clear days next after such person shall be so brought back, transmit a written notice thereof to the commissioners, and also, if such house be within the jurisdiction of any visitors, to the clerk of such visitors ; and such notice shall state when such person was so brought back, and the circumstances connected therewith, and whether with or without a fresh order and certificates or certificate ; and every proprietor or resident superintendent omitting to transmit such notice, whether of escape or of return, shall for every such omission forfeit a sum not exceeding £10. (5)

Sec. LIV. Whenever any patient (6) shall be removed or discharged from any licensed house (7) or any hospital, (8) or shall die therein, the proprietor(9) or superintendent of such house or hospital shall within two clear days next after such removal, discharge, or death, make an entry thereof in a book to be kept for that purpose, according to the form and stating the particulars in schedule (G 1) annexed to this Act, and shall also within the same two days transmit a written notice thereof, and also of the cause of his death to the commissioners, and also if such house shall be within the jurisdiction of any visitors to the clerk of such visitors according to the form and containing the particulars in schedule (G 2) annexed to this Act ; and every proprietor or superintendent of any such house or hospital who shall neglect to make such entry or transmit such notice or notices, or shall therein set forth anything untruly, shall be guilty of a misdemeanor. (10)

Sec. LV. In case of the death of any patient (11) in any licensed house (12) or any hospital,(13) a statement of the cause of the death of such patient, with the name of any person present at the death, shall be drawn up and signed by the medical attendant (14) of such house or hospital, and a copy thereof duly certified by the proprietor(15) or superintendent of such house or hospital shall by him be transmitted to the commissioners, and also to the person signing the order for such patient's confinement, and to the registrar of deaths for the district; and if such house be within the jurisdiction of any visitors, then also to the clerk of such visitors, within 48 hours after the death of such patient ; and every medical attendant, proprietor, or superintendent, who shall neglect or omit to draw up, sign, certify, or transmit such statement as aforesaid shall for every such neglect or omission forfeit and pay a sum not exceeding £50. (16)

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(1) *Sec.* 114. (2) *Sec.* 114. (3) *Sec.* 114. (4) *Sec.* 114.
(5) *Sec.* 106. (6) *Sec.* 114. (7) *Sec.* 114. (8) *Sec.* 114.
(9) *Sec.* 114. (10) 16 & 17 *Vic. c.* 96, *s.* 21. (11) *Sec.* 114.
(12) *Sec.* 114. (13) *Sec.* 114. (14) *Sec.* 114. (15) *Sec.* 114.
(16) *Sec.* 106.

Sec. LVI. If any superintendent, officer, nurse, attendant, (1) servant, or other person employed in any licensed house(2) or registered hospital(3) shall in any way abuse or illtreat any patient(4) confined therein, or shall wilfully neglect any such patient, he shall be deemed guilty of a misdemeanor; and in the event of the release of any person from confinement in any asylum (5) or private house who shall consider himself to have been unjustly confined, a copy of the certificates and order upon which he has been confined shall at his request be furnished to him or to his attorney by the clerk to the commissioners without any fee or reward for the same; and it shall be lawful for the home secretary on the report of the commissioners or visitors of any asylums to direct Her Majesty's Attorney-General to prosecute on the part of the Crown any person who shall have been concerned in the unlawful taking or confinement of any of Her Majesty's subjects as an insane patient, (6) and likewise any person who shall have been concerned in the neglect or ill-treatment of any patient or person so confined.

Sec. LVII. In every house licensed for 100 patients or more there shall be a physician, surgeon, or apothecary (7) resident as the superintendent or medical attendant thereof, and every house licensed for less than 100 and more than 50 patients (in case such house shall not be kept by or have a resident physician, surgeon, or apothecary) shall be visited daily by a physician, surgeon, or apothecary; and every house licensed for less than 50 patients (in case such house shall not be kept by or have a resident physician, surgeon, or apothecary) shall be visited twice in every week by a physician, surgeon, or apothecary: Provided always, that it shall be lawful for the visitors of any licensed house to direct that such house, and for the commissioners to direct that any licensed house, (8) shall be visited by a physician, surgeon, or apothecary, at any other time or times not being oftener than once in every day.

Sec. LVIII. Provided always, that when any house is licensed to receive less than eleven lunatics (9) it shall be lawful for any two of the commissioners, or any two of the visitors of such house, if they shall respectively so think fit, by any writing under their hands, to permit that such house shall be visited by a physician, surgeon, or apothecary, at such intervals more distant than twice in every week as such commissioners or visitors shall appoint, but not at a greater interval than once in every two weeks.

Sec. LIX. Every physician, surgeon, or apothecary,(10) where there shall be only one, keeping or residing in or visiting any licensed house(11) or any hospital, (12) and where there shall be two or more physicians, surgeons, or apothecaries keeping or residing in or visiting any licensed house or any hospital, then one at least of such physicians, surgeons, or apothecaries, shall once in every week (or in the case of any house at which visits at more distant intervals than once a week are permitted on every visit) enter and sign in a book to be kept at such house or hospital for that purpose, to be called "The Medical

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(1) 16 & 17 *Vic. c.* 96, *s.* 36. (2) *Sec.* 114. (3) *Sec.* 114.
(4) *Sec.* 114. (5) *Sec.* 114. (6) See *R.* v. *Pelham*, 8 Q. B. 959.
(7) 16 & 17 *Vic. c.* 96, *s.* 36. (8) *Sec.* 114. (9) *Sec.* 114.
(10) 16 & 17 *Vic. c.* 96, *s.* 36. (11) *Sec.* 114. (12) *Sec.* 114.

Visitation Book," a report, showing the date thereof, and also the number, sex, and state of health of all the patients (1) then in such house or hospital, the christian and surname of every patient who shall have been under restraint, or in seclusion, or under medical treatment, since the date of the last preceding report, the condition of the house or hospital, and every death, injury, and act of violence which shall have happened to or affected any patient since the then last preceding report, according to the form in schedule (H) annexed to this Act; (2) and every such physician, surgeon, or apothecary who shall omit to enter or sign such report as aforesaid shall for every such omission forfeit and pay the sum of £20; (3) and every such physician, surgeon, or apothecary who shall in any such report as aforesaid enter anything untruly shall be guilty of a misdemeanor.

Sec. LX. There shall be kept in every licensed house (4) and in every hospital (5) a book to be called "The Case Book," in which the physician, surgeon, or apothecary keeping or residing in or visiting such house or hospital shall from time to time make entries of the mental state and bodily condition of each patient, (6) together with a correct description of the medicine and other remedies prescribed for the treatment of his disorder; and that it shall be lawful for the commissioners from time to time, by any order under their common seal, to direct the form (7) in which such Case Book shall be kept by such physi-

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(1) *Sec.* 114 (2) 16 & 17 *Vic. c.* 96, *s.* 25. (3) *Sec.* 106.
(4) *Sec.* 114. (5) *Sec.* 114. (6) *Sec.* 114.

(7) "The Medical Case Book, by the Act 8 & 9 Vic. c. 100, directed to be kept in every licensed house and hospital, shall be kept in the form or manner hereinafter mentioned, and shall contain the following particulars (to be amplified in cases which appear to call for more extended details), viz.:—

"1st. A statement of the name, age, sex, and previous occupation of the patient; and whether he is married or single.

"2d. An accurate description of the external appearance of the patient when first seen after admission; of his habit of body and temperament; of the appearance of his eyes, the expression of his countenance, and any peculiarity in the form of his head; of the physical state of the vascular and respiratory organs and of the abdominal viscera, and their respective functions; of the state of the pulse, tongue, skin, &c.

"3d. A description of the phenomena of mental disorder which characterize the case, the manner and period of the attack, with a minute account of the symptoms and the changes produced in the patient's temper or disposition, specifying—whether the malady displays itself by any and what illusions, or by irrational conduct or morbid or dangerous habits or propensities—whether it has occasioned any failure of memory or understanding, or is connected with epilepsy, hemiplegia, or symptoms of general paralysis, such as tremulous movements of the tongue, defect of articulation, or weakness or unsteadiness of gait.

"4th. Every particular which can be obtained respecting the previous history of the patient; what are believed to have been the predisposing and exciting causes of the attack; what have been his habits, whether active or sedentary, temperate or otherwise; whether he has experienced any former attacks, and if so at what periods; whether any of his relatives have been subject to insanity or any other cerebral disorder; and whether his present attack has been preceded by any premonitory symptoms, such as restlessness, unusual elevation or depression of spirits, or any remarkable deviation from his

cian, surgeon, or apothecary; and immediately after a copy of such order shall have been transmitted by the secretary of the commissioners to such physician, surgeon, or apothecary, such physician, surgeon, or apothecary shall thereupon keep such Case Book in the form which shall be directed by such order; and it shall be lawful for the commissioners (whenever they shall see fit) to require, by an order in writing under their common seal, such physician, surgeon, or apothecary to transmit to the commissioners a correct copy of the entries or entry in any Case Book kept under the provisions of this Act relative to the case of any lunatic (1) who is or may have been confined in any such licensed house or hospital; and every such physician, surgeon, or apothecary who shall neglect to keep the said Case Book, or to keep the same according to the form directed by the commissioners, or to transmit a copy of the said entry or entries, pursuant to such order or orders as aforesaid, shall for every such neglect forfeit any sum not exceeding £10. (2)

Sec. LXI. Every licensed house shall, without any previous notice, be visited by two at least of the commissioners (one of whom shall be a physician or surgeon, and the other a barrister) four times at the least in every year if such house shall be within the immediate jurisdiction of the commissioners, and if not twice at least in every year; and every hospital(3) in which lunatics(4) shall be received shall, without any previous notice, be visited by two at least of the said commissioners (one of whom shall be a physician or surgeon, and the other a barrister) once at least in every year, and every such visit shall be made on such day or days and at such hours of the day and for such length of time as the visiting commissioners shall think fit, and also at such other times, if any, as the said Commissioners in Lunacy shall direct, and such visiting commissioners when visiting such house or hospital may and shall inspect every part of such house or hospital, and every outhouse, place, and building communicating with such house or hospital, or detached therefrom, but not separated by ground belonging to any other person, and every part of the ground or appurtenances held, used, or occupied therewith, and see every patient then confined in such house or hospital, and inquire whether any patient is under restraint, and why, and inspect the order and certificates or certificate for the reception of every patient (5) who shall have been re-

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ordinary habits and conduct; and whether he has undergone any and what previous treatment, or has been subjected to personal restraint.

"5th. A statement from time to time of the mental and bodily condition of the patient, and of any changes which may be observed in his bodily health or in the form of his mental disease; also an accurate record of the medicines administered and other remedies employed, with the results. That the several particulars hereinbefore required to be recorded be set forth, not in any fixed or tabular form, but in a manner so clear and distinct that they may admit of being easily referred to and extracted whenever the commissioners shall so require.

"That a copy of this order be inserted at the commencement of the case book."

—*Order of Commissioners in Lunacy, 9th January*, 1846.

(1) *Sec.* 114. (2) *Sec.* 106. (3) *Sec.* 114.
(4) *Sec.* 114. (5) *Sec.* 114.

ceived into such house or hospital since the last visit of the commissioners, and in the case of any house licensed by justices, shall consider the observations made in the Visitors' Book for such house by the visitors appointed by the justices, and enter in the Visitors' Book of such house or hospital a minute of the then condition of the house or hospital and of the patients therein, and the number of patients under restraint, with the reason thereof as stated, and such irregularity (if any) as may exist in any such order or certificates as aforesaid, and also whether the previous suggestions (if any) of the visiting commissioners or visitors have or have not been attended to, and any observations which they may deem proper as to any of the matters aforesaid or otherwise, and also if such visit be the first after the granting a licence to the house shall examine such licence, and if the same be in conformity with the provisions of this Act sign the same, but if it be informal enter in such Visitors' Book in what respect such licence is informal: Provided also, that it shall be lawful for the Lord Chancellor on a representation by the commissioners setting forth the expediency of such alteration by any writing under his hand to direct that any house licensed by justices shall (during such period as he shall therein specify, or until such his direction shall be revoked) be visited by the commissioners once only in the year, and also to direct that any house licensed by the commissioners, and not receiving any pauper patients [1] therein, shall (during such period as he shall therein specify, or until such his direction shall be revoked) be visited by the commissioners twice only in the year.

Sec. LXII. Every licensed house [2] within the jurisdiction of any visitors appointed by justices [3] shall be visited by two at least of the said visitors (one of whom shall be a physician, surgeon, or apothecary) [4] four times at the least in every year, on such days, and at such hours in the day, and for such length of time as the said visitors shall think fit, and also at such other times (if any) as the justices by whom such house shall have been licensed shall direct; and such visitors when visiting any such house may and shall inspect every part of such house, and every house, outhouse, place, and building communicating therewith or detached therefrom, but not separated by ground belonging to any other person, and every part of the ground or appurtenances held, used, or occupied therewith, and see every patient then confined therein, and inquire whether any patient [5] is under restraint and why, and inspect the order and certificates or certificate for the reception of every patient who shall have been received into such house since the last visit of the visitors, and enter in the Visitors' Book a minute of the then condition of the house, of the patients therein, and the number of patients under restraint, with the reason thereof as stated, and such irregularity (if any) as may exist in any such order or certificates as aforesaid, and also whether the previous suggestions (if any) of the visitors or visiting commissioners have or have not been attended to, and any observations which they may deem proper as to any of the matters aforesaid or otherwise.

Sec. LXIII. The proprietor [6] or superintendent of every licensed

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(1) *Sec.* 114. (2) *Sec.* 114. (3) *Sec.* 114. (4) 16 & 17 *Vic. c.* 96, *s.* 36.
(5) *Sec.* 114. (6) *Sec.* 114.

house (1) or hospital (2) shall show to the commissioners and visitors respectively visiting the same every part thereof respectively, and every person detained therein as a lunatic; (3) and every proprietor or superintendent of any licensed house or any hospital who shall conceal or attempt to conceal, or shall refuse or wilfully neglect to show, any part of such house or hospital, or any house, outhouse, place, or building communicating therewith, or detached therefrom but not separated as aforesaid, or any part of the ground or appurtenances held, used, or occupied therewith, or any person detained or being therein, from any visiting commissioners or visitors or from any person authorized under any power or provision of this Act to visit and inspect such house or hospital, or the patients (4) confined therein or any of them, shall be guilty of a misdemeanor.

Sec. LXIV. The visiting commissioners and visitors respectively, upon their several visitations to every licensed house, (5) and to every hospital, (6) shall inquire when Divine service is performed, and to what number of the patients, (7) and the effect thereof, and also what occupations or amusements are provided for the patients and the result thereof, and whether there has been adopted any system of coercion, and if so the result thereof, and also as to the classification of patients, and also as to the condition of the pauper patients (8) (if any) when first received, and also as to the dietary of the pauper patients (if any), and shall also make such other inquiries as to such visiting commissioners or visitors shall seem expedient; and every proprietor (9) or superintendent of a licensed house or hospital who shall not give full and true answers to the best of his knowledge to all questions which the visiting commissioners and visitors respectively shall ask in reference to the matters aforesaid shall be guilty of a misdemeanor.

Sec. LXV. Upon every visit of the visiting commissioners to any licensed house(10) or to any hospital,(11) and upon every visit of the visitors to any licensed house, there shall be laid before such visiting commissioners or visitors, as the case may be, by the proprietor (12) or superintendent of such licensed house or of such hospital, a list of all the patients(13) then in such house or hospital (distinguishing pauper patients(14) from other patients and males from females, and specifying such as are deemed curable), and also the several books by this Act required to be kept by the proprietor or superintendent and by the medical attendant of a licensed house or an hospital, and also all orders and certificates relating to patients admitted since the last visitation of the commissioners or visitors (as the case may be), and also, in the case of a licensed house, the licence then in force for such house, and also all such other orders, certificates, documents, and papers relating to any of the patients at any time received into such licensed house or hospital as the visiting commissioners or visitors shall from time to time require to be produced to them, and the said visiting commissioners or visitors as the case may be shall sign the said books as having been produced to them.

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(1) *Sec.* 114. (2) *Sec.* 114. (3) *Sec.* 114. (4) *Sec.* 114.
(5) *Sec.* 114. (6) *Sec.* 114. (7) *Sec.* 114. (8) *Sec.* 114.
(9) *Sec.* 114. (10) *Sec.* 114. (11) *Sec.* 114. (12) *Sec.* 114.
(13) *Sec.* 114. (14) *Sec.* 114.

Sec. LXVI. There shall be hung up in some conspicuous part of every licensed house (1) a copy of the plan given to the commissioners or justices (2) on applying for the licence for such house, and there shall be kept in every licensed house and in every hospital in which lunatics shall be received a Queen's printers' copy of this Act, bound up in a book to be called "The Visitors' Book," and the said visiting commissioners and visitors respectively shall at the time of their respective visitations enter therein the result of the inspections and inquiries hereinbefore directed or authorized to be made by them respectively, with such observations (if any) as they shall think proper; and there shall also be kept in every such house and hospital a book to be called "The Patients' Book," and the visiting commissioners and visitors respectively shall at the times of their respective visitations enter therein such observations as they may think fit respecting the state of mind or body of any patient in such house or hospital.

Sec. LXVII. The proprietor (3) or resident superintendent of every licensed house (4) and of every hospital (5) shall within three days after every such visit by the visiting commissioners as aforesaid transmit a true and perfect copy of the entries made by them in "The Visitors' Book," "The Patients' Book," and "The Medical Visitation Book" respectively (distinguishing the entries in the several books) to the commissioners, and shall, within three days after every such visitation by the visitors, transmit a true and perfect copy of the entries made by them as aforesaid (distinguishing as aforesaid) to the commissioners, and also to the clerk of the visitors; and the copies so transmitted to the clerk of the visitors of all such entries relating to any licensed house, and made since the grant or last renewal of the licence thereof, shall be laid before the justices on taking into consideration the renewal of the licence to the house to which such entries shall relate; and every such proprietor or superintendent as aforesaid who shall omit to transmit, as hereinbefore directed, a true and perfect copy of every or any such entry as aforesaid shall for every such omission forfeit a sum not exceeding £10. (6)

Sec. LXVIII. The commissioners visiting any house licensed by justices (7) shall carefully consider and give special attention to the state of mind of any patient (8) therein confined as to the propriety of whose detention they shall doubt (or as to whose sanity their attention shall be specially called), and shall, if they shall think that the state of mind of such patient is doubtful, and that the propriety of his detention requires further consideration, make and sign a minute thereof in the Patients' Book of such house; and a true and perfect copy of every such minute shall, within two clear days after the same shall have been made, be sent by the proprietor (9) or superintendent of such house to the clerk of the visitors of such house, and such clerk shall forthwith communicate the same to the said visitors or some two of them (of whom a physician, surgeon, or apothecary (10) shall be one), and such visitors shall thereupon immediately visit such patient, and act as they shall see fit; and every such proprietor or superintendent who shall

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(1) *Sec.* 114. (2) *Sec.* 114. (3) *Sec.* 114.
(4) *Sec.* 114. (5) *Sec.* 114. (6) *Sec.* 106.
(7) *Sec.* 114. (8) *Sec.* 114. (9) *Sec.* 114.
(10) 16 & 17 *Vic. c.* 96, *s.* 36.

omit to send a true and perfect copy, as hereinbefore directed, of every or any such last-mentioned minute, and every clerk who shall neglect to communicate the same to two of the visitors as aforesaid shall be guilty of a misdemeanor.

Sec. LXIX. The visiting commissioners shall after every visitation by them to every licensed house [1] not being within their immediate jurisdiction, and to every hospital,[2] report in writing the general result of their inspection thereof (together with such special circumstances, if any, as they may deem proper to notice) to the commissioners, and the secretary of the commissioners shall thereupon enter the same in a book to be kept for that purpose.

Sec. LXX. It shall be lawful for the commissioners or any five of them, at any quarterly or special meeting, by any resolution or resolutions under their common seal, or to be entered in a book to be kept for that purpose, and signed by five at least of the commissioners present at such meeting, from time to time to make such orders and rules as they shall think fit for regulating the duties of the commissioners or any of them, or of their secretary, clerks, and servants, or for the due or better performance of the business of the commission: Provided, nevertheless, that the secretary of the commissioners shall give to every commissioner, so far as circumstances will admit, not less than seven days' notice of every such special meeting, and shall in the summons for such special meeting state the purposes for which the same is intended to be held.

Sec. LXXI. It shall be lawful for any two or more of the commissioners, or any two visitors, to visit and to inspect any licensed house [3] or hospital[4] at such hour of the night as they shall think fit: Provided, nevertheless, that no such visitor shall make any such visitation or inspection except of a licensed house within their jurisdiction.

Sec. LXXII. If and when any person who signed the order on which any person (not being a pauper) [5] was received into any licensed house, [6] or into any hospital, [7] shall by writing under his hand direct that such patient [8] shall be discharged or removed, then and in such case such patient shall forthwith be discharged or removed as the person who signed the order for his reception shall direct. [9]

Sec. LXXIII. If the person who signed the order on which any patient[10] (not being a pauper) [11] was received into any licensed house [12] or into any hospital[13] be incapable, by reason of insanity or absence from England or otherwise, of giving an order for the discharge or removal of such patient, or if such person be dead, then and in any of such cases the husband or wife of such patient, or if there be no such husband or wife the father of such patient, or if there be no father the mother of such patient, or if there be no mother then anyone of the nearest of kin for the time being of such patient, or the person who made the last payment on account of such patient, may by any writing under his or her hand give such direction as aforesaid for the discharge or removal of such patient, and thereupon such patient

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(1) *Sec.* 114. (2) *Sec.* 114. (3) *Sec.* 114. (4) *Sec.* 114.
(5) *Sec.* 114. (6) *Sec.* 114. (7) *Sec.* 114. (8) *Sec.* 114.
(9) 16 & 17 *Vic. c.* 96. *s.* 17. (10) *Sec.* 114. (11) *Sec.* 114.
(12) *Sec.* 114. (13) *Sec.* 114.

shall be forthwith discharged or removed as the person giving such direction shall direct.(1)

Sec. LXXIV. The guardians of any parish (2) or union may, by a minute of their board or an officiating clergyman (3) of any parish not under a board of guardians and one of the overseers thereof, or any two justices (4) of the county or borough in which such last mentioned parish is situate, may, by writing under the hands respectively of such clergyman and overseer, or of such justices, direct that any pauper (5) patient (6) belonging to such parish or union, and detained in any licensed house (7) or any hospital, (8) shall be discharged or removed therefrom, and may direct the mode of such discharge or removal; and if a copy of such minute or such writing be produced to the proprietor (9) or superintendent of such licensed house or such hospital, he shall forthwith discharge or remove such patient, or cause or suffer such patient to be discharged or removed accordingly.

Sec. LXXV. No patient (10) shall be discharged or removed, under any of the powers hereinbefore contained from any licensed house (11) or any hospital (12) if the physician, surgeon, or apothecary by whom the same shall be kept, or who shall be the regular medical attendant thereof, shall by writing under his hand certify that in his opinion such patient is dangerous and unfit to be at large, together with the grounds on which such opinion is founded, unless the commissioners visiting such house or the visitors of such house shall, after such certificates shall have been produced to them, give their consent in writing that such patient shall be discharged or removed; provided that nothing herein contained shall prevent any patient from being transferred from any licensed house or any hospital to any other licensed house or any other hospital, or to any asylum, (13) but in such case every such patient shall be placed under the control of an attendant belonging to the licensed house, hospital, or asylum, to or from which he shall be about to be removed for the purpose of such removal, and shall remain under such control until such time as such removal shall be duly affected.

Sec. LXXVI. It shall be lawful for any two or more of the commissioners to make visits to any patient(14) detained in any house licensed by the commissioners on such days and at such hours as they shall think fit; and if after two distinct and separate visits so made (seven days at least to intervene between such visits) it shall appear to such visiting commissioners that such patient is detained without sufficient cause, it shall be lawful for the commissioners, if they shall think fit, to make such order as to the commissioners shall seem meet for the discharge of such patient, and such patient shall be discharged accordingly.

Sec. LXXVII. It shall be lawful for any two or more of the commissioners, of whom one shall be a physician and one a barrister, to make special visits to any patient (15) detained in any house licensed by the justices (16) or in any hospital, (17) on such days and at such hours as

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(1) 16 & 17 *Vic. c.* 96, *s.* 17. (2) *Sec.* 114. (3) *Sec.* 114.
(4) *Sec.* 114. (5) *Sec.* 114. (6) *Sec.* 114. (7) *Sec.* 114.
(8) *Sec.* 114. (9) *Sec.* 114. (10) *Sec.* 114. (11) *Sec.* 114.
(12) *Sec.* 114. (13) *Sec.* 114. (14) *Sec.* 114. (15) *Sec.* 114.
(16) *Sec.* 115. (17) *Sec.* 114.

they shall think fit; and if after two distinct and separate visits so made it shall appear to such visiting commissioners that such patient is detained without sufficient cause, they may make such order as to them shall seem meet for the discharge of such patient, and such patient shall be discharged accordingly.

Sec. LXXVIII. It shall be lawful for any two or more of the visitors of any licensed house,(1) of whom one shall be a physician, surgeon, or apothecary, to make special visits to any patient (2) detained in such house, on such days and at such hours as they shall think fit; and if after two distinct and separate visits so made it shall appear to such visitors that such patient is detained without sufficient cause, they may make such order as to them shall seem meet for the discharge of such patient, and such patient shall be discharged accordingly.

Sec. LXXIX. Every such order. by any commissioners or visitors for the discharge of a patient (3) from any house licensed by justices (4) or from any hospital (5) shall be signed by them, and that each of such special visits shall be by the same commissioners or visitors; and it shall not be lawful for such commissioners or visitors to order the discharge of any patient from any such last-mentioned house or hospital without having previously, if the medical attendant of such house or hospital shall have tendered himself for that purpose, examined him as to his opinion respecting the fitness of such patient to be discharged; and if such commissioners or visitors shall, after so examining such medical attendant, discharge such patient, and such medical attendant shall furnish them with any statement in writing containing his reasons against the discharge of such patient, they shall forthwith transmit such statement to the commissioners or to the clerk of the visitors as the case may require, to be kept and registered in a book for that purpose.

Sec. LXXX. Not less than seven days shall intervene between the first and second special visits; and such commissioners or visitors shall, seven days previously to the second of such special visits, give notice thereof, either by post or by an entry in the Patients' Book to the proprietor (6) or superintendent of the house licensed by justices,(7) or of the hospital (8) in which the patient(9) intended to be visited is detained; and such proprietor or superintendent shall forthwith, if possible, transmit by post a copy of such notice—in the case of a patient not being a pauper, (10) to the person by whose authority such patient was received into such house, or by whom the last payment on account of such patient was made; and in the case of a pauper, to the guardians of his parish or union, or if there be no such guardians to one of the overseers for the time being of his parish; and also in the case of any patient detained in a house licensed by justices, to the clerk of the visitors of such house.

Sec. LXXXI. None of the powers of discharge hereinbefore contained shall extend to any person who shall have been found lunatic (11) by inquisition, or under any inquiry directed by the Lord Chancellor

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(1) *Sec.* 114. (2) *Sec.* 114. (3) *Sec.* 114. (4) *Sec.* 114.
(5) *Sec.* 114. (6) *Sec.* 114. (7) *Sec.* 114. (8) *Sec.* 114.
(9) *Sec.* 114. (10) *Sec.* 114. (11) *Sec.* 114.

in pursuance of the powers in that behalf hereinafter(1) given to him, nor to any lunatic confined under any order or authority of Her Majesty's principal Secretary of State for the Home Department, or under the order of any Court of criminal jurisdiction.

Sec. LXXXII. It shall be lawful for the visitors of any licensed house(2) at any time to determine and regulate the dietary of the pauper (3) patients therein; and it shall be lawful for the visiting commissioners at any time to determine and regulate the dietary of the pauper patients in any licensed house or in any hospital; (4) and if such determination and regulation of any visitors and of the visiting commissioners shall not agree with each other, then the determination and regulation of the visiting commissioners shall be followed: Provided always nevertheless, that every such regulation shall be made to take effect only from such time as not to affect any contract existing on the 1st day of June last for the maintenance of pauper patients before the 1st day of June, 1846, or the expiration of such contract, whichever shall first happen.

Sec. LXXXIII. If any person shall apply to any visitor in order to be informed whether any particular person is confined in any licensed house (5) within the jurisdiction of such visitor, the said visitor, if he shall think it reasonable to permit such inquiry to be made, shall sign an order to the clerk of the visitors, and the said clerk shall, on receipt of such order and on payment to him of a sum not exceeding 7s. for his trouble, make search amongst the returns made to him in pursuance of this Act whether the person inquired after is or has been within the then last twelve calendar months confined in any licensed house within the jurisdiction of such visitor; and if it shall appear that such person is or has been so confined, the said clerk shall deliver to the person so applying a statement in writing specifying the situation of the house in which the person so inquired after appears to be or to have been confined and of the name of the proprietor (6) or resident superintendent thereof, and also the date of the admission of such person into such licensed house, and (in case of his having been removed or discharged) the date of his removal or discharge therefrom.

Sec. LXXXIV. If any person shall apply to any commissioner in order to be informed whether any particular person is confined in any licensed house,(7) or in any hospital,(8) asylum,(9) or other place by this Act made subject to the visitation of the commissioners, such commissioner, if he shall think it reasonable to permit such inquiry to be made, shall sign an order to the secretary of the commissioners, and the secretary shall, on the receipt of such order, and on payment to him of a sum not exceeding 7s. (to be applied as hereinbefore (10) provided), make search amongst the returns made in pursuance of this Act, or of any of the Acts hereby repealed, whether the person inquired after is or has been within the last 12 calendar months confined in any house, hospital, asylum, or place by this Act made subject to the visitation of the commissioners; and if it shall appear that

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(1) *Sec.* 95; but see also 16 & 17 *Vic. c.* 70, *s.* 53. (2) *Sec.* 114.
(3) *Sec.* 114. (4) *Sec.* 114. (5) *Sec.* 114. (6) *Sec.* 114.
(7) *Sec.* 114. (8) *Sec.* 114. (9) *Sec.* 114. (10) *Sec.* 33.

such person is or has been so confined the secretary shall deliver to the person so applying a statement in writing specifying the situation of the house, hospital, asylum, or place in which the person so inquired after appears to be or to have been confined, and also (so far as the said secretary can ascertain the same from any register or return in his possession) the name of the proprietor,(1) superintendent, or principal officer of such house, hospital, asylum, or place, and also the date of the admission of such person into such licensed house, hospital, asylum, or other place, and (in case of his having been removed or discharged) the date of his removal or discharge therefrom.

Sec. LXXXV. It shall be lawful for any one of the commissioners, as to patients (2) confined in any house, hospital, (3) or other place (not being a gaol), hereby authorized to be visited by the commissioners, and also for any one of the visitors of any licensed house (4) as to patients confined in such house at anytime, to give an order in writing under the hand of such one commissioner or visitor for the admission to any patient of any relation or friend of such patient (or of any medical or other person whom any relation or friend of such patient shall desire to be admitted to him), and such order of admission may be either for a single admission, or for an admission for any limited number of times, or for admission generally at all reasonable times, and either with or without any restriction as to such admission or admissions being in the presence of a keeper or not, or otherwise; and if the proprietor (5) or superintendent of any such house, hospital, or place, shall refuse admission to or shall prevent or obstruct the admission to any patient of any relation, friend, or other person who shall produce such order of admission as aforesaid, he shall for every such refusal, prevention, or obstruction, forfeit a sum not exceeding £20. (6)

Sec. LXXXVI. It shall be lawful for the proprietor (7) or superintendent of any licensed house or of any hospital, (8) with the consent in writing of any two of the commissioners, or in the case of a house licensed by justices (9) of any two of the visitors of such house, to send or take under proper control any patient (10) to any specified place for any definite time, for the benefit of his health: (11) Provided always, nevertheless, that before any such consent as aforesaid shall be given by any commissioners or visitors the approval in writing of the person who signed the order for the reception of such patient, or by whom the past payment on account of such patient was made, shall be produced to such commissioners or visitors, unless they shall, on cause being shown, dispense with the same.

Sec. LXXXVII. In every case in which any patient (12) shall under any of the powers or provisions of this Act be removed temporarily from the house or hospital (13) into which the order for his reception was given, or be transferred from such house or hospital into any new house, and also in every case in which any patient shall escape from any house or hospital, and shall be retaken within 14 days next after

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(1) *Sec.* 114. (2) *Sec.* 114. (3) *Sec.* 114. (4) *Sec.* 114.
(5) *Sec.* 114. (6) *Sec.* 106. (7) *Sec.* 114. (8) *Sec.* 114.
(9) *Sec.* 114. (10) *Sec.* 114. (11) 18 & 19 *Vic. c.* 105, *s.* 17.
(12) *Sec.* 114. (13) *Sec.* 114.

such escape, the certificate or certificates relating to and the original order for the reception of such patient shall respectively remain in force in the same manner as the same would have done if such patient had not been so removed or transferred, or had not so escaped and been retaken.

Sec. LXXXVIII. The commissioners shall at the expiration of every six calendar months report to the Lord Chancellor(1) the number of visits which they shall have made, the number of patients (2) whom they shall have seen, and the number of miles which they shall have travelled during such months, and shall on the first day of January in each year make a return to the Lord Chancellor of all sums received by them for travelling expenses, or upon any other and what account, and shall also in the month of June (3) in every year make to the Lord Chancellor a report of the state and condition of the several houses, hospitals, asylums, and other places visited by them under this Act and of the care of the patients therein and of such other particulars as they shall think deserving of notice; and a true copy of such reports, showing the number of visits made, the number of patients seen, and the number of miles travelled, and also a copy of such return of sums received for travelling expenses, or on any other and what account, shall be laid before Parliament within 21 days next after the commencement of every session of Parliament.

Sec. LXXXIX. repealed. (4)

Sec. XC. No person (unless he be a person who derives no profit from the charge, or a committee appointed by the Lord Chancellor) (5) shall receive to board or lodge in any house other than an hospital (6) registered under this Act, or an asylum, (7) or a house licensed under this Act or under one of the Acts hereinbefore repealed, or take the care or charge of any one patient (8) as a lunatic (9) or alleged lunatic, without the like order and medical certificates in respect of such patient as are hereinbefore required on the reception of a patient (not being a pauper) into a licensed house; (10) and every person (except a person deriving no profit from the charge, or a committee appointed by the Lord Chancellor) who shall receive to board or lodge in any unlicensed house, not being a registered hospital or an asylum, or take the care or charge of any one patient as a lunatic or alleged lunatic, shall, within seven clear days after so receiving or taking such patient, transmit to the secretary of the commissioners a true and perfect copy of the order and medical certificates on which such patient has been so received, and a statement of the date of such reception, and of the situation of the house into which such patient has been received, and of the christian and surname and occupation of the occupier thereof, and of the person by whom the care and charge of such patient has been taken; and every such patient shall at least once in every two weeks be visited (11) by a physician, surgeon, or apothecary not deriving and not having a partner, father, son, or brother who derives any profit from the care or charge of such patient; and such physician,

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(1) *Sec.* 114. (2) *Sec.* 114. (3) 16 & 17 *Vic. c.* 96, *s.* 32.
(4) 16 & 17 *Vic. c.* 96, *s.* 27. (5) *Sec.* 114. (6) *Sec.* 114.
(7) *Sec.* 114. (8) *Sec.* 114. (9) *Sec.* 114.
(10) 16 & 17 *Vic. c.* 96, *s.* 8. (11) 16 & 17 *Vic. c.* 96, *s.* 14.

surgeon, or apothecary, shall enter in a book, to be kept at the house or hospital for that purpose, to be called "The Medical Visitation Book," the date of each of his visits, and a statement of the condition of the patient's health, both mental and bodily, and of the condition of the house in which such patient is, and such book shall be produced to the visiting commissioner on every visit, and shall be signed by him as having been so produced; and the person by whom the care or charge of such patient has been taken, or into whose house he has been received as aforesaid, shall transmit to the secretary of the commissioners the same notices and statements of the death, removal, escape, and recapture of such lunatic, and within the same periods as are hereinbefore required in the case of the death, removal, escape, and recapture of a patient (not being a pauper) received into a licensed house; and that every person who shall receive into an unlicensed house, not being a registered hospital nor an asylum, or take the care or charge of any person therein as a lunatic, without first having such order and medical certificates as aforesaid, or who, having received any such patient, shall not within the several periods aforesaid transmit to the secretary of the commissioners such copy, statement, and notices as aforesaid, or shall fail to cause such patient to be so visited by a medical attendant as aforesaid, and every such medical attendant who shall make an untrue entry in the said Medical Visitation Book, shall be guilty of a misdemeanor.

Sec. XCI. The secretary to the commissioners shall preserve every copy transmitted as aforesaid of the order and certificates for the reception of any patient (1) as a lunatic (2) into an unlicensed house, and every statement and notice which may be transmitted to such secretary with respect to any such patient aforesaid, and shall enter the same (in such form as the private committee shall direct) in a book to be kept for that purpose, to be called "The Private Register," and such private register shall be kept by such secretary in his own custody, and shall be inspected only by the members for the time being of the said private committee and by such other persons as the Lord Chancellor(3) shall by writing under his hand appoint.

XCII. It shall be lawful for any one member of the said private committee, on the direction of such committee or of any two members thereof (of whom the one member aforesaid may be one), at all reasonable times to visit every or any unlicensed house in which one patient(4) only is received as a lunatic (5) (unless such patient be so received by a person deriving no profit from the charge, or by a committee appointed by the Lord Chancellor), (6) and to inquire and report to the said private committee on the treatment and state of health, both bodily and mental, of such patient, and a copy of every or any such report shall be entered in a private register to be kept for that purpose by the secretary of the commissioners, and another copy thereof shall, if such private committee think it expedient, be laid before the Lord Chancellor.

Sec. XCIII. It shall be lawful for the Lord Chancellor, (7) on the representation of the said private committee accompanied with a

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(1) *Sec.* 114. (2) *Sec.* 114. (3) *Sec.* 114. (4) *Sec.* 114.
(5) *Sec.* 114. (6) *Sec.* 114. (7) *Sec.* 114.

copy of a report made as last aforesaid as to any patient (1) received or detained as a lunatic (2) in an unlicensed house as aforesaid, to make an order that such patient shall be removed from such house and from the care and charge of the person under whose care and charge such lunatic may be, and any person detaining such lunatic in such house or in such care or charge for the space of three days after a copy of such order shall have been left at such house or served on such person shall be guilty of a misdemeanor.

Sec. XCIV. Whenever the commissioners shall have reason to suppose that the property of any person detained or taken charge of as a lunatic (3) is not duly protected, or that the income thereof is not duly applied for his maintenance, such commissioners shall make such inquiries relative thereto as they shall think proper, and report thereon to the Lord Chancellor. (4)

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(1) *Sec.* 114. (2) *Sec.* 114. (3) *Sec.* 114.

(4) The proceedings for which this section and the four following sections provide are now discontinued, for the Act 16 & 17 Vic. c. 70, after reciting that "Whereas proceedings under commissions confer larger and more effectual powers for the due protection, care, and management, and of the persons and estates of persons of unsound mind than proceedings under the Act of the Session of Parliament, holden in the 8th & 9th years of the reign of Her Majesty, chapter 100, secs. 94, 95, 96, 97, 98 (both inclusive), and the expenses of proceedings under commission will be much diminished by this Act," enacts as follows:—

"Sec. 53. It shall not be lawful for the Lord Chancellor to direct that one of the Masters shall make such examination as by the 95th section of the last-mentioned Act is authorized in any cases in which a petition or report upon which such direction of the Lord Chancellor might be founded shall not have been presented or made before the commencement of this Act."

To carry out the proceedings under the Act 8 & 9 Vic. c. 100, ss. 94, 95, 96. 97, 98, the following General Order was issued 1st December, 1845:—

G. O., 1st December, 1845:—1. That every report made by either of the Masters in Lunacy as to the lunacy of any person in pursuance of any direction given by the Lord Chancellor under the provisions of the above-mentioned Act of Parliament (8 & 9 Vic. c. 100), be within one calendar month from the date thereof filed by the clerk of the said Masters in Lunacy with the secretary of lunatics, and be submitted to the Lord Chancellor for confirmation. 2. That when any such report finding the person therein named to be a lunatic shall have been so confirmed, either of the said Masters do from time to time, and without any special order in the matter, inquire and report who is or are the heir or heirs at law and next of kin of the lunatic, and the person or persons who would be entitled to his estate or to shares thereof under the statutes for the distribution of intestates' estates, in case he were at the date of such inquiry dead intestate, to whom due notice of attending the Master in Lunacy is to be given; and also inquire and report what is the situation of the lunatic and the nature of the lunacy, and who is the most fit and proper person to be appointed receiver of the estate of such lunatic, and of what the fortune of the lunatic consists, and what is the amount of income arising therefrom, and in what manner, and at what expense, and by whom and where, the lunatic has been maintained; and whether anything and what is due and to whom in respect of such past maintenance, and to whom and out of what fund arising from income the same ought to be paid, and what is fit and proper to be allowed for the maintenance and sup-

Sec. XCV. When any person shall have been received or taken charge of as a lunatic (1) upon an order and certificates, or an order and

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port of the lunatic for the time past and to come, regard being had to the circumstances and estate of the lunatic, and from what time such allowance should commence: Provided always, that either of the said Masters may after such direction given by the Lord Chancellor and before the confirmation of such report as aforesaid, if it shall to such Master seem expedient, commence and take evidence as to all or any of the aforesaid inquiries. 3. That either of the said Masters in Lunacy be at liberty, after the confirmation of such report under the said Act as aforesaid, to receive any proposal or conduct any inquiry as to the protection, care, and management of the person, or estate of the person in such report found to be a lunatic, and may report thereon as to such Master shall seem fit; but every such report shall be submitted for confirmation, as is done with respect to reports when made on special reference. 4. That every receiver to be appointed under the provisions of the said Act, or his legal personal representatives, as the case may be, do from time to time, without any special order in the lunacy for that purpose, attend before one of the Masters in Lunacy, and have an account of his or their receipts and payments for and on account of the lunatic and his estate taken and passed; and that in taking and passing such accounts, the Master in Lunacy make unto the receiver, or his legal personal representatives, as the case may be, all just allowances, including an allowance of his and their reasonable and proper costs, charges, and expenses, and those of the next of kin of the lunatic, of passing such accounts; and that the General Orders, rules, and regulations for the time being in force with respect to the accounts of committees and receivers of the estates of lunatics found such by inquisition and the balances thereon shall, so far as the same may be applicable, be in force with respect to the accounts of receivers of the estates of lunatics under certificate, and the balances thereon. 5. That either of the Masters in Lunacy may from time to time determine whether all or how many and which of the next of kin, or of the heirs of any such lunatic as aforesaid, shall, unless at their own costs, attend before the Masters in Lunacy on any proceedings in the lunacy, and that no other of such parties shall be allowed costs out of the estate, unless by special order for that purpose. 6. That either of the Masters in Lunacy be at liberty from time to time, and at the request of any party or otherwise, to make separate reports, or a separate report, and to state any circumstances as to the subject matter of the report specially as he shall think fit. 7. That the protection, care, and management of the person and estate of every such lunatic as aforesaid shall continue for six months after such person shall cease to be detained as a lunatic upon an order and certificates, or order and certificate, as the case may be, unless the Lord Chancellor shall in any case by order in the particular matter otherwise direct. 8. That until further order the clerks to the Masters in Lunacy, and the secretary of lunatics, take and receive for the business done under the said Act the like fees to those for the time being received and taken by them respectively for the like business under or by virtue of the Act passed in the 5th and 6th years of the reign of Her present Majesty, intituled "An Act to alter and amend the Practice and course of Proceeding under Commissions in the nature of Writs *de Lunatico Inquirendo*;" and that all fees so taken and received be once in every month paid into the Bank of England to the credit of the Accountant-General of the Court of Chancery to the account entitled, "The Suitors' Fee Fund Account," together with and as part of the

(1) *Sec.* 114.

certificate, in pursuance of the provisions of this Act, or of any Act hereinbefore repealed, and shall either have been detained as a lunatic for the 12 months then last past, or shall have been the subject of a report by the commissioners in pursuance of the provision lastly hereinbefore contained, it shall be lawful for the Lord Chancellor (1) to direct that one of the said Masters in Lunacy shall, and thereupon one of the said Masters shall personally examine such person, and shall take such evidence and call for such information as to such Master shall seem necessary to satisfy him whether such person is a lunatic, and shall report thereon to the Lord Chancellor, and such report shall be filed with the secretary of lunatics; and it shall be lawful for the Lord Chancellor from time to time to make orders for the appointment of a guardian, or otherwise for the protection, care, and management of the person of any person who shall by any such report as last aforesaid be found to be a lunatic, and such guardian shall have the same powers and authorities as a committee of the person of a lunatic found such by inquisition now has, and also to make orders for the appointment of a receiver or otherwise for the protection, care, and management of the estate of such lunatic, and such receiver shall have the same powers and authorities as a receiver

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fees payable under the said last mentioned Act, and be applied as part of such last mentioned fees.

And to remove doubts which had arisen whether the 8 & 9 Vic. c. 100, extended to authorize a receiver appointed under sec. 95 of the Act to receive dividends on Government or Bank Stock or Annuities standing in the name of the idiot, lunatic, or person of unsound mind, an Act 15 & 16 Vic. c. 48, was passed, which enacted:

Sec. 4. Every receiver of the estate of such lunatic as aforesaid already appointed, or who may be hereafter appointed under the powers in the said last recited Act (8 & 9 Vic. c. 100), shall have full power to demand and to receive, and to give effectual receipts for, the dividends due or to become due of any stock belonging to the lunatic.

Sec. 5. 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 such acts and things shall not be questioned or impeached in any court of law or equity to their prejudice or detriment.

Sec. 6. The person or persons for the time being intrusted as aforesaid (*i. e.* intrusted by virtue of the Queen's sign manual with the care and commitment of the custody of the persons and estates of persons found idiot, lunatic, and of unsound mind) may, by order upon a petition, direct the receiver to make such repairs and improvements of or upon the land of the lunatic, or to make to the tenant executing the same such allowance in respect thereof by and out of the lunatic's income, and also to make and execute such contracts, agreements, leases, or underleases of or concerning the same as may seem expedient for the preservation or increase of the income, and every act done according to such direction as aforesaid shall be valid and binding to all intents, and upon all persons whomsoever.

Sec. 7. In the construction of those provisions of this Act which refer to the secondly-mentioned Act (8 & 9 Vic. c. 100) the words "land," "stock," and "dividends" respectively shall be interpreted as is provided for the like words in the first mentioned Act (11 Geo. 4 & 1 Wm. 4, c. 65, s. 28).

(1) *Sec.* 114.

of the estate of a lunatic found such by inquisition now has, and also to make orders for the application of the income of such lunatic, or a sufficient part thereof, for his maintenance and support, and in payment of the costs, charges, and expenses attending the protection, care, and management of the person and estate of such lunatic, and also as to the investment or other application for the purpose of accumulation of the overplus, if any, of such income, for the use of such lunatic, as to the Lord Chancellor shall from time to time in each case seem fit: Provided always, that such protection, care, and management shall continue only during such time as such lunatic shall continue to be detained as a lunatic upon an order and certificates or certificate as aforesaid, and for such further time, not exceeding six months, as the Lord Chancellor may fix: Provided also, that it shall be lawful for the Lord Chancellor in any such case, either before or after directing such inquiry by such Master as aforesaid, and whether such Master shall have made a report as aforesaid or not, to direct a commission in the nature of a writ *de lunatico inquirendo* to issue to inquire of the lunacy of such person.

Sec. XCVI. Such Masters shall have power in the prosecution of all inquiries and matters which may be referred to them as aforesaid or otherwise under this Act to summon persons before them, and to administer oaths, and take evidence either *vivâ voce* or on affidavit, and to require the production of books, papers, accounts, and documents; and the Lord Chancellor (1) may by any order (either general or particular) refer to the said Masters any inquiries under the provisions of this Act relating to the person and estate of any lunatic (2) as to whom a report shall be made by a Master as aforesaid in like manner as inquiries relating to the persons and estates of lunatics found such by inquisition are now referred to them.

Sec. XCVII. It shall be lawful for the Lord Chancellor (3) from time to time to make such orders as shall to him seem fit for regulating the form and mode of proceeding before the Lord Chancellor and before the said Masters, and of any other proceedings pursuant to the provisions of this Act for the due protection, care, and management of the persons and estates of lunatics (4) as to whom such reports shall be made by the said Masters as aforesaid; and also for fixing, altering, and discontinuing the fees to be received and taken in respect of such proceedings as to the Lord Chancellor shall from time to time seem fit: Provided, nevertheless, that all fees to be so received and taken shall be paid into the Bank of England, and placed to the credit of the Accountant-General of the Court of Chancery to the account intituled "The Suitors' Fee Fund Account," in like manner as and together with the fees payable under the Act passed in the fifth and sixth years of Her present Majesty, intituled "An Act to alter and amend the Practice and course of Proceeding under Commissions in the nature of Writs *de Lunatico Inquirendo*," and be applied in like manner as such last-mentioned fees.

Sec. XCVIII. The travelling and other expenses of the said Masters and their clerks shall be paid to them by virtue of any order or orders of the Court of Chancery out of the said fund, intituled

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(1) *Sec.* 114. (2) *Sec.* 114. (3) *Sec.* 114. (4) *Sec.* 114.

"The Suitors' Fee Fund Account," in the same manner as their expenses under the said last-mentioned Act.

Sec. XCIX. Every proprietor (1) and superintendent of a licensed house (2) or registered hospital, (3) and every other person hereby or by any of the Acts hereinbefore repealed, authorized to receive or take charge of a lunatic (4) upon an order, and who shall receive or has received a proper order in pursuance of this Act, or any of the said repealed Acts, accompanied with the required medical certificates or certificate for the reception or taking charge of any person as a lunatic, and the assistants and servants of such proprietor, superintendent, or other person shall have power and authority to take charge of, receive, and detain such patient(5) until he shall die or be removed or discharged by due authority; and in case of the escape at any time or times of such patient to retake him at any time within 14 days after such escape, and again to detain him as aforesaid; and in every writ, indictment, information, action, and other proceeding which shall be preferred or brought against any such proprietor, superintendent, or other person authorized as aforesaid, or against any assistant or servant of any such proprietor, superintendent, or authorized person, for taking, confining, detaining, or retaking any person as a lunatic, the party complained of may plead such order and certificates or certificate in defence to any such writ, indictment, information, action, or other proceeding as aforesaid, and such order and certificates or certificate shall, as respects such party, be a justification for taking, confining, detaining, or retaking such lunatic or alleged lunatic.

The proprietor of a licensed house detaining a wife on the statutory certificates is not liable to her husband in trespass for such detainer though the wife be sane; the husband's remedy is by application to the commissioners.(6)

Sec. C. It shall be lawful for the commissioners, or any two of them, and also for the visitors of any licensed house, (7) or any two of such visitors, from time to time, as they shall see occasion, to require, by summons under the common seal of the commission, if by the commissioners, and if by two only of the commissioners or by two visitors, then under the hands and seals of such two commissioners or two visitors, as the case may be, (according to the form in schedule (I) annexed to this Act, or as near thereto as the case will permit,) any person to appear before them to testify on oath the truth touching any matters respecting which such commissioners and visitors respectively are by this Act authorized to inquire (which oath such commissioners or visitors are hereby empowered to administer); and every person who shall not appear before such commissioners or visitors pursuant to such summons, or shall not assign some reasonable excuse for not so appearing, or shall appear and refuse to be sworn or examined, shall, on being convicted thereof before one of Her Ma-

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(1) *Sec.* 114. (2) *Sec.* 114. (3) *Sec.* 114. (4) *Sec.* 114.
(5) *Sec.* 114. (6) *Norris* v. *Seend*, 3 Exch. 782. (7) *Sec.* 114.

jesty's justices(1) for the county(2) or borough(3) within which the place at which such person shall have been by such summons required to appear and give evidence is situate, shall for every such neglect or refusal forfeit a sum not exceeding £50.(4)

Sec. CI. It shall be lawful for any commissioners or visitors who shall summon any person to appear and give evidence as aforesaid to direct the secretary of the commissioners or the clerk of such visitors, as the case may be, to pay to such person all reasonable expenses of his appearance and attendance in pursuance of such summons, the same to be considered as expenses incurred by such commissioners and visitors respectively in the execution of this Act, and to be taken into account and paid accordingly.

Sec. CII. Every complaint or information of or for any offence against this Act, where any pecuniary penalty is hereby imposed (except when hereby otherwise provided for), may be made before one justice;(5) and when any person shall be charged upon oath before a justice for any such offence against this Act, such 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 (either personally or by leaving the same at his last or usual place of abode), any two justices may either proceed to hear and determine the case or may issue their warrant for apprehending such person and bringing him before any two justices, and any two justices shall and may upon the appearing of such person pursuant to such summons, or upon such person being apprehended with such warrant, or upon the nonappearance of such person, hear the matter of every such complaint or information, and make any such determination thereon, as such justices shall think proper, and upon conviction of any person, such justices may if they shall think fit reduce the amount of the penalty by this Act imposed for such offence to any sum not less than one-fourth of the amount thereof, and shall and may issue a warrant under their hands and seals for levying such penalty or reduced penalty and all costs and charges of such summons, warrant and hearing, and all incidental costs and charges by distress and sale of the goods and chattels of the person so convicted, and it shall be lawful for any such two 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 security to the satisfaction of such justices by way of recognizance or otherwise for his appearance before such 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; but if upon the return of such warrant or distress it shall appear that no sufficient distress can be had whereupon to levy the said penalty, and such costs and charges as aforesaid, and the same shall not be paid forthwith, or in case it shall appear to the satisfaction of such justices either by the confession of the offender or otherwise that the offender hath not sufficient goods and chattels whereupon the said penalty, costs, and charges,

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(1) *Sec.* 114. (2) *Sec.* 114. (3) *Sec.* 114. (4) *Sec.* 106. (5) *Sec.* 114.

may be levied, such justices shall and may by warrant under their hands and seals commit such offender to the common gaol or house of correction for any term not exceeding three calendar months, unless such penalty and all such costs and charges as aforesaid shall be sooner paid; and all such penalties when recovered shall be paid when the complaint or information shall be laid or brought by or by the direction of the commissioners to the secretary of the commissioners to be by him applied and accounted for as hereinbefore (1) directed with respect to monies received for licences granted by the commissioners, and when the complaint or information shall be laid or brought by the direction of any visitors to the clerk of the peace (2) for the county (3) or borough (4) to be by him applied and accounted for as hereinbefore directed with respect to monies received for licences granted by the justices of such county or borough, and the overplus (if any) arising from such distress and sale after payment of the penalty and all costs and charges as aforesaid shall be paid upon demand to the owner of the goods and chattels so distrained.

Sec. CIII. The justices (5) before whom any person shall be convicted of any offence against this Act for which a pecuniary penalty is imposed may cause the conviction to be drawn up in the following form, or in any other form to the same effect, as the case may require; and 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 [*or* borough] of A.B. was convicted before
'us of Her Majesty's justices of the peace for the
'said county [*or* borough], for that he the said
'did and we the said adjudge the
'said for his offence to pay the sum of .'

Sec. CIV. Any person who shall think himself aggrieved by any order or determination of any justices (6) under this Act may, within four calendar months after such order made or given, appeal to the justices at general or quarter sessions, 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, 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 at general or quarter sessions, upon the proof of such notice and recognizance having been given and entered into, shall in a summary way hear and determine such appeal, or, if they think proper, adjourn the hearing thereof until the next general or quarter sessions, and, if they see cause, may mitigate any penalty to not less than one fourth of the amount imposed by this Act, 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

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(1) *Sec.* 33. (2) *Sec.* 114. (3) *Sec.* 114.
(4) *Sec.* 114. (5) *Sec.* 114. (6) *Sec.* 114.

judge reasonable and proper; and all such determinations of the said justices at general or quarter sessions shall be final, binding, and conclusive upon all parties to all intents and purposes whatsoever.

Sec. CV. If any action or suit shall be brought against any person for anything done in pursuance of this Act or of any of the Acts hereby repealed, the same shall be commenced within 12 calendar months next after the release of the party bringing the action, and shall be laid or brought in the county (1) or borough (2) where the cause of action shall have arisen, and not elsewhere; and the defendant in every such action or suit 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 or borough than as aforesaid, or shall not have been commenced within the time before limited for bringing the same, 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 double costs, and have such remedy for recovering the same as any defendant hath or may have in any other cases by law.

Sec. CVI. It shall be lawful for the secretary of the commissioners on their order to prosecute any person for any offence against the provisions of this Act, and to sue for and recover any penalty to which any person is made liable by this Act; and all penalties sued for and recovered by such secretary shall be paid to him, and be by him applied and accounted for as hereinbefore (3) directed, with respect to monies received for licences granted by the commissioners; and it shall be lawful for the clerk of any visitors on their order to prosecute any person for any offence against the provisions of this Act committed within the jurisdiction of such visitors, and to sue for and recover any penalty to which any person within the jurisdiction of such visitors is made liable by this Act; and all penalties sued for and recovered by any such clerk shall be paid to him, and be by him paid to the clerk of the peace (4) for such county (5) or borough, (6) and be by such clerk of the peace applied and accounted for as hereinbefore (7) directed, with respect to monies received for licences by such clerk of the peace; and it shall not be lawful for any one to prosecute any person for any offence against the provisions of this Act, or to sue for any penalty to which any person is made liable by this Act, except by order of the commissioners or of visitors having jurisdiction in the place where the cause of prosecution has arisen, or the penalty been incurred, or with the consent of Her Majesty's Attorney-General or Solicitor-General for England for the time being.

Sec. CVII. That notwithstanding the repeal of the several Acts hereinbefore repealed, every offence heretofore committed against

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(1) *Sec.* 114. (2) *Sec.* 114. (3) *Sec.* 33. (4) *Sec.* 114.
(5) *Sec.* 114. (6) *Sec.* 114. (7) *Sec.* 33.

any of the provisions of any of the same Acts may be prosecuted; and every penalty heretofore incurred by any person for any offence against the provisions of any of the same Acts may be sued for and recovered by the secretary of the commissioners in the same manner and with all the same powers and rights as if such offence had been committed or such penalty incurred for an offence against the provisions of this Act, and every penalty so recovered shall be applied in the same manner as a penalty recovered for an offence against the provisions of this Act.

Sec. CVIII. When any person shall be proceeded against under the provisions of this Act for omitting to transmit or send any copy, list, notice, statement, or other document hereinbefore required to be transmitted or sent by such person, and such person shall prove by the testimony of one witness upon oath (1) that the copy, list, notice, statement, or document in respect of which such proceeding is taken was put into the post in due time, or (in case of documents required to be transmitted or sent to the commissioners or a clerk of the peace) left at the office of the commissioners or of the clerk of the peace, and shall have been properly addressed, such proof shall be a bar to all further proceeding in respect of such omission.

Sec. CIX. The costs, charges, and expenses incurred by or under the authority or order of the commissioners in proceedings under this Act shall be paid by the secretary of the commissioners, and included by him in the account of receipts and payments hereinbefore (2) directed to be kept by him; and the costs, charges, and expenses incurred by or under the order of any visitors in proceedings under this Act shall be paid by the clerk of the peace (3) of their county (4) or borough, (5) and included by him in the account of receipts and payments hereinbefore (6) directed to be kept by him.

Sec. CX. Two or more of the commissioners, one at least of whom shall be a physician or surgeon, and one at least a barrister, shall and may, once or oftener in each year, on such day or days, and at such hours of the day, and for such length of time as they shall think fit, visit every asylum (7) for lunatics, (8) and every gaol in which there shall be or alleged to be any lunatic, and shall inquire whether the provisions of the law have been carried out as to the construction of each asylum visited, and as to its visitation and management, and also as to the regularity of the admissions and discharges of patients (9) therein and therefrom; and whether divine service is performed therein; and whether any system of coercion is in practice therein, and the result thereof; and as to the classification or nonclassification of patients therein, and the number of attendants on each class; and as to the occupations and amusements of the patients, and the effects thereof; and as to the condition, as well mental as bodily, of the pauper patients when first received; and also as to the dietary of the pauper (10) patients; and shall also make such other inquiries as to every or any such asylum, and

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(1) *Sec.* 114. (2) *Sec.* 34. (3) *Sec.* 114. (4) *Sec.* 114.
(5) *Sec.* 114. (6) *Sec.* 37. (7) *Sec.* 114. (8) *Sec.* 114.
(9) *Sec.* 114. (10) *Sec.* 114.

all such inquiries as to the lunatics in any gaol, as to such visiting commissioners shall seem meet.

Sec. CXI. repealed.(1)

Sec. CXII. It shall be lawful for the Lord Chancellor (2) in the case of any lunatic (3) under the care of a committee appointed by the Lord Chancellor, and for the Lord Chancellor or Her Majesty's principal Secretary of State for the Home Department in the case of any lunatic under the care of any person receiving or taking the charge of such one lunatic only, and deriving no profit from the charge, and in the case of any person confined as a State lunatic or as a lunatic under the order of any criminal Court of justice, and in the case of every other person detained or taken charge of as a lunatic, or represented to be a lunatic, or to be under any restraint as a lunatic, at any time by an order in writing under the hand of the Lord Chancellor or the said Secretary of State, as the case may be, directed to the commissioners or any of them, or to any other person, (4) to require the persons or person to whom such order shall be directed, or any of them, to visit and examine such lunatic or supposed lunatic, and to make a report to the Lord Chancellor or to Her Majesty's principal Secretary of State for the Home Department of such matters as in such order shall be directed to be inquired into.

The authority conferred by this section on the Lord Chancellor and the principal Secretary of State for the Home Department is it seems of a ministerial, not judicial nature. (5)

Sec. CXIII. It shall be lawful for the Lord Chancellor(6) or Her Majesty's principal Secretary of State for the Home Department to employ any commissioner appointed under this Act, or other person, to inspect or inquire into the state of any asylum, (7) hospital, (8) gaol, house, or place, wherein any lunatic (9) or person represented to be lunatic shall be confined, or alleged to be confined, and to report to him the result of such inspection and inquiry; and every such person so employed, and not being a commissioner, may be paid such sum of money for his attendance and trouble as to the Lord Chancellor or Her Majesty's principal Secretary of State for the Home Department shall seem reasonable; and every such person so employed, whether a commissioner or not, shall be allowed his reasonable travelling or other expenses while so employed, and such sum of money for attendance and trouble and such expenses shall be charged on and shall be paid out of the contingency fund of the Home Office. (10)

Sec. CXIV. In this Act and the schedules hereto the words and expressions following shall have the several meanings hereby assigned

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(1) 16 & 17 *Vic. c.* 96, *s.* 28. (2) *Sec.* 114. (3) *Sec.* 114.
(4) 16 & 17 *Vic. c.* 96, *ss.* 33, 34, *post.*
(5) 9 *Geo.* 4, *c.* 41, *ss.* 39, 42; *Re Knight*, L. J. Ch. 1831, 230.
(6) *Sec.* 114. (7) *Sec.* 114. (8) *Sec.* 114. (9) *Sec.* 114.
(10) 16 & 17 *Vic. c.* 96, *ss.* 33, 34.

to them, unless there shall be something in the subject or context repugnant to such construction (that is to say):

"Borough" shall mean every borough, town, and city corporate having a separate quarter sessions, recorder, and clerk of the peace.

"County" shall mean every county, riding, division of a county, county of a city, county of a town, liberty, and other place having a separate commission of the peace, and not being a "borough" within the meaning aforesaid.

"The Lord Chancellor" shall mean the Lord High Chancellor, the Lord Keeper, or Commissioners of the Great Seal of Great Britain, and other the person or persons for the time being intrusted, by virtue of the Queen'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.

"Barrister" shall mean a barrister and a serjeant-at-law; and a serjeant-at-law who shall have been called to the bar five years or more before his appointment to be a commissioner shall be considered as a barrister of five years standing.

"Lunatic" shall mean every insane person, and every person being an idiot or lunatic or of unsound mind.

"Parish" shall mean any parish, township, hamlet, vill, tithing, extra-parochial place, or place maintaining its own poor.

"Officiating clergyman of a [*or* the] parish" shall mean a clergyman regularly officiating and acting as the minister or one of the ministers of a parish, chapelry, or ecclesiastical district.(1)

"Borough rate" shall mean a borough rate, and any funds assessed upon or raised in or belonging to any borough in the nature of a borough rate, and applicable to the purposes to which borough rates are applicable.

"County rate" shall mean a county rate, and any funds assessed upon or raised in or belonging to any county in the nature of a county rate, and applicable to the purposes to which county rates are applicable.

"Pauper" shall mean every person maintained wholly or in part at the expense of any parish, union, county, or borough.

"Patient" shall mean every person received or detained as a lunatic, or taken care or charge of as a lunatic.

"Private patient" shall mean every patient who is not a pauper.

"Proprietor" shall mean every person to whom any licence has been granted under the provisions of any Act hereby repealed, or shall be granted under the provisions of this Act, and every person keeping, owning, having any interest or exercising any duties or powers of a proprietor in any licensed house.

"Clerk of the peace" shall mean every clerk of the peace and person acting as such, and every deputy duly appointed.

"Medical attendant" shall mean every physician, surgeon, and apothecary who shall keep any licensed house, or shall in his medical capacity attend any licensed house, or any asylum, hospital, or other place where any lunatic shall be confined.

"Justice" shall mean a justice of the peace.

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(1) 16 & 17 *Vic. c.* 96, *s.* 36.

"Asylum" shall mean any lunatic asylum already erected and established under an Act passed in the 48th 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 or which have been made subject or liable to any of the provisions of an Act passed in the 9th 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, or hereafter to be erected and established under the provisions of any Act for the erection or regulation of county or borough lunatic asylums.

"Hospital" shall mean any hospital, or part of a hospital, or other house or institution (not being an asylum) wherein lunatics are received and supported wholly or partly by voluntary contributions, or by any charitable bequest or gift, or by applying the excess of payments of some patients for or towards the support, provision, or benefit of other patients.

"Licensed house" shall mean a house licensed under the provisions of this Act, or of some Act hereby repealed for the reception of lunatics.

"Oath" shall mean an oath and every affirmation or other declaration or solemnity lawfully substituted for an "oath" in the case of Quakers or other persons exempted by law from the necessity of taking an oath. Words importing the singular number shall include the plural number; and words importing the plural number shall include the singular number; and words importing the masculine gender shall include females.

Sec. CXV. For the purposes of this Act every borough and county shall include every place situate within the limits of such borough or county, and not having a separate commission of the peace; and for the purposes of this Act every place situate within the limits of any borough or county, and not having a separate commission of the peace, shall be within the jurisdiction of the justices of such borough or county; and the justices of every borough shall, for the purposes of this Act, assemble in special sessions at such times as the quarter sessions for such borough shall be holden; and all acts hereinbefore required to be done by the justices of counties in general or quarter sessions assembled may be done by the justices of boroughs at such special sessions.

Sec. CXVI. repealed. (1)

Sec. CXVII. This Act shall extend only to England and Wales.

Sec. CXVIII. This Act may be amended or repealed by any Act to be passed in this present session of Parliament.

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(1) 16 & 17 *Vic. c.* 96, *s.* 35.

SCHEDULES REFERRED TO BY THE FOREGOING ACT.

SCHEDULE (A), Section 30.

Form of Licence.

Know all men, that we, the Commissioners in Lunacy [*or* we the undersigned justices of the peace, acting in and for in general [*or* quarter *or* special] sessions assembled], do hereby certify that A. B. of in the parish of in the county of hath delivered to us [*or* the clerk of the peace] a plan and description of a house and premises proposed to be licensed for the reception of lunatics, situate at in the county of [*or, in the case of a renewed licence,* hath delivered to us [*or* the clerk of the peace] a list of the number of patients now detained in a house and premises licensed on the day of last, for the reception of lunatics, situate at in the county of], and we, having considered and approved the same, do hereby authorize and empower the said A.B. (he intending [*or* not intending] (1) to reside therein) to use and employ the said house and premises for the reception of male [*or* female, *or* male and female] lunatics, of whom not more than shall be private patients, for the space of calendar months from this date.

Sealed with our common seal [*or* given under our hands and seals], this day of in the year of our Lord 18 .

Witness,
Y. Z., secretary to the Commissioners of Lunacy, [*or* clerk of the peace].

SCHEDULE (B), Section 45.

Order for the Reception of a Private Patient.

Repealed. (2)

SCHEDULE (C), Section 45.

Form of Medical Certificate in the Case of Private Patients.

Repealed. (3)

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(1) See 16 & 17 *Vic. c.* 96, *s.* 2.
(2) 16 & 17 *Vic. c.* 96, *ss.* 3, 4, and *Schedule* (*A*), *No.* 1, to that Act.
(3) 16 & 17 *Vic. c.* 96, *ss.* 3, 4, and *Schedule* (*A*), *No.* 2, to that Act.

SCHEDULE (D), Section 48.

Order for the Reception of a Pauper Patient.

Repealed. (1)

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(1) 16 & 17 *Vic. c.* 96, *ss.* 3, 7, and *Schedules* (*B*), *No.* 1, *No.* 2, to that Act.

REGISTRY (

Register

Date of last previous Admission (if any).	No. in Order of Admission.	Date of Admission.	Christian and Surname at Length.	Sex and Class.				Age.	Condition as to Marriage.			Condition of Life, and previous Occupation.	Previous Place of Abode.	County, Union, or
				Private.		Pauper.								
				M.	F.	M.	F.		Married.	Single.	Widowed.			
	1	1846: Jan 3	William Johnson -	-	-	1	-	23	-	1	-	Carpenter	-	-
	2													
	3													
	4	1848: June 9	William Johnson -	-	-	1	-	25	-	1	-	- -	-	-
	5													
	6													
	7	1852: May 6	William Johnson -	-	-	1	-	29	1	-	-	- -	-	-
	8													

OMISSIONS.

ntients.

sent.	Dates of Medical Certificates, and by whom signed.	Bodily Condition.	Name of Disorder (if any).	Form of Mental Disorder.	Supposed Cause of Insanity.	Epileptics.	Congenital Idiots.	Duration of existing Attacks. Years.	Months.	Weeks.	Number of previous Attacks.	Age on First Attack.	Date of Discharge or Death.	Discharged. Recovered.	Relieved.	Not improved.	Died.	Observations.
- -	- -	-	-	Melancholia	-	-	-	-	4	-	2	17	1846: Sept. 1.	1				
- -	- -	-	-	- - -	-	-	-	7	-	-	3	-	1848: Dec. 2.	1				
- -	- -	-	-	- - -	-	-	-	3	-	-	4	-	1853: June 8.					

SCHEDULE (F), Section 52.

Notice of Admission.

Repealed. (1)

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(1) 16 & 17 *Vic. c.* 96, *s.* 24, and *Schedule* (*C*) to that Act.

SCHEDULE (G 1), Section 54.

Register of Discharges and Deaths.

Date of Discharge or Death.	Date of last Admission.	No. in Register of Patients.	Christian and Surname at Length.	Sex and Class.				Discharged.						Died.		Assigned cause of Death.	Age at Death.		Observations.
				Private.		Pauper.		Recovered.		Relieved.		Not Improved.							
				M.	F.	M.	F.	M.	F.	M.	F.	M.	F.	M.	F.		M.	F.	
1846: Sept. 1.	1846: Jan. 3.	1	William Johnson -	-	-	1	-	1	-	-	-	-	-	-	-				
1848: Dec. 2.	1848: June 9.	4	William Johnson -	-	-	1	-	1	-	-	-	-	-	-	-				
1853: June 8.	1852: May 6.	7	William Johnson -	-	-	1	-	-	-	-	-	-	-	1	-	Phthisis.	27		

SCHEDULE (G 2), Section 54.

Form of Notice of Discharge or Death.

I hereby give you notice, that a private [*or* pauper] patient, received into this house [*or* hospital] on the day of was discharged therefrom recovered [*or* relieved, *or* not improved], by the authority of [*or* died therein, on the day of]

(Signed)
Superintendent [*or* proprietor] of house [*or* hospital] at

Dated this day of , 18 .

In case of death, add, "and I further certify, that A. B. was present at the death of the said ; and that the apparent cause of death of the said [ascertained by *post mortem* examination (*if so*)] was ."

SCHEDULE (H), Section 59.

Form of Medical Journal and Weekly Report.

Repealed. (1)

SCHEDULE (I), Section 100.

Form of Summons.

We, the Commissioners in Lunacy [*or* we whose names are hereunto set and seals affixed, being two of the Commissioners in Lunacy or visitors], appointed under or by virtue of an Act passed in the year of the reign of Her present Majesty, intituled [*here insert the title of the Act*], 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

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(1) 16 & 17 *Vic. c.* 96, *s.* 25, and *Schedule* (*D*) to that Act.

day, and then and there to be examined and to testify the truth touching certain matters relating to the execution of the said Act.

Sealed with the common seal of the "Commissioners in Lunacy" [*or* given under our hands and seals] this day of 18 .

The Act 16 & 17 Vic. c. 96, which is entitled, "*An Act to amend an Act passed in the 9th year of Her Majesty for the regulation of the Care and Treatment of Lunatics,*" is to the following effect:—

Sec. I. Section 25 of the said recited Act (1) shall be repealed, and any one licence to be granted for the reception of lunatics may in the discretion of the commissioners or justices granting such licence include two or more houses belonging to one proprietor, or to two or more joint proprietors, provided that no one of such houses be separated from the other or others of them otherwise than by land in the same occupation, and by a road, or by either of such modes; and all houses, buildings, and lands intended to be included in any licence, shall be specified, delineated, and described in the plan required by 8 & 9 Vic. c. 100, s. 24.

Sec. II. No person having, after the passing of the said recited Act, (2) received for the first time a licence for the reception of lunatics, (3) or hereafter receiving for the first time such licence, shall receive a licence unless he shall reside on the premises licensed; and no two or more persons having after the passing of the said recited Act received for the first time a joint licence for the reception of lunatics, or hereafter receiving for the first time such licence, shall receive such licence unless they or one of them shall reside on the premises licensed.

Sec. III. Sections 45, 46, 47, 48, and 49 of the said recited Act (4) shall be repealed; but such repeal shall not prevent or defeat any prosecution for any offence committed before the commencement of this Act, and every such offence shall and may be prosecuted, and every pending prosecution continued, as if this Act had not been passed.

Sec. IV. Save as hereinafter otherwise provided, no person (not being a lunatic) (5) for or in respect of whom any money shall be paid or agreed to be paid, shall be boarded or lodged in any licensed house; (6) and, save where otherwise provided or authorized under this or any other Act, no person (not being a pauper) (7) shall be received as a lunatic into any licensed house or hospital (8) without an order under the hand of some person according to the form in Schedule (A), No. 1, annexed to this Act, together with such statement of particulars as is contained in the same schedule, nor without the medical cer-

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(1) 8 & 9 *Vic. c.* 100.
(2) 8 & 9 *Vic. c.* 100.
(3) 8 & 9 *Vic. c.* 100, *s.* 114.
(4) 8 & 9 *Vic. c.* 100.
(5) 8 & 9 *Vic. c.* 100, *s.* 114.
(6) *Ibid.* (7) *Ibid.* (8) *Ibid.*

tificates, according to the form in Schedule (A), No. 2, annexed to this Act, of two persons, each of whom shall be a physican, surgeon, or apothecary,(1) and shall not be in partnership with or an assistant to the other, and each of whom shall separately from the other have personally examined(2) the person to whom the certificate signed by him relates not more than seven clear days previously to the reception of such person into such house or hospital; and such order as aforesaid may be signed before or after the medical certificates or either of them; and every person who shall receive any such person as aforesaid into any such house or hospital as aforesaid (save where otherwise provided or authorized under this or any other Act) without such order and medical certificates as aforesaid, shall be guilty of a misdemeanor.

Sec. V. Provided always, that any person (not a pauper)(3) may, under special circumstances preventing the examination of such person by two medical practitioners as aforesaid, be received as a lunatic(4) into any licensed house(5) or any hospital(6) upon such order as aforesaid, and with the certificate of one physician, surgeon, or apothecary(7) alone, provided that the statement accompanying such order set forth the special circumstances which prevent the examination of such person by two medical practitioners; but in every such case two other such certificates shall, within three clear days after his reception into such house or hospital, be signed by two other persons, each of whom shall be a physician, surgeon, or apothecary, not in partnership with or an assistant to the other, or the physician, surgeon, or apothecary who signed the certificate on which the patient was received, and not connected with such house or hospital, and shall within such time and separately from the other of them have personally examined the person so received as a lunatic; and every person who, having received any person as a lunatic into any house or hospital as aforesaid upon the certificate of one medical practitioner alone as aforesaid, shall keep or permit such person to remain in such house or hospital beyond the said period of three clear days without such further certificates as aforesaid, shall be guilty of a misdemeanor.

Sec. VI. Provided also, that it shall be lawful for the proprietor(8) or superintendent of any licensed house,(9) with the previous assent in writing of two of the commissioners, such assent not to be given until after such commissioners have by personal examination of the patient(10) satisfied themselves of his desire to remain, to entertain and keep in such house as a boarder any person who may have been discharged as a patient from such house for such time after such discharge as he may desire to remain, not exceeding the time specified in such assent, and also for the benefit of any patient in such house, and with the previous assent in writing of two of the commissioners, to receive and accommodate as a boarder therein, for a time to be specified in the assent, any relative or friend of such patient, and any two of the commissioners may from time to time,

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(1) *Sec.* 36. (2) *R.* v. *Jones*, 2 B. & Ad. 611.
(3) 8 & 9 *Vic c.* 100. *s.* 114. (4) *Ibid.* (5) *Ibid.* (6) *Ibid.*
(7) *Sec.* 36. (8) 8 & 9 *Vic. c.* 100, *s.* 114. (9) *Ibid.* (10) *Ibid.*

by any writing under their hands, extend or revoke any such assent as aforesaid; and every such patient so retained after discharge, and every such relative or friend so accommodated, shall, if required, be produced to the commissioners and visitors respectively at their respective visits.(1)

Sec. VII. Save where otherwise provided or authorized under any Act, no pauper(2) shall be received into any licensed house(3) or any hospital(4) without an order according to the form in schedule (B), No. 1, annexed to this Act, under the hand of one justice,(5) or under the hands of an officiating clergyman,(6) and the relieving officer or one of the overseers of the union or parish from which such pauper shall be sent, together with such statement of particulars as is contained in the same schedule, nor without the medical certificate, according to the form in schedule (B), No. 2, annexed to this Act, of a physician, surgeon, or apothecary,(7) who shall have personally examined the pauper to whom it relates not more than seven clear days previously to his reception; and every person who shall receive any pauper into such house or hospital as aforesaid (save where otherwise provided or authorized under any Act), without such order and medical certificate as last aforesaid, shall be guilty of a misdemeanor: Provided always, that this enactment shall not, by implication or otherwise, give any power or authority to make such order, or extend, alter, or affect any power or authority expressly given by any Act to any justice, officiating clergyman, relieving officer, or overseer, to make or join in making any such order or any provisions giving or relating to such power or authority.

Sec. VIII. Where under section 90 of the said recited Act,(8) the like order and medical certificates are required on the reception or taking the charge or care of any one person as a lunatic,(9) or alleged lunatic, as are thereinbefore required on the reception of a patient(10) (not being a pauper)(11) into a licensed house,(12) the like order and medical certificates (in lieu of those required as first aforesaid) shall hereafter be required on the reception or taking the charge or care of any such person as are by this Act required on the reception of a patient (not being a pauper) into a licensed house.

Sec. IX. If any superintendent,(13) officer, nurse, attendant, servant, or other person employed in any registered hospital(14) or licensed house,(15) or any person having the care or charge of any single patient,(16) or any attendant of any single patient in any way abuse or illtreat, or wilfully neglect any patient in such hospital or house, or such single patient, or if any person detaining or taking or having the care or charge, or concerned or taking part in the custody, care, or treatment of any lunatic(17) or person alleged to be a lunatic, in any way abuse, illtreat, or wilfully neglect such lunatic or alleged lunatic, he shall be guilty of a misdemeanor, and shall be subject to indictment for every such offence, or to forfeit

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(1) 18 & 19 *Vic. c.* 105, *s.* 16. (2) 8 & 9 *Vic. c.* 100, *s.* 114.
(3) *Ibid.* (4) *Ibid.* (5) *Ibid.* (6) *Sec.* 36. (7) *Ibid.*
(8) 8 & 9 *Vic. c.* 100. (9) 8 & 9 *Vic. c.* 100, *s.* 114.
(10) *Ibid.* (11) *Ibid.* (12) *Ibid.* (13) *Ibid.* (14) *Ibid.*
(15) *Ibid.* (16) *Ibid.* (17) *Ibid.*

for every such offence on a summary conviction thereof before two justices any sum not exceeding £20.(1)

The words "person having the care or charge of any lunatic" in this section do not apply to a person having the care or charge of one *non compos mentis* by virtue of marital or parental relation.(2)

Sec. X. Every physician, surgeon, and apothecary,(3) signing any certificate under or for the purposes of this Act, shall specify therein the facts upon which he has formed his opinion that the person to whom such certificate relates is a lunatic, an idiot, or a person of unsound mind, and distinguish in such certificate facts observed by himself from facts communicated to him by others, and no person shall be received into any registered hospital (4) or licensed house, (5) or as a single patient, (6) under any certificate which purports to be founded only upon facts communicated by others.

This section is not directory. (7)

Sec. XI. If after the reception of any lunatic (8) it appear that the order or the medical certificate, or (if more than one) both or either of the medical certificates, upon which he was received, is or are in any respect incorrect or defective, such order and medical certificate or certificates may be amended by the person signing the same at any time within 14 days next after the reception of such lunatic: Provided nevertheless, that no such amendment shall have any force or effect unless the same shall receive the sanction of one or more of the commissioners.

Sec. XII. No physician, surgeon, or apothecary (9) who, or whose father, brother, son, partner, or assistant, is wholly or partly the proprietor of, or a regular professional attendant in, a licensed house (10) or a hospital, (11) shall sign any certificate for the reception of a patient into such house or hospital; and no physician, surgeon, or apothecary shall himself, or by his servants or agents, receive to board or lodge in any unlicensed house, or take the charge or care of any person upon or under any medical certificate signed by himself or his father, brother, son, partner, or assistant, and no physician, surgeon, or apothecary having (either before or after the passing of this Act) signed any certificate for the reception of any person, shall be the regular professional attendant of such person while under care or charge under such certificate; and no physician, surgeon, or apothecary who, or whose father, brother, son, partner, or assistant, shall sign the order hereinbefore required for the reception of a patient, shall sign any certificate for the reception of the same patient.

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(1) 8 & 9 *Vic. c.* 100, *s.* 106.
(2) *R.* v. *Rundle*, 6 Cox Cr. Ca. 549.
(3) *Sec.* 36.
(4) 8 & 9 *Vic. c.* 100, *s.* 114.
(5) *Ibid.*
(6) *Sec.* 36.
(7) *Re Shuttleworth*, 9 Q. B. 651. Sir J. Coleridge, J., in *R.* v. *Pinder*, 24 Law J. Q. B. 148; 8 & 9 *Vic. c.* 100, *s.* 46; *Re Fell*, 3 Dowl. & L. 373.
(8) 8 & 9 *Vic. c.* 100, *s.* 114.
(9) *Sec.* 36.
(10) 8 & 9 *Vic. c.* 100, *s.* 114.
(11) *Ibid.*

Sec. XIII. Any physician, surgeon, or apothecary (1) who shall sign any certificate, or do any other act (not declared to be a misdemeanor) contrary to any of the provisions herein contained, shall for every such offence forfeit any sum not exceeding £20; (2) and any physician, surgeon, or apothecary who shall falsely state or certify anything in any certificate under this Act, and any person who shall sign any certificate under this Act in which he shall be described as a physician, surgeon, or apothecary, not being a physician, surgeon, or apothecary respectively within the meaning of this Act, shall be guilty of a misdemeanor.

Sec. XIV. It shall be lawful for the commissioners, by an order under their common seal, where they see fit so to do, to permit the visitation of any single patient (3) by a physician, surgeon, or apothecary (4) less frequently than once in every two weeks, as required by section 90 of the said recited Act, (5) and to prescribe from time to time how often any single patient shall be visited by such a physician, surgeon, or apothecary as therein mentioned; but where such visitation of any single patient, so often as once in every two weeks, is so dispensed with, and such patient is in the care or charge of a physician, surgeon, or apothecary, such physician, surgeon, or apothecary shall once at the least in every two weeks make an entry in a book to be kept for that purpose to be called "The Medical Journal" of the condition of the patient's health, both mental and bodily, together with the date of such entry, and such book shall be produced to the visiting commissioner on every visit, and shall be signed by him as having been so produced, and every such physician, surgeon, or apothecary, who shall make an untrue entry in the said book shall be guilty of a misdemeanor.

Sec. XV. It shall be lawful for one or more of the visitors appointed in or for any county (6) or borough (7) under the said recited Act, (8) upon the request in writing of the commissioners or any two of them under their hands so to do, to visit any person detained in any unlicensed house in such county or borough as a single patient (9) and to inquire into and report to the commissioners on the treatment and state of health bodily and mental of such patient, and to inspect the order and certificates on which such person was received and the provisions of the said recited Act, (10) for and concerning the remuneration or payment of any such visitor being a physician, surgeon, or apothecary, (11) in respect of the execution of the duties of that Act, and for the payment of the costs, charges, and expenses incurred by any visitor in proceedings under that Act, shall extend and be applicable to and for the remuneration or payment of any visitor being a physician, surgeon, or apothecary, visiting as aforesaid any single patient, and to and for the payment of the costs, charges, and expenses incurred by any visitor in or about such visit as aforesaid.

Sec. XVI. Every physician, surgeon, and apothecary, (12) who visits any single patient, (13) or under whose care or charge any single

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(1) *Sec.* 36. (2) 8 & 9 *Vic. c.* 100, *s.* 106. (3) *Sec.* 36.
(4) *Ibid.* (5) 8 & 9 *Vic. c.* 100. (6) 8 & 9 *Vic. c.* 100, *s.* 114.
(7) *Ibid.* (8) 8 & 9 *Vic. c.* 100. (9) *Sec.* 36.
(10) 8 & 9 *Vic. c.* 100. (11) *Sec.* 36. (12) *Ibid.* (13) *Ibid.*

patient shall be, shall on the 10th day of January or within seven days from that time in every year report in writing to the commissioners the state of health bodily and mental of such patient, with such other circumstances as he may deem necessary to be communicated to the commissioners; and it shall be lawful for the commissioners at any other time, and from time to time as they see occasion, to call from and require from any such physician, surgeon, or apothecary, a report in writing relative to any single patient visited by him or under his care or charge, in such form and specifying such particulars as the commissioners may direct.

Sec. XVII. The provisions contained in secs. 72 and 73 of the said recited Act, (1) for the discharge of patients (2) (not being paupers) (3) from licensed houses (4) shall extend and be applicable to and for the discharge of any single patient: (5) Provided always, that this enactment shall not extend to authorize the discharge of any single patient, if the physician, surgeon, or apothecary, (6) who has the care or charge of or visits such patient certify in writing under his hand that in his opinion such patient is dangerous, and unfit to be at large, together with the grounds on which such opinion is founded, unless one of the commissioners shall consent in writing to the discharge of such patient.

Sec. XVIII. It shall be lawful for the Lord Chancellor, (7) upon the report of the Commissioners in Lunacy, to order the discharge of any person received or detained as a single patient, (8) or to give such orders and directions in reference to such patient as the Lord Chancellor shall think fit; and any person detaining any such patient for the space of three days after a copy of such order for his discharge shall have been served on him, or left at the house in which such person so ordered to be discharged is detained, shall be guilty of a misdemeanor.

Sec. XIX. The superintendent or proprietor (9) of every registered hospital (10) and licensed house, (11) and every person having the care or charge of any single patient, (12) shall forthwith, upon the recovery of any patient in such hospital or house, or of such single patient, transmit notice of such recovery in the case of a patient not a pauper (13) to the person who signed the order for his reception, or by whom the last payment on account of such patient was made, and in the case of a pauper to the guardians of his union or parish, or if there be no such guardians to one of the overseers of the poor of his parish, or if such pauper be chargeable to any county to the clerk of the peace (14) thereof; and in case such patient be not discharged or removed within fourteen days from the giving of such notice, such superintendent, proprietor, or person as aforesaid shall immediately after the expiration of such period transmit notice of the recovery of such patient to the commissioners, and also in the case of a licensed house within the jurisdiction of any visitors to the clerk of such

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(1) 8 & 9 *Vic. c.* 100. (2) 8 & 9 *Vic. c.* 100, *s.* 114.
(3) *Ibid.* (4) *Ibid.* (5) *Sec.* 36. (6) *Ibid.*
(7) 8 & 9 *Vic. c.* 100, *s.* 114. (8) *Sec.* 36.
(9) 8 & 9 *Vic. c.* 100. *s.* 114. (10) *Ibid.* (11) *Ibid.*
(12) *Sec.* 36. (13) 8 & 9 *Vic. c.* 100, *s.* 114. (14) *Ibid.*

visitors, with the date of the notice firstly in this enactment mentioned; and where notice is so given to the clerk of any visitors he shall forthwith communicate the same to the visitors or two of them, one of whom shall be a physician, surgeon, or apothecary;(1) and in case of the death of any patient in any hospital or licensed house, a statement setting forth the time and cause of the death, and the duration of the disease of which such patient died, shall be prepared and signed by the medical person or persons who attended the patient during the illness which terminated in death, and such statement shall be entered in "The Case Book," and a copy of such statement certified by the superintendent or proprietor shall, within two days of the date of the death, be transmitted to the coroner for the county (2) or borough, (3) and in case such coroner after receiving such statement shall think that any reasonable suspicion attends the cause and circumstances of the death of such patient, he shall summon a jury to inquire into the cause of such death.

Sec. XX. Any person having authority to order the discharge of any patient (4) (not being a pauper) (5) from any asylum, (6) registered hospital, (7) or licensed house, (8) or of any single patient, (9) may, with the previous consent in writing of two of the commissioners, direct, by an order in writing under his hand, the removal of such patient to any asylum, registered hospital, or licensed house, or to the care or charge of any person mentioned or named in such order; and every such order and consent shall be made and given respectively in duplicate, and one of the duplicates shall be delivered to and left with the superintendent or proprietor (10) of the asylum, hospital, or house from which, or the person from whose care or charge the patient is ordered to be removed, and the other duplicate shall be delivered to and left with the superintendent or proprietor of the asylum, (11) hospital, (12) or house into which, or the person into whose care or charge the patient is ordered to be removed; and such order for removal, together with such consent in writing, shall be a sufficient authority for the removal of such patient, and also for his reception into the asylum, registered hospital, or licensed house (13) into which, or by the person into whose care or charge he is ordered to be removed: Provided always, that a copy of the order and certificates upon which such patient was received into the asylum, hospital, or house from which he is removed, or as a single patient, (14) by the person from whose care he is removed, certified under the hand of the superintendent or proprietor (15) of such asylum, hospital, or house, or of such person as last aforesaid, to be a true copy, shall be furnished by him free of expense, and shall be delivered with one duplicate of the said order of removal and consent, to the superintendent or proprietor of the asylum, hospital, or house to which, or to the person to whose care or charge such patient is removed.

Sec. XXI. Every person from whose care or charge any single patient (16) shall be discharged shall transmit to the commissioners a

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(1) *Sec.* 36. (2) 8 & 9 *Vic. c.* 100, *s.* 114. (3) *Ibid.*
(4) *Ibid.* (5) *Ibid.* (6) *Ibid.* (7) *Ibid.*
(8) *Ibid.* (9) *Sec.* 36. (10) 8 & 9 *Vic. c.* 100, *s.* 114.
(11) *Ibid.* (12) *Ibid.* (13) *Ibid.*
(14) *Sec.* 36. (15) 8 & 9 *Vic. c.* 100, *s.* 114. (16) *Sec.* 36.

written notice of such discharge within the like period and under the like penalty for default, as by the said recited Act (1) is required and provided in the case of the discharge of a patient (2) from a licensed house. (3)

Sec. XXII. It shall be lawful for any person having the care or charge of a single patient (4) to change his residence, and remove such patient to any new residence of such person, in England, provided that seven clear days before such change of residence he give notice in writing thereof, and of the place of such new residence, to the commissioners and to the person who signed the order for the reception of such patient, or by whom the last payment on account of such patient was made; and it shall be lawful for any person having the care or charge of any single patient, having first obtained the consent of two of the commissioners, to take or send such patient, under proper control, to any specified place or places, for any definite time, for the benefit of his health: Provided always, that before any such consent shall be given, the approval in writing of the person who signed the order for the reception of such patient, or by whom the last payment on account of such patient was made, shall be produced to such commissioners, unless they shall, on cause being shown, dispense with the same.

Sec. XXIII. Where any person has already been received as a lunatic (5) under order and certificates, and shall be detained thereunder, and where any person shall hereafter be in like manner received and detained, and the commissioners represent to the Lord Chancellor that it is desirable that the extent and nature of his income should be ascertained, and the application thereof, the Lord Chancellor may, if he think fit, through the registrar in lunacy, require that the person signing the order, or other the person paying for the care and maintenance of the lunatic or having the management of the property, shall transmit to the Lord Chancellor a statement in writing, to the best of his knowledge, of the particulars of the property and income of the lunatic and of the application of the income.

Sec. XXIV. The notice of admission and statement mentioned or referred to in sec. 52 of the said recited Act, (6) shall hereafter be according to the form mentioned in schedule (C) annexed to this Act, in lieu of the form set forth in schedule (F) to the said recited Act; and such statement shall be signed by the medical superintendent, proprietor, (7) or attendant (8) of the hospital (9) or licensed house (10) from which the same is sent, and the said notice and statement shall be accompanied by a copy of the several documents mentioned in the said notice.

Sec. XXV. The Medical Visitation Book mentioned in section 59 of the said recited Act (11) shall henceforth be kept in the form set forth in schedule (D) annexed to this Act, in lieu of the form set forth in schedule (H) to the said recited Act; and the said

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(1) 8 & 9 *Vic. c.* 100. (2) 8 & 9 *Vic. c.* 100, *s.* 114. (3) *Ibid.*
(4) *Sec.* 36. (5) 8 & 9 *Vic. c.* 100, *s.* 114.
(6) 8 & 9 *Vic. c.* 100. (7) 8 & 9 *Vic. c.* 100, *s.* 114. (8) *Sec.* 36.
(9) 8 & 9 *Vic. c.* 100, *s.* 114. (10) *Ibid.*
(11) 8 & 9 *Vic. c.* 100.

section shall be construed as if the particulars mentioned in the several heads of the said form in the said schedule (D) had by the said section been required to be entered in the said book in lieu of the particulars mentioned in the said section.

Sec. XXVI. The superintendent or proprietor (1) of every registered hospital (2) or licensed house (3) shall, within one week after the dismissal for misconduct of any nurse or attendant (4) employed in such hospital or house, transmit to the commissioners by the post information in writing under his hand of such dismissal, and of the cause thereof; and every superintendent or proprietor neglecting to transmit such information to the commissioners within the period aforesaid, shall, for every such offence, forfeit any sum not exceeding £10. (5)

Sec. XXVII. Section 89 of the said recited Act, (6) constituting from among the commissioners a private committee for the purposes in the said Act mentioned shall be repealed, and all the powers vested in, and all the provisions of the said Act applicable to the said private committee, or one or two members thereof, shall be vested in and be applicable to the commissioners, or one commissioner, or two commissioners (as the case may require), as if where in the said Act the said private committee, or one member or two members thereof (as the case may be), is or are mentioned or referred to, the commissioners, or one commissioner, or two commissioners (as the case may require), had been mentioned or referred to instead thereof.

Sec. XXVIII. Section 111 of the said recited Act, (7) shall be repealed, and any one or more of the commissioners shall and may on such day or days, and at such hours in the day and for such length of time as he or they shall think fit, visit all such parish and union-workhouses in which there shall be, or be alleged to be, any lunatic, (8) as the commissioners shall by any resolution or resolutions of the board direct, and shall inquire whether the provisions of the law as to lunatics in such parish or union have been carried out; and also as to the dietary, accommodation, and treatment of the lunatics in such workhouses, and shall report in writing thereon to the poor law board.

Sec. XXIX. It shall be lawful for the commissioners where, for any reasons to be entered upon the minutes of the board, (9) any case appears to them specially to call for immediate investigation, to authorize and direct, by an order under their common seal, any competent person or persons to visit and examine and report to them upon the mental and bodily state and condition of any lunatic (10) or alleged lunatic in any asylum, (11) hospital, (12) or licensed house, (13) or of any pauper lunatic (14) in a workhouse or elsewhere, or of any lunatic or alleged lunatic under the care or charge of any person as a single patient, (15) and to inquire into and report upon any matters into which the commissioners are authorized to inquire; and every such person shall, for the special purposes mentioned in such order, have all the powers of a commissioner; and the commissioners may allow to every such

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(1) 8 & 9 *Vic. c.* 100, *s.* 114. (2) *Ibid.* (3) *Ibid.* (4) *Sec.* 36.
(5) 8 & 9 *Vic. c.* 100, *s.* 106. (6) 8 & 9 *Vic. c.* 100. (7) *Ibid.*
(8) 8 & 9 *Vic. c.* 100, *s.* 114. (9) *Sec.* 36.
(10) 8 & 9 *Vic. c.* 100, *s.* 114. (11) *Ibid.*
(12) *Ibid.* (13) *Ibid.* (14) *Ibid.* (15) *Sec.* 36.

person a reasonable sum for his services and expenses, such sum to be paid in manner provided by the said recited Act (1) with regard to expenses incurred by or under the authority of the commissioners in proceedings thereunder; but this enactment shall not be taken to exonerate the commissioners from the performance of any duty by law imposed on them.

Sec. XXX. The committee having the management or government of every registered hospital (2) shall, within three months after the passing of this Act, in the case of every hospital now registered, and within three months after the registration of every hospital hereafter to be registered under the said recited Act, (3) submit the existing regulations, or regulations to be framed by such committee, to one of Her Majesty's principal Secretaries of State, for his approval, and any such committee may, with the like approbation, alter and vary such regulations as they think necessary; and all such regulations so approved shall be printed, abided by, and observed, and a copy thereof shall be sent to the commissioners, and another copy thereof kept hung up in the visitors' room of the hospital.

Sec. XXXI. It shall be lawful for the commissioners, with the sanction and approbation of one of Her Majesty's principal Secretaries of State, from time to time to make regulations for the government of any house licensed for the reception of lunatics; (4) and such regulations of the commissioners, or a copy thereof, shall be transmitted by their secretary to the proprietor (5) or resident superintendent of every licensed house to which the same relate, and shall be abided by and observed therein.

Sec. XXXII. The report required by section 88 of the said recited Act, (6) to be made by the commissioners to the Lord Chancellor in the month of June in every year of the state and condition of the several houses, hospitals, asylums, and other places visited by them under that Act, and of the care of the patients therein, and of such other particulars as they think deserving of notice, shall be made in or before the month of March in every year, and shall be made up to the end of the preceding year.

Sec. XXXIII. The provision in section 113 of the said recited Act, (7) for and concerning the payment for attendance and trouble of any person (not being a commissioner) employed under that enactment, and of the travelling or other expenses of any person so employed, and as to the fund out of which such payment is to be made, shall extend and be applicable to and in the case of any person (not being a commissioner) required to visit and examine any lunatic or supposed lunatic under section 112 of the said recited Act. (8)

Sec. XXXIV. Any person who wilfully obstructs the commissioners, or any of them, or any other person authorized by an order in writing under the hand of the Lord Chancellor, or Her Majesty's principal Secretary of State for the Home Department, pursuant to the provisions of section 112 or 113 of the said recited Act, (9) to visit

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(1) 8 & 9 *Vic. c.* 100.
(2) 8 & 9 *Vic. c.* 100, *s.* 114.
(3) 8 & 9 *Vic. c.* 100.
(4) 8 & 9 *Vic. c.* 100, *s.* 114.
(5) *Ibid.* (6) 8 & 9 *Vic. c.* 100. (7) *Ibid.* (8) *Ibid.* (9) *Ibid.*

and examine any lunatic (1) or supposed lunatic, or to inspect or inquire into the state of any asylum, (2) hospital, (3) gaol, house, or place wherein any lunatic or person represented to be lunatic is confined or alleged to be confined in the execution of such order; and any person who wilfully obstructs any person authorized under this Act by any order of the commissioners to make any visit and examination or inquiry in the execution of such order shall (without prejudice to any proceedings, and in addition to any punishment to which such person obstructing the execution of such order would otherwise be liable) forfeit for every such offence any sum not exceeding £20.(4)

Sec. XXXV. Section 116 of the said recited Act (5) shall be repealed, and the Royal Hospital of Bethlehem shall henceforth be subject to the provisions of the said recited Act, and of this Act in the same manner as if the same had not been exempted from the said recited Act, and shall be forthwith registered as an hospital accordingly in pursuance of section 43 of the said recited Act.

Sec. XXXVI. In the construction of the said recited Act,(6) and of this Act the words "physician," "surgeon," and "apothecary," shall respectively mean a physician, surgeon, and apothecary duly authorized or licensed to practise as such by or as a member of some college, university, company, or institution legally constituted and qualified to grant such authority or licence in some part of the United Kingdom, or having been in practice as an apothecary in England or Wales on or before the 1st day of August, 1815, and being in actual practice as such physician, surgeon, or apothecary; the expression "officiating clergyman of the parish" shall include the chaplain of the workhouse of the same parish, or of the workhouse of the union to which such parish belongs; the expression "single patient" shall mean any person received or taken charge of as a lunatic under section 90 of the said recited Act, or under such section as amended by this Act; and the expression "attendant" shall mean any person, whether male or female, who shall be employed either wholly or partially in the personal care, control, or management of any lunatic in any registered hospital or licensed house, or of any single patient; and in the construction of this Act the word "board," as used in relation to the commissioners in lunacy, shall mean any three or more of the commissioners assembled at a meeting convened in pursuance of section 16 of the said recited Act, or holden under any order or rule for the time being in force made under section 70 of the said recited Act, for regulating the duties of the commissioners.

Sec. XXXVII. The said recited (7) Act, and this Act, shall be construed together as one Act, and a Queen's printers' copy of this Act shall be bound up in the "Visitors' Book" of every hospital and licensed house together with the said recited Act.

Sec. XXXVIII. Nothing in this Act shall affect the provisions of any of the following Acts (that is to say), an Act of the session holden in the 39th and 40th years of King George the Third, chapter 94;

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(1) 8 & 9 *Vic. c.* 100, *s.* 114.
(2) *Ibid.*
(3) *Ibid.*
(4) 8 & 9 *Vic. c.* 100, *s.* 106.
(5) 8 & 9 *Vic. c.* 100.
(6) *Ibid.*
(7) *Ibid.*

an Act of the session holden in the 1st and 2d years of Her Majesty, chapter 14; and an Act of the session holden in the 3d and 4th years of Her Majesty, chapter 54, or any other provisions concerning criminal lunatics, save as hereinafter provided; that is to say, it shall be lawful for one of Her Majesty's principal Secretaries of State to issue his warrant to remove or discharge any insane person who shall be in custody under the provisions of the said Act of the 3d and 4th years of Her Majesty, chapter 54, provided it shall be duly certified to such Secretary of State, by two physicians or surgeons, that such insane person was harmless, and might be discharged from restraint as an insane person without danger to himself or to others in like manner as if it had been certified to such Secretary of State that such person had become of sound mind, anything in the said Act or any other Act to the contrary thereof in anywise notwithstanding.

Sec. XXXIX. And whereas by the said recited Act,(1) it is provided that every person to be appointed in the room of any commissioner being a barrister of five years' standing at the bar and upwards, shall be a practising barrister of not less than five years standing at the bar: And whereas it is expedient to amend the said provisions as hereinafter mentioned, the present or any future secretary to the commissioners, if at the time of his appointment to be such secretary he was or shall have been a practising barrister of not less than five years' standing at the bar, shall be eligible to be appointed a commissioner in the room of any such commissioner as aforesaid.

Sec. XL. This Act shall commence and come into operation on the 1st day of November, 1853.

SCHEDULES TO THE FOREGOING ACT.

Schedule (A), No. 1; Sections 4, 8.

Order for the Reception of a Private Patient.

I, the undersigned, hereby request you to receive A. B., a lunatic [*or* an idiot, *or* a person of unsound mind], as a patient into your house [*or* hospital]. Subjoined is a statement respecting the said A. B.

(Signed) Name.
Occupation (if any).
Place of abode.
Degree of relationship (if any) or other circumstance of connection with the patient.

Dated this day of one thousand eight hundred and

To proprietor [*or* superintendent] of [*describing the house or hospital by situation and name, if any*].

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(1) 8 & 9 *Vic. c.* 100.

STATEMENT.

[*If any particulars in this statement be not known, the fact to be so stated.*]

Name of patient, with christian name at length.
Sex and age.
Married, single, or widowed.
Condition of life and previous occupation (if any).
The religious persuasion as far as known.
Previous place of abode.
Whether first attack.
Age (if known) on first attack.
When and where previously under care and treatment.
Duration of existing attack.
Supposed cause.
Whether subject to epilepsy.
Whether suicidal.
Whether dangerous to others.
Whether found lunatic by inquisition, and date of commission or order for inquisition.
Special circumstances (if any) preventing the patient being examined, before admission, separately by two medical practitioners.

(Signed) Name.

[*Where the person signing the statement is not the person who signs the order, the following particulars concerning the person signing the statement are to be added; viz.,*]

Occupation (if any).
Place of abode.
Degree of relationship (if any) or other circumstances of connection with the patient.

SCHEDULE (A), No. 2; Sections 4, 5, 8, 10, 11, 12, 13.

Form of Medical Certificate.

I, the undersigned [*here set forth the qualification entitling the person certifying to practise as a physician, surgeon, or apothecary, ex. gra.*, being a fellow of the Royal College of Physicians in London], and being in actual practice as a [physician, surgeon, or apothecary, *as the case may be*], hereby certify that I, on the day of at [*here insert the street and number of the house (if any) or other like particulars*] in the county of separately from any other medical practitioner, personally examined A. B., of [*insert residence and profession or occupation, if any*], and that the said A. B. is a lunatic, [*or* an idiot, *or* a person of unsound mind], and a proper person to be taken charge of and

detained under care and treatment, and that I have formed this opinion upon the following grounds, viz.:

1. Facts indicating insanity observed by myself [*here state the facts*].
2. Other facts (if any) indicating insanity communicated to me by others [*here state the information, and from whom*].

(Signed)

Place of abode.

Dated this day of one thousand eight hundred and

A medical certificate is invalid under this Schedule if it omits to state any of the particulars which the Act requires, and no person can be legally detained under it.(1)

SCHEDULE (B), No. 1; Section 7.

Order for the Reception of a Pauper Patient.

I, C. D. [*or*, in the case of a clergyman and relieving officer, &c., We, C. D. and E. F.,], the undersigned, having called to my [*or* our] assistance a physician [*or* surgeon, *or* apothecary, *as the case may be*], and having personally examined A. B. a pauper, and being satisfied that the said A. B. is a lunatic, [*or* an idiot, *or* a person of unsound mind,] and a proper person to be taken charge of and detained under care and treatment, hereby direct you to receive the said A. B. as a patient into your house [*or* hospital]. Subjoined is a statement respecting the said A. B.

(Signed) C. D., a justice of the peace for the county, city, or borough of [*or* an, *or* the, officiating clergyman of the parish of].

(Signed) E. F., the relieving officer of the union or parish of [*or* an overseer of the parish of].

Dated the day of one thousand eight hundred and .

To proprietor [*or* superintendent] of [*describing the house or hospital*].

STATEMENT.

[*If any particulars in this statement be not known, to be so stated.*]

Name of patient and christian name at length.
Sex and age.
Married, single, or widowed.

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(1) *R.* v. *Pinder*, 24 Law J. Q. B. 148.

Condition of life and previous occupation (if any).
The religious persuasion as far as known.
Previous place of abode.
Whether first attack.
Age (if known) on first attack.
When and where previously under care and treatment.
Duration of existing attack.
Supposed cause.
Whether subject to epilepsy.
Whether suicidal.
Whether dangerous to others.
Parish or union to which the lunatic is chargeable.
Name and christian name and place of abode of nearest known relative of the patient, and degree of relationship (if known).

I certify that, to the best of my knowledge, the above particulars are correctly stated.

(Signed) relieving officer [*or* overseer].

SCHEDULE (B), No. 2; Sections 7, 10, 11, 12, 13.

Form of Medical Certificate.

I, the undersigned [*here set forth the qualification entitling the person certifying to practise as a physician, surgeon, or apothecary, ex. gr.*, being a fellow of the Royal College of Physicians in London], and being in actual practice as a [physician, surgeon, *or* apothecary, *as the case may be*], hereby certify that I, on the day of at (1) [*here insert the street and number of the house (if any) or other like particulars*], in the county of , personally examined A. B. of [*insert residence and profession or occupation, if any*], and that the said A. B. is a [lunatic, *or* an idiot, *or* a person of unsound mind], and a proper person to be taken charge of and detained under care and treatment, and that I have formed this opinion upon the following grounds, viz.: (2)

1. Facts indicating insanity observed by myself (3) [*here state the facts*].
2. Other facts (if any) indicating insanity communicated to me by others [*here state the information, and from whom*].

(Signed)

Place of abode.

Dated this day of one thousand eight hundred and

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(1) *R.* v. *Pinder*, 24 Law J. Q. B. 148,; s. c. 25 Law T. 86, & 19 Jur. 522. See also *R.* v. *Minster*, 14 Q. B. 349.
(2) See *Legeyt* v. *O'Brien*, Milw. 340.
(3) Lord Tenterden, C.J., in *Arderdon* v. *Burrows*, 4 C. & P. 213.

SCHEDULE (C), Section 24.

Notice of Admission.

I hereby give you notice that A. B. was admitted into this house [*or* hospital] as a private [*or* pauper] patient on the day of and I hereby transmit a copy of the order and medical certificates [*or* certificate] on which he was received. [*If a private patient be received upon one certificate only, the special circumstances which have prevented the patient from being examined by two medical practitioners to be here stated as in the statement accompanying the order for admission.*] Subjoined is a statement with respect to the mental and bodily condition of the above-named patient.

(Signed)
Superintendent [*or* proprietor] of
Dated the day of one thousand eight hundred and

STATEMENT.

I have this day [*some day not less than two clear days after the admission of the patient*] seen and examined the patient mentioned in the above notice, and hereby certify that with respect to mental state he [*or* she] and that with respect to bodily health and condition he [*or* she]

(Signed)
Medical proprietor [*or* superintendent, *or* attendant] of
Dated the day of one thousand eight hundred and

SCHEDULE (D), Section 25.

Form of Medical Visitation Book.

Date.	Number and Class of Patients.				Patients who are, or since the last Entry have been, under Restraint, or in Seclusion, when, and for what Period, and Reasons, and, in Cases of Restraint, by what Means.				Patients under Medical Treatment, and for what (if any) bodily Disorder.		Deaths, Injuries, and Violence to Patients since the last Entry.
	Private.		Pauper.		Restraint.		Seclusion.				
	M.	F.	M.	F.	Males.	Females.	Males.	Females.	Males.	Females.	

The Act 18 & 19 Vic. c. 105, amending the Acts 8 & 9 Vic. c. 100, and 16 & 17 Vic. c. 96, is set forth in the next chapter, to which it seems more properly to belong.

The remarks of Sir J. Coleridge, J., in *R.* v. *Pinder*, on 16 & 17 Vic. c. 96, deserve attention. He remarked: "I cannot help perceiving, in reference to this and preceding statutes upon the same subject, that the Legislature has proceeded in them with the double object of protecting the public and lunatics real or supposed; facilitating in many respects the reception of persons dangerous to themselves or others or of unsound mind into asylums where they will be properly restrained and treated, yet guarding both their reception and continuance there with great and it cannot be denied with proper jealousy, to secure persons placed there from being improperly treated there with harshness or inconsiderateness or detained there unnecessarily. Now, multiplied and minute forms are among the means, perhaps the necessary means, by which the desired objects are attained; they are specially a protection to the real or supposed lunatic; and if neglect of any prescribed form be permitted, no one can say that some measure of that protection may not thereby be weakened or made incomplete; and any reluctance to yield anything in this direction as regards the enactments and schedules in question is increased by this, that we have now to deal with a statute which was passed in 1852, in order to amend a former statute of 8 & 9 Vic. c. 100, passed in 1845; and it is obvious that some of the amendments, at least, are framed with a desire of increasing in efficacy and enforcing compliance with the protecting provisions created by the former statute in favour of those who are dealt with as of unsound mind."

As to the repayment of money expended *bonâ fide* for the protection of an idiot lunatic or person of unsound mind, see *antè*, p. 18. (1)

The Act 11 Geo. 4, and 1 Wm. 4, c. 20, s. 70, (2) reciting "that many cases occur of officers of the Royal Navy and Royal Marines, and of seamen and marines, entitled to pay, half-pay, pension or prize money, becoming insane or lunatic, in which it is

(1) See also *Co. Litt.* 206 b; *Viner's Abr. Cond. K.* a, *pl.* 10.
(2) 17 & 18 *Vic. c.* 19, *s.* 13.

not deemed by their relatives expedient, by reason of the expense and of there being no other monies or estate to administer, to take measures according to law for obtaining a commission of lunacy, and that it is expedient that the monies accruing due to them should be advanced for their support," enacts: "That in any of such cases, when it shall be made appear to the Treasurer of the Navy or to the Paymaster of Royal Marines, as the case may be, by satisfactory evidence, that any officer, seaman, or marine, is insane, lunatic, or otherwise from his state of mind incompetent to the management of his affairs, it shall be lawful for the said treasurer or paymaster to pay over to the wife, relative, or other person having the care and maintenance of such incompetent person, such monies as shall become payable, or such portion thereof as the Lord High Admiral or the Commissioners for executing the office of Lord High Admiral aforesaid shall think fit, to be applied towards the maintenance and support of such incompetent person; and every payment so made shall be deemed good and valid, and be allowed to the said treasurer and paymaster respectively in their accounts.

Idiots, lunatics, or persons of unsound mind, though they be not paupers, may be admitted into county or borough lunatic asylums erected or provided under any of the Acts 48 Geo. 3, c. 96, 9 Geo. 4, c. 40, 8 & 9 Vic. c. 126, 9 & 10 Vic. c. 84, 10 & 11 Vic. c. 43, 16 & 17 Vic. c. 97; and the Act 16 & 17 Vic. c. 97, hereinafter set forth, has several provisions now in force relating to their maintenance and treatment while patients in such asylums. (1)

The Act 13 & 14 Vic. c. 101, s. 5, provides: "Where any married woman, being lunatic, shall be duly removed to any asylum, licensed house, or registered hospital, under any of the statutes in such behalf, any two justices having jurisdiction in the place wherein the husband of such lunatic shall dwell, upon application by or on behalf of the guardians of the union or of the parish having a separate board of guardians, or the overseers of the parish, to which union or parish respectively such lunatic shall be or become chargeable, may summon such

(1) 16 & 17 *Vic. c.* 97, *ss.* 4, 43, 63, 74, 83, 84, 85, 86, 88, 94, 104, 123, 124.

husband to appear before them to show cause why an order should not be made upon him to maintain or contribute towards the maintenance of his wife in such asylum, licensed house, or registered hospital; and upon his appearance, or in the event of his not appearing upon proof of due service of such summons upon him, such justices may (if they think fit) make an order upon him to pay such sum weekly or otherwise for or towards the costs of the maintenance of such lunatic as, after consideration of all the circumstances of the case, shall appear to them to be proper, and determine in such order how and to whom the payments shall from time to time be made, which order shall, if the payments required by it to be made be in arrear, be enforced in the manner prescribed by the statute passed in the 12th year of the reign of Her Majesty,(1) intituled '*An Act to facilitate the performance of the duties of justices of the peace within England and Wales with respect to summary convictions and orders,*' for the enforcing orders of justices requiring the payment of a sum of money."

The Act 16 & 17 Vic. c. 97, has also provisions (2) as to every idiot, lunatic, or person of unsound mind, wandering at large or not under proper care and control, or cruelly treated or neglected by any relative or other persons having the care or charge of him, whether the idiot, lunatic, or person of unsound mind, be or be not a pauper.

It seems that the procuring a conveyance and devise to be executed by a person of unsound mind is a fraud within 3 & 4 Wm. 4, c. 27, s. 26. (3) And a fraudulent marriage with an idiot, lunatic, or person of unsound mind is an offence punishable on information. (4)

By way of conclusion to this chapter, it may be observed, that on a question of giving or refusing christian burial to the body of a person (the subject of a *post mortem* inquisition), a clergyman should acquiesce in the verdict of the coroner's jury as to the state of such person's mind. (5)

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(1) 11 & 12 *Vic. c.* 43.
(2) 16 & 17 *Vic. c.* 97, *ss.* 68, 69, 70.
(3) *Lewis* v. *Thomas*, 3 Hare, 26.
(4) *Smart* v. *Taylor*, 9 Mod. 98.
(5) *Cooper* v. *Dodd*, 2 Rob. E. R. 270.

CHAPTER VI.

As to Paupers Idiot, Lunatic, or of unsound mind.

The treatment of paupers idiot, lunatic, or of unsound mind, has been the subject of several statutory enactments, and these have been consolidated by the Act 16 & 17 Vic. c. 97, amended by the Act 18 & 19 Vic. c. 105. The Act 16 & 17 Vic. c. 97, is entitled, "An Act to consolidate and amend the Laws for the Provision and Regulation of Lunatic Asylums for Counties and Boroughs, and for the Maintenance and Care of Pauper Lunatics in England," and is as follows :—

Sec. I. The following Acts, relating to lunatic asylums for counties and boroughs, and the maintenance and care of pauper lunatics, in England (that is to say), an Act of the session holden in the 8th and 9th years of Her Majesty, chapter 126, an Act of the session holden in the 9th and 10th years of Her Majesty, chapter 84, and an Act of the session holden in the 10th and 11th years of Her Majesty, chapter 43, shall be repealed ; but such repeal shall not interfere with or affect any appointment, salary, or annuity made or granted, or act done, or agreement or contract entered into or made, or prevent or defeat any prosecution or proceeding for any offence committed or any penalty or forfeiture incurred before the commencement of this Act, but every such agreement or contract shall and may (subject to the provisions hereinafter contained in relation thereto) be carried into effect and enforced, and every such offence prosecuted, and every such penalty and forfeiture sued for, recovered, and applied, and every pending prosecution or proceeding continued, in like manner as if this Act had not been passed.

Sec. II. The justices of every county[1] and (save as hereinafter[2] otherwise provided) of every borough[3] not having an asylum[4] for the pauper[5] lunatics[6] thereof, shall provide an asylum in manner herein directed (that is to say), the justices[7] of every such county and the recorder of every such borough shall at or before the general or quarter sessions for such county or borough next after the 20th day of December, 1853, direct public notice to be given by the clerk of the peace[8] of such county or borough, in some newspaper or newspapers commonly circulated in such county or borough, of the intention of

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(1) *Sec.* 132. (2) *Sec.* 8. (3) *Sec.* 132. (4) *Ibid.*
(5) *Ibid.* (6) *Ibid.* (7) *Ibid.* (8) *Ibid.*

the justices of such county or borough to appoint, at the then next general or quarter sessions for such county, or (in the case of a borough) at a special meeting of the justices of such borough to be fixed in such notice and to be holden within three months from the date thereof, a committee of justices to provide an asylum for the pauper lunatics of such county or borough, under the provisions of this Act; and the clerk of the peace of such county or borough shall, within 10 days after being so directed as aforesaid, cause such notice to be given accordingly. (1)

Sec. III. The justices(2) of every such county(3) and borough(4) respectively (such notice having been given as aforesaid(5) shall, at the then next general or quarter sessions for such county, or at such special meeting as aforesaid of the justices of such borough, either themselves determine in which of the modes hereinafter mentioned an asylum (6) shall be provided for such county or borough, or shall refer the selection to the committee to be appointed as hereinafter mentioned, and shall elect some justices of such county or borough to be a committee to provide such asylum, and may authorize such committee to provide such asylum in such of the modes hereinafter mentioned as the said justices shall have determined (that is to say), to superintend the erecting or providing of an asylum for the pauper (7) lunatics (8) of such county or borough for such county or borough alone, or to treat and enter into an agreement for uniting with any county or counties, borough or boroughs, alone or together with the subscribers to any hospital for the reception of lunatics established or in course of erection or afterwards to be established, or for uniting with any county or counties and borough or boroughs jointly, or jointly and also together with the subscribers to any such hospital as aforesaid, in erecting or otherwise providing an asylum under or for the purposes of this Act, as the justices appointing such committee may have determined, or in case the said justices appointing such committee think fit to refer the selection of the mode in which such asylum shall be provided to the committee, they may authorize such committee to provide such asylum in such of the modes aforesaid as to the committee may seem best; and any committee so authorized to treat and enter into an agreement may treat and enter into such agreement with any committee or committees having due authority in that behalf under this Act, or any former Act, for any county or counties, borough or boroughs, or on behalf of any such subscribers as aforesaid, and with any committee of visitors of any existing asylum, and whether or not any previous agreement for uniting may have been already entered into between some of the parties under this Act or any former Act; and by any such agreement to be entered into as aforesaid the several committees, parties thereto, may, to the extent of their authority, in lieu of agreeing to erect or provide an asylum, or in addition thereto, and in consideration of any payment in gross or of the payment of any sum in the nature of rent or otherwise, agree for the joint use of any existing asylum or hospital, and, where they think fit, for enlarging the same. (9)

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(1) 19 & 20 *Vic. c.* 87. (2) *Sec.* 132. (3) *Ibid.* (4) *Ibid.*
(5) *Sec.* 2. (6) *Sec.* 132. (7) *Ibid.* (8) *Ibid.*
(9) 18 & 19 *Vic. c.* 105, *ss.* 1, 2, 3 4.

Sec. IV. It shall be lawful for the major part of such of the subscribers to any such hospital as aforesaid as shall be present at any meeting of such subscribers called together expressly for this purpose by advertisement in a newspaper commonly circulated in the place where such hospital is or is intended to be situate, to elect any number of such subscribers not exceeding five to be a committee to treat and enter into an agreement for uniting with any county (1) or counties or borough (2) or boroughs alone, or any county or counties and borough or boroughs jointly, under and for the purposes of this Act; and where any such agreement has been or shall be entered into under any former Act or this Act, nothing in this Act shall prevent the reception into the asylum(3) provided under such agreement, or the discharge therefrom, of so many of any lunatics (4) other than pauper (5) lunatics as might have been received into such hospital or asylum if this Act had not been passed.

Sec. V. It shall be lawful for the committee of visitors of any asylum (6) already provided for any county (7) or borough, (8) alone or otherwise to enter into an agreement for uniting for the purposes of this Act with any county or counties, borough or boroughs, alone or together with the subscribers to any such hospital as aforesaid, or for uniting with any county or counties and borough or boroughs jointly, or jointly and also together with the subscribers to any such hospital.(9)

Sec. VI. Provided always, That where a committee has been appointed before the commencement of this Act for any county (10) or borough (11) for any of the purposes aforesaid, or proceedings have been taken for or towards the appointment of a committee for any of the said purposes, nothing herein contained shall render it necessary to proceed afresh to the appointment of a committee for any of such purposes; and any proceedings already taken as aforesaid shall remain in force and be continued; and all the provisions of this Act shall be applicable to any such committee already appointed or to be appointed under such proceedings in like manner as if such committee had been appointed under the provisions of this Act.

Sec. VII. Provided also, That it shall be lawful for the justices (12) of any such borough (13) as aforesaid, at such special meeting, if they think fit, in lieu of electing a committee to superintend the erecting or providing of an asylum, (14) or to treat for uniting, as hereinbefore mentioned, or to effect either of such purposes, to elect a committee of justices of such borough to contract with any committee of visitors of any existing asylum, or any committee providing or about to provide an asylum, whether for any county or borough, alone or otherwise, for the reception of the pauper (15) lunatics (16) of such first-mentioned borough into such asylum, in consideration of such payment in gross, or such annual or periodical payment, and upon and subject to such terms, stipulations, and conditions as to the duration and determination of the contract, and otherwise, as may be agreed upon;

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(1) *Sec.* 132. (2) *Ibid.* (3) *Ibid.* (4) *Ibid.*
(5) *Ibid.* (6) *Ibid.* (7) *Ibid.* (8) *Ibid.*
(9) *Sec.* 3, *antè*; and 18 & 19 *Vic. c.* 105, *s.* 1. (10) *Sec.* 132.
(11) *Ibid.* (12) *Ibid.* (13) *Ibid.* (14) *Ibid.*
(15) *Ibid.* (16) *Ibid.*

and it shall be lawful for any committee of visitors of any existing asylum, or any other such committee as last aforesaid, to contract with the committee for any such borough accordingly; and during the continuance of such contract the justices of such borough shall, at a special meeting of such justices to be holden within twenty days after the 20th day of December in every year, appoint a committee of such justices to visit the pauper lunatics sent from such borough to such asylum, and two at least of the members of such committee shall together once at the least in every six months visit such asylum, and see and examine as far as circumstances will permit every lunatic received into such asylum under such contract, and shall after each such visit report the result thereof, with such remarks as they think fit, to the justices of such borough at a special meeting of such justices; and the justices making any such visit may, if they see fit, be accompanied by some physician, surgeon, or apothecary,(1) other than a medical officer of the asylum; and such justices may by writing under their hands order the payment to such physician, surgeon, or apothecary of such reasonable sum for his services on any such visit as they may think fit, and such sum shall, upon the production of such order, be paid to such physician, surgeon, or apothecary by the treasurer of such borough;(2) and every report of such justices so visiting shall be entered among the records of the court of quarter sessions of such borough, and shall be open to the inspection of any of the Commissioners in Lunacy; and such commissioners may, if they think fit, require a copy of every or any such report to be transmitted to them by the clerk of the peace (3) of such borough; and while any such contract making adequate provision for the pauper lunatics of such borough is in force such borough shall not be required to provide an asylum for itself alone, or in union, as hereinbefore mentioned.

Sec. VIII. Provided also, That every borough (4) situate within a county(5) having an asylum (6) for pauper (7) lunatics,(8) and which at the time of the passing of the said Act of the 8th and 9th years of Her Majesty contributed and still contributes to such asylum, shall be considered as having an asylum for the pauper lunatics of such borough; but it shall be lawful for any such borough, at any time hereafter, upon giving six months' notice in writing under the hand of the town clerk, in pursuance of a resolution of the council of such borough, to the clerk of the peace (9) of the county, to separate itself, so far as relates to the establishment of a lunatic asylum for such county, and the maintenance of lunatics therein, from such county, and from and after the expiration of such notice such borough shall for the purposes of this Act be deemed a borough not having an asylum for the pauper lunatics thereof; and from and after the expiration of such notice, and the withdrawal from such county asylum of all lunatics from or belonging to such borough, such borough shall not be liable to pay or contribute towards the expense of the establishment of such asylum, or the maintenance of lunatics therein, but until the withdrawal from such county asylum of all lunatics from or

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(1) *Sec.* 132. (2) *Ibid.* (3) *Ibid.* (4) *Ibid.* (5) *Ibid.*
(6) *Ibid.* (7) *Ibid.* (8) *Ibid.* (9) *Ibid.*

belonging to such borough such borough shall be liable to contribute towards the expenses of such asylum, in the same manner and to the same extent as if such notice had not been given.

Sec. IX. Provided also, That every borough (1) in which, at the passing of the said Act of the 8th and 9th years of Her Majesty hereby repealed, there were not six justices (2) besides a recorder shall, for the purposes of this Act, be annexed to and be part of the county(3) in which it is wholly situate, or in case it be not wholly situate in any one county shall for the purposes of this Act be annexed to and be part of such one of the counties in which it is situate as such borough may have been annexed to under the said Act of the 8th and 9th years of Her Majesty, or if not already so annexed then the same shall be annexed to and be part of such one of the said counties as one of Her Majesty's principal Secretaries of State shall by writing under his hand direct; and the recorder of every such borough shall at the general or quarter sessions next after the 20th day of December in every year appoint two justices of such borough to be members of the committee of visitors of the asylum (4) of the county to which such borough is or shall be annexed; and the justices of every county to which any borough is or shall be annexed as aforesaid shall, at their general or quarter sessions, from time to time fix the sum to be contributed by such borough towards the expenses of and incident to erecting, providing, and maintaining the asylum of such county, according to the comparative population of such borough and county as stated in the then last returns made of the same under the authority of Parliament, and cause notice thereof in writing to be given to the treasurer of such borough,(5) and such sum shall be raised by a borough rate (6) to be made by the council of the borough in manner directed by the Act of the session holden in the 5th and 6th years of King William the Fourth, "to provide for the regulation of municipal corporations in England and Wales," or out of the borough fund, if the council think fit, and shall be paid by the treasurer of the borough to the treasurer of the asylum. (7)

Sec. X. If at any time after the expiration of one year after the passing of this Act it appear to one of Her Majesty's principal Secretaries of State, upon the report of the Commissioners in Lunacy, that the justices (8) of any borough (9) by this Act required to provide an asylum,(10) or contract for the care of the pauper(11) lunatics(12) thereof, have not provided an asylum, or entered into an agreement for that purpose, or into a subsisting contract making adequate provision for the care of the pauper lunatics thereof in some asylum, and that any asylum belonging wholly or in part to the county or any of the counties (if more than one) in which such borough is locally situate, either wholly or in part, is capable of affording accommodation for the pauper lunatics of such borough, or may be conveniently enlarged so as to afford such accommodation, it shall be lawful for such Secretary of State, with the consent of the committee of visitors of such asylum, by writing under his hand, to annex such borough for

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(1) *Sec.* 132. (2) *Ibid.* (3) *Ibid.* (4) *Ibid.* (5) *Ibid.*
(6) *Ibid.* (7) 18 & 19 *Vic. c.* 105, *s.* 7. (8) *Sec.* 132.
(9) *Ibid.* (10) *Ibid.* (11) *Ibid.* (12) *Ibid*

the purposes of this Act to such county; and the justices of every borough so annexed under this provision shall, at a special meeting of such justices to be holden within 20 days after the 20th day of December in every year, appoint two justices of such borough to e members of the committee of visitors of the asylum of the county to which such borough shall be annexed; and the provision in the enactment lastly hereinbefore contained in relation to the contribution by a borough annexed to a county under such enactment to the expenses of the asylum of such county, shall extend to any borough so annexed under this provision. (1)

Sec. XI. Where any committee has been appointed for any county (2) or borough (3) (whether before or after the passing of this Act) for any of the purposes hereinbefore mentioned, it shall be lawful for the justices (4) of such county or borough, if they think fit, at any general or quarter sessions for such county, or (in the case of a borough) at any special meeting of the justices of such borough, after like public notice as is required in the case of the first appointment of the committee, to enlarge or alter the powers of the committee so as to vest in the committee any such powers as might be vested in any committee on the original appointment thereof under this Act, and if the justices see fit so to do, to appoint additional members of the said committee, and every such committee shall have the like powers, and the provisions of this Act shall be applicable to such committee in like manner as if such committee had been originally appointed with the powers so vested in them under such enlargement or alteration of their powers.

Sec. XII. Where any committee appointed for any county (5) or borough (6) (either before or after the passing of this Act) for any of the purposes hereinbefore mentioned has ceased or shall hereafter cease to exist, without carrying into effect the purposes for which it was appointed, or if appointed for the purpose only of treating for uniting or of contracting as aforesaid, has reported or shall hereafter report that it is not practicable or expedient to enter into an agreement for uniting or into the proposed contract, or to that effect, the justices of such county or the recorder of such borough shall, at or before the general or quarter sessions next after the passing of this Act, or next after the occasion has arisen, cause public notice to be given, in manner herein directed in the case of the original appointment of a committee under this Act for any of the said purposes, of the intention of the justices of such county or borough to appoint at the then next general or quarter sessions for such county, or (in the case of a borough) at some special meeting of the justices of such borough to be fixed in the notice and to be holden within three months from the date thereof, a committee in lieu of the committee previously appointed as aforesaid; and such notice having been so given, the justices of such county or borough shall, at the then next general or quarter sessions for such county, or at such special meeting as aforesaid of the justices of such borough, appoint a committee accordingly, and shall have the like

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(1) See 19 & 20 *Vic. c.* 87. (2) *Sec.* 132. (3) *Ibid.*
(4) *Ibid.* (5) *Ibid.* (6) *Ibid.*

discretion and authority for determining the purposes for which such committee shall be appointed as in the case of an original appointment of a committee under the provisions hereinbefore contained; or such justices may, if they think fit, in lieu of appointing a new committee in the place of any such committee appointed only for the purpose of treating for uniting or of contracting as aforesaid, and which may have reported that it is not practicable or expedient to enter into an agreement for uniting or into the proposed contract, or to that effect, enlarge or alter the powers of such committee as hereinbefore provided, and, if such justices think fit, appoint additional members of such committee.

Sec. XIII. Provided always, That where the justices (1) of any county (2) or the recorder of any borough (3) have or has not, in pursuance of any of the provisions hereinbefore contained, at or before such general or quarter sessions as in that behalf required, caused notice to be given of the intention of the justices of such county or borough to appoint a committee under this Act, it shall be lawful for the justices of such county or the recorder of such borough, at or before any subsequent general or quarter sessions, to cause such notice to be given in manner required by this Act; and the appointment of a committee in pursuance of such notice, or the enlargement or alteration of the powers of any existing committee, and the appointment of any additional members of such committee, at the sessions or meeting for which such notice has been given, shall be valid.

Sec. XIV. When two or more committees agree to unite for the purposes of this Act, an agreement shall be entered into and signed by the several committees uniting, or the major part of such committees respectively, in the form or to the effect set forth in schedule (A) to this Act; and such agreement, when signed by the major part of each such committee, and not before, shall be binding upon every county(4) and borough,(5) and the subscribers (if any) for or on behalf of which or whom such agreement has been entered into; and every such agreement shall specify the proportion in which the expenses necessary for carrying into execution the purposes of this Act shall be charged upon each county and borough, and the subscribers (if any) so uniting; and the proportions of the counties and boroughs uniting shall be calculated and fixed with reference to their respective populations as stated in the then last return made of the same under the authority of Parliament; and where under any such agreement a right to the joint use of any existing asylum (6) or hospital is required by any county or borough, or the subscribers to any hospital, such agreement shall fix the sum to be paid by such county, borough, or subscribers towards the expenses already incurred in erecting or providing such asylum or hospital.(7)

Sec. XV. Provided always, That it shall be lawful for such committees to insert in the agreement to be entered into by them any stipulations or conditions, in addition to the matters by this Act required to be specified in such agreement, so that such additional stipulations or conditions do not in any way subject the acts of the

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(1) *Sec.* 132. (2) *Ibid.* (3) *Ibid.* (4) *Ibid.* (5) *Ibid.*
(6) *Ibid.* (7) But see 18 & 19 *Vic. c.* 105, *s.* 4.

committee of visitors to the approval or control of any Court of general or quarter sessions, or of any justices, (1) in any case not provided for by this Act, and the additional stipulations and conditions so inserted in the said agreement shall be of the same force and effect as the matters so required to be specified, notwithstanding that such additional stipulations or conditions may control in any other manner than as hereinbefore specified and excepted the discretion and acts of the committee of visitors as regulated by this Act, or may require the consent or approval of, or may subject the acts or orders of the visitors to be disallowed, modified, or controlled by one of Her Majesty's principal Secretaries of State, in cases not provided for by this Act; but any stipulations or conditions subjecting the acts of the committee of visitors to the approval or control of any Court of general or quarter sessions, or of any justices, in any case not provided for by this Act, shall be void and of none effect.

Sec. XVI. Provided also, That with the consent in writing under the hands of the greater number of visitors of each county (2) and borough,(3) and of the greater number of visitors of any body of subscribers united under any agreement entered into under this Act or any former Act, and with the previous consent in writing under the hand of one of Her Majesty's principal Secretaries of State, the committee of visitors may from time to time repeal or alter any of the stipulations or conditions of such agreement, but not so as to subject the acts of the committee of visitors to the approval or control of any Court of general or quarter sessions, or of any justices, in any case not provided for by this Act.(4)

Sec. XVII. Where any agreement for uniting has been entered into under this Act or any former Act, and the union effected thereunder is added to by an agreement for further union, the proportions in which any expenses are under any former agreement for union to be charged on the counties (5) or boroughs,(6) or counties and boroughs, and the subscribers, if any, uniting, and the proportions in which visitors are to be elected for and on behalf of such counties or boroughs, or counties and boroughs, and subscribers (if any), may be altered as may be agreed upon.

Sec. XVIII. Where under an agreement for union any money is to be paid towards the expenses already incurred by any county(7) or borough (8) in erecting or providing an asylum, (9) the same shall be paid to the treasurer of such county or borough,(10) and shall be applied in liquidation and payment, *pro tanto*, of the monies, if any, which shall have been raised by such county or borough for the purposes of this Act or the Acts hereby repealed, or any of them, in such manner as the justices (11) of such county at any general or quarter sessions for the same, or the council of such borough, shall respectively order and direct, or if all such monies shall have been paid, then the same shall be applied in diminution of any rate to be made in pursuance of this Act.

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(1) *Sec.* 132. (2) *Ibid.* (3) *Ibid.*
(4) But see 18 & 19 *Vic. c.* 105, *s.* 2. (5) *Sec.* 132. (6) *Ibid.*
(7) *Ibid.* (8) *Ibid.* (9) *Ibid.* (10) *Ibid.* (11) *Ibid.*

Sec. XIX. When any agreement has been entered into and signed as aforesaid, the committee for each county (1) and borough (2) on behalf of which the same has been entered into shall report the same to the justices (3) of such county or the recorder of such borough at the then next general or quarter sessions; and the original agreement shall, at such sessions for the county or borough in which the asylum (4) to which the same relates is situate or is intended to be situate, be delivered to the clerk of the peace (5) of such county or borough, to be by him entered among the records thereof; and a copy of such agreement shall at such sessions for each other county or borough on behalf of which such agreement has been entered into be delivered to the clerk of the peace of such county or borough, to be by him entered among the records thereof; and a copy of every such agreement shall be sent by the clerk of the peace to whom the original agreement is delivered, within 20 days after the delivery thereof to him, to the Commissioners in Lunacy; and any of the justices of any county or borough on behalf of which such agreement has been entered into, and any Commissioner in Lunacy, shall be entitled, without payment, to inspect the original agreement so delivered to the clerk of the peace as aforesaid; and any clerk of the peace hereby required to send to the said commissioners a copy of any agreement who shall neglect so to do within the time aforesaid, and any clerk of the peace who shall refuse to permit such inspection as aforesaid, shall for every such offence be liable to a penalty not exceeding £5, and this enactment shall extend and be applicable to and in respect of every agreement by which any of the stipulations or conditions in any agreement entered into under this Act or any former Act shall be repealed or altered.

Sec. XX. When any agreement for uniting has been entered into, signed, and reported as aforesaid, the justices(6) of every county(7) to which the same relates shall, at the general or quarter sessions to which such agreement is reported, elect from among the justices of such county the number of visitors allotted to such county in the agreement; and the justices of every borough(8) to which such agreement relates shall, at a special meeting of such justices to be holden within 20 days after such agreement has been reported to the general or quarter sessions for such borough, elect from among the justices of such borough the number of visitors allotted to such borough in the agreement; and the majority of such of the subscribers to any hospital to which such agreement relates as shall be present at a meeting of such subscribers to be holden within 28 days after the signing of such agreement, and of which meeting public notice shall have been given by advertisement in some newspaper circulated in the place in which such hospital is situate or is intended to be situate, shall elect from among such subscribers the number of visitors allotted to the subscribers to such hospital in such agreement; and the visitors so elected as aforesaid shall together form and be the committee of visitors for carrying such agreement into effect.

Sec. XXI. Every committee elected for any county(9) or borough(10)

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(1) *Sec.* 132. (2) *Ibid.* (3) *Ibid.* (4) *Ibid.* (5) *Ibid.*
(6) *Ibid.* (7) *Ibid.* (8) *Ibid.* (9) *Ibid.* (10) *Ibid.*

as hereinbefore provided, and authorized to superintend the erecting or providing of an asylum (1) for such county or borough, shall, until the election of visitors or a committee of visitors for such county or borough, or the asylum thereof, under any of the provisions herein contained, be deemed the committee of visitors for such county or borough.

Sec. XXII. At the generalor quarter sessions to be held next after the 20th day of December in every year the justices (2) of every county, (3) and at a special meeting to be held within 20 days after the 20th day of December in every year the justices of every borough, (4) having for the time being an asylum (5) (whether provided before or after the passing of this Act) either for the sole use of such county or borough or under any agreement for uniting as aforesaid, shall elect some justices of such county or borough to be visitors on behalf of such county or borough for the said asylum during the year next ensuing the election; and where such asylum has been provided under any agreement for uniting entered into with any such subscribers as aforesaid, the majority of such of the subscribers as shall be present at a meeting to be holden in the month of January in every year, of which notice shall have been given by public advertisement in some newspaper circulated within the place in which such asylum is situate, shall elect some of such subscribers to be visitors for such asylum during the year then next ensuing; and where such asylum is for the sole use of any one county or borough, the visitors elected for such county or borough as aforesaid shall be "the committee of visitors" of such asylum; and where such asylum has been provided under any agreement for uniting, the visitors elected as aforesaid on behalf of every county and borough, and the subscribers (if any) to which the asylum belongs, shall together form and be "the committee of visitors" of such asylum: Provided always, that the number of the committee of visitors of any county or borough having an asylum for its sole use shall not be less than seven; and that in all other cases the number of visitors to be elected on behalf of every county and borough, and of any body of subscribers, to form and be the committee of visitors, shall be the number provided for in the agreement.

Sec. XXIII. Where any county (6) or borough (7) has more than one asylum (8) a separate committee of visitors shall be appointed as aforesaid for every such asylum, each of which committees shall have all the powers and be subject to all the provisions of this Act with regard to the asylum for which it is appointed, as if it were the only asylum for that county or borough: Provided always, that it shall be lawful for the justices (9) of the county or borough, if they think fit, with the approval of one of Her Majesty's principal Secretaries of State, to appoint the same committee for two or more such asylums.

Sec. XXIV. The several persons elected members of any committee of visitors shall within one month after their election assemble at some convenient place to be named in a notice in writing given

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(1) *Sec.* 132. (2) *Ibid.* (3) *Ibid.* (4) *Ibid.* (5) *Ibid.*
(6) *Ibid.* (7) *Ibid.* (8) *Ibid.* (9) *Ibid.*

by two or more of such visitors, or by the clerk to the outgoing committee by the direction of two or more of the said visitors, to the several members so elected, such notice to be given to each member personally, or left at his place of abode, or transmitted to him through the post office, seven days at least before the time appointed for such meeting; and the said visitors may adjourn the said meeting from time to time or from place to place, and meet where and so often as they think necessary; and the said visitors shall at their first meeting after their election elect one of their members to be their chairman, who shall preside at all meetings at which he is present; and in case of the absence of the chairman from any meeting the members of the committee then present shall elect one of such members to be chairman for the meeting, who shall preside at the meeting; and to constitute a meeting of a committee there shall be present not less than three members thereof, except for adjournment, which may be made by less than three; and every question shall be decided by a majority of votes (the chairman, whether permanent or temporary, having a vote), and in the event of an equality of votes on any question the chairman for the time being shall have an additional or casting vote.

Sec. XXV. The clerk of any committee of visitors shall, whenever required in writing by the chairman or two of the visitors, or by the superintendent of the asylum,(1) and the chairman of any such committee may, whenever he shall see fit, convene a meeting of such committee by a notice in writing to each visitor of the time and place of such meeting, such notice to be delivered, left, or transmitted as aforesaid by such clerk or chairman seven days at least before the time appointed for the meeting.

Sec. XXVI. Every committee of visitors shall appoint a clerk to such visitors for the purposes of this Act, at such salary or remuneration as such visitors think fit, and may, if and when they think fit, remove any clerk appointed by them, and in any such case, or in case of the death or resignation of any such clerk, shall appoint a new clerk; and the clerk to any committee of visitors of any asylum(2) may also be the clerk of such asylum; and any clerk to any committee of visitors shall, unless he sooner die, resign, or be removed, continue in office so long as such committee continue in office.

Sec. XXVII. The powers of any committee of visitors and of the members of such committee, whether appointed or elected before or after the commencement of this Act, shall continue until the first meeting of the committee by which such first-mentioned committee is to be succeeded, anything herein contained to the contrary notwithstanding; and if the justices (3) of any county,(4) or the justices or recorders of any borough,(5) or any body of subscribers, neglect in any year to make such election or appointment as required by this Act, then the committee of visitors lastly before elected, or the members of such committee elected or appointed for such county or borough, or on behalf of such body of subscribers, or such of them as shall continue to act, shall be deemed and taken to be the committee of visitors, or to form part of the committee of visitors, as if such com-

(1) *Sec.* 132. (2) *Ibid.* (3) *Ibid.* (4) *Ibid.* (5) *Ibid.*

mittee or members had been re-elected or re-appointed in such year, and so from time to time so often as the said justices, recorder, or subscribers so neglect.

Sec. XXVIII. In case any member of any committee or any visitor, elected or appointed under this Act or any Act hereby repealed, die, resign, or become incapable to act, the justices(1) for the county(2) or borough(3) for which such member or visitor was elected or appointed, at any general or quarter sessions for such county, or at a special meeting of the justices of such borough, or where such visitor was appointed by the recorder of a borough, then the recorder of such borough, shall elect or appoint some other justice in his place; and where any such member or visitor has been elected on behalf of any body of subscribers, the majority of such of the said subscribers as shall be present at some meeting called in manner provided with respect to the annual election of visitors shall elect some other subscriber in his place: but, notwithstanding any vacancy in any committee, the continuing members or visitors may act as if no such vacancy had occured.

Sec. XXIX. In case at any time after the expiration of one year from the commencement of this Act it appear to one of Her Majesty's principal Secretaries of State, upon the report of the Commissioners in Lunacy, that any county(4) or borough(5) has not an asylum(6) for the pauper(7) lunatics(8) thereof, it shall be lawful for such Secretary of State, by writing under his hand, to require the justices (9) of such county or borough forthwith to provide a fit and sufficient asylum for so many pauper lunatics as upon the report of the said commissioners such Secretary of State may think fit and direct, and such justices shall forthwith proceed as hereinbefore mentioned to cause such asylum to be provided: Provided always, that no borough annexed to any county by virtue of this Act or any former Act, or on behalf of which a subsisting contract making adequate provision for the care of the pauper lunatics thereof shall have been entered into under this Act, or which now contributes to any asylum for the county in which it is situate, and shall not have been separated from such county, shall be required to provide an asylum under any such order.

Sec. XXX. It shall be lawful for the justices(10) of every county(11) and borough(12) having an asylum or asylums for the pauper(13) lunatics(14) thereof, where it appears to such justices at any general or quarter sessions, or (in the case of a borough) at any special meeting of such justices, that the asylum or asylums of such county or borough is or are inadequate or unfit for the proper accommodation of the pauper lunatics of such county or borough,(15) to cause an additional asylum, or a new asylum in lieu of any existing asylum of such county or borough, to be provided for such county or borough, in like manner as hereinbefore directed in the case of a county or borough not having an asylum, or to direct the committee of visitors of any existing asylum to cause the same to be enlarged or improved, or, in any other case

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(1) *Sec.* 132. (2) *Ibid.* (3) *Ibid.* (4) *Ibid.* (5) *Ibid.*
(6) *Ibid.* (7) *Ibid.* (8) *Ibid.* (9) *Ibid.* (10) *Ibid.*
(11) *Ibid.* (12) *Ibid.* (13) *Ibid.* (14) *Ibid.*
(11) 9 *Geo.* 4, *c.* 40, *ss.* 38, 41; *R.* v. *Ellis*, 6 Q. B. 501.

where the said justices deem it necessary or expedient, to direct the committee of visitors of any existing asylum to improve the same; but it shall not be incumbent on any such committee under any such direction as aforesaid to enlarge or improve such asylum where the same does not belong to one county or borough alone, without a like direction from the justices of every county or borough to which the same belongs; and in case at any time it appear to one of Her Majesty's principal Secretaries of State, upon the report of the Commissioners in Lunacy, that any existing asylum or asylums for any county or borough is or are inadequate or unfit for the proper accommodation of the pauper lunatics thereof, it shall be lawful for such Secretary of State, by writing under his hand, to require the justices of such county or borough forthwith to cause an additional asylum, or a new asylum in lieu of any existing asylum, to be provided as aforesaid for such county or borough, or the committee or committees of visitors of any existing asylum or asylums forthwith to enlarge or improve the same, in such manner as the said Secretary of State may see fit and direct, and the said Secretary of State may require accommodation to be provided in and by such additional or new asylum, or by means of the enlargement of such existing asylum or asylums, for so many pauper lunatics as upon the report of the said commissioners such Secretary of State may think fit and direct; and the said justices or committee or committees shall forthwith carry such requisition of the said Secretary of State into effect; and the powers and provisions in this enactment contained with respect to the enlargement and improvement of asylums shall extend and be applicable to and for the enlargement and improvement of the offices, outbuildings, yards, courts, outlets, ground, land, and appurtenances belonging thereto.

Sec. XXXI. It shall be lawful for any committee of visitors having authority to provide an asylum[1] for pauper[2] lunatics[3] (but subject as hereinafter mentioned) to procure, examine, and determine on plans for the same, and estimates, [4] and contract for the purchase of lands and buildings (and in the case of buildings, either with or without any fittings-up and furniture belonging thereto), and for building, erecting, altering, improving, restoring, furnishing, and completing, or otherwise providing such asylum, and rendering the same in all respects fit and ready for the reception of lunatics, and for making, laying out, and completing the offices, outbuildings, yards, courts, outlets, grounds, land, and appurtenances of or for such asylum, and for providing clothing for patients, and everything necessary for the opening of any such asylum; and any committee of visitors having authority to enlarge, alter, or improve any asylum shall have like powers for the purpose of enlarging, altering, or improving such asylum, or the offices, outbuildings, yards, courts, outlets, grounds, land, and appurtenances thereto belonging; and every person contracting for building or doing any other such work as aforesaid shall give to the clerk of such visitors sufficient security

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(1) *Sec.* 132. (2) *Ibid.* (3) *Ibid.*

(4) 8 & 9 *Vic. c.* 126, *s.* 17; *Moffatt* v. *Dickson*, 15 C. B. 543; *Kendall* v. *King*, 4 W. R. 389.

for the due performance of the contract; and every such contract, either for purchase of lands or buildings, or for doing any such work as aforesaid, and all orders relating thereto, shall be entered in a book to be kept by the clerk of such visitors; and, when such asylum and appurtenances, or (as the case may be) the additions to or alterations or improvements thereof, are completed, such book shall be deposited and kept among the records of the county (1) or borough,(2) or where more than one county or borough is interested in such contract by reason of an agreement for union,(3) then among the records of the county or borough which has contributed the largest proportion of the expenses of such contract; and every such book may be inspected at all reasonable times by any person contributing to the rates of the county or borough, or, in the case of a union, to the rates of any of the counties or boroughs, and also, if any part of such expenses has been paid by voluntary subscriptions, by any of such voluntary subscribers; and a copy of every such book shall be kept at the asylum to which the contract relates: Provided always, that the said visitors shall from time to time make their report to the General or Quarter Sessions of the county or borough, counties or boroughs, for which they, or such of them as have not been elected by subscribers as aforesaid, have been elected, of the several plans, estimates, and contracts which have been agreed upon, and of the sum or sums of money necessary to be raised and levied for defraying the purchase-monies and expenses thereof on the county or borough, or, in the case of such union as aforesaid, on each or every of the counties or boroughs; which plans, estimates, and contracts shall be subject to the approbation of the Court or Courts of general or quarter sessions of such county or counties, and of the justices (4) of such borough or boroughs, before the same are completed or carried into execution, save where the amount to be expended does not exceed an amount previously fixed by the Court or Courts of general or quarter sessions of such county or counties, or by the justices of such borough or boroughs.

Sec. XXXII. It shall be lawful for any committee of visitors to purchase and take a conveyance for the purposes of this Act from any person having absolute power to sell and convey, independently of this Act, any lands or buildings, in consideration of a yearly rentcharge or annual sum to be limited to such person, his heirs and assigns, or as he or they shall direct, out of the lands or buildings to be purchased, and the same shall accordingly be conveyed as aforesaid, subject thereto and to powers of distress and entry for securing the same.

Sec. XXXIII. It shall be lawful for any committee of visitors, instead of purchasing any land or buildings which they are hereby authorized to purchase, to take a lease thereof for any absolute term of not less than 60 years, at such annual rent and under such covenants as the said committee of visitors think fit; and it shall also be lawful for such committee to rent any land by the year for the purpose of employing such of the inmates of the asylum (5) as may be fit

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(1) *Sec.* 132. (2) *Ibid.* (3) *Ibid.* (4) *Ibid.* (5) *Ibid.*

for such employment or otherwise for the occupation and use of the patients.

Sec. XXXIV. The asylum (1) to be provided for any county (2) or borough, (3) either solely or jointly, may be without the limits of such county or borough, and when any asylum provided or to be provided solely or in part for any county or borough, or any part of such asylum, is situate within the limits of any other county or borough, then and in every such case the justices(4) of the county or borough to which such asylum wholly or partly belongs shall have full power and authority to act in such other county or borough, so far as concerns the regulation of such asylum, and the powers conferred by this Act, in the like manner as if such asylum and every part thereof were situate within such first-mentioned county or borough.

Sec. XXXV. No lands or buildings already or to be hereafter purchased or acquired under the provisions of any former Act or this Act, for the purposes of any asylum(5) (with or without any additional building erected or to be erected thereon), shall while used for such purposes be assessed to any county, parochial, or other local rates at a higher value or more improved rent than the value or rent at which the same were assessed at the time of such purchase or acquisition.

Sec. XXXVI. The provisions of "The Lands Clauses Consolidation Act, 1845," "with respect to the purchase of lands by agreement," "with respect to the purchase money or compensation coming to parties having limited interests, or prevented from treating or not making title," and all other provisions of the said Act applicable to and in the case of the purchase of lands by agreement, shall be incorporated with this Act; and all parties by the said provisions empowered to sell any lands may give lands in exchange for the purposes of this Act for other lands, and enter into all necessary agreements for that purpose, and on any such exchange money may be paid by either party by way of equality of exchange, and the said provisions "with respect to purchase money or compensation coming to parties having limited interests, or prevented from treating, or not making title," shall apply to any money coming to any such parties on any such exchange; and any lands to be purchased or taken in exchange for the purposes of this Act shall be conveyed to such persons, being not less than five in number, and in such manner as the committee of visitors purchasing the same or taking the same in exchange may direct, in trust for the purposes of this Act; and any conveyance to be so made shall have the like force and effect as a conveyance made under section 81 of the said Lands Clauses Consolidation Act.

Sec. XXXVII. When and so often as any land purchased or acquired under this Act or any former Act, for the purposes of an asylum,(6) shall be vested in less than three trustees, or there shall not be any trustee thereof living, it shall be lawful for the committee of visitors of such asylum, or any three or more of them, by an instrument in writing under the hands of such visitors or any three or more of them, to appoint such number of new trustees of such land

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(1) *Sec.* 132. (2) *Ibid.* (3) *Ibid.* (4) *Ibid.* (5) *Ibid.* (6) *Ibid.*

as such visitors may think fit; and such appointment shall be deposited and kept among the records of the county(1) or borough,(2) or, where more than one county or borough is interested in such land, then among the records of the county or borough having the largest interest therein; and all the estate and interest in such land which at the time of such appointment may be vested in any trustee or trustees, in trust for the purposes aforesaid, or in any other person, as heir or devisee, or otherwise, subject to such trust, shall by virtue of such appointment vest in the trustees so appointed, either alone, or if there be any continuing trustees or trustee jointly with such continuing trustees or trustee, as the case may require, without any conveyance or assignment for that purpose.

Sec. XXXVIII. The committee of visitors of every asylum(3) may of their own authority from time to time order all such ordinary repairs as may be necessary for such asylum, and any additions, alterations, or improvements to or in such asylum, or the offices, outbuildings, yards, courts, outlets, grounds, land, and appurtenances thereto belonging, which to them may seem necessary or proper for the further or better accommodation of the pauper(4) lunatics(5) who may be received or taken care of therein, provided that the expense of all such additions, alterations, and improvements shall not exceed £400 in any one year; and if such asylum belong to one county or borough only, they shall cause the expenses of such repairs, additions, alterations, or improvements to be paid by making an order upon the treasurer of such county or borough(6) for the payment thereof, but if otherwise they shall apportion such expenses in the proportion in which each county(7) or borough(8) has contributed to the erection thereof, or where any other proportion is fixed by any agreement for the time being in force, then in such other proportion, and where any such agreement only provides in what proportion the expense of repairs shall be defrayed, the said committee shall apportion the expense of such additions, alterations, and improvements in the same proportion unless it be otherwise provided by such agreement, and the said committee shall make an order on the treasurer of each county or borough for the payment of the proportion to be paid by such county or borough, and such treasurer shall pay the same accordingly out of any money of such county or borough then in his hands, or which may thereafter come to his hands, not specifically appropriated to any other purpose, and the same may be recovered from him, for the benefit of such asylum, by the treasurer or clerk thereof, together with all costs and expenses, in any of Her Majesty's courts at Westminster, or in any other court of competent jurisdiction: Provided always, nevertheless, that no order for any such repairs, additions, alterations, or improvements as aforesaid, or for the payment of any money for the expenses thereof, where such expenses exceed the sum of £100, shall be made, unless notice of the meeting at which the same shall be ordered, and of the intention to determine thereat the question of such expenditure, have been given in such manner and so long before the time appointed for the meeting

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(1) *Sec.* 132. (2) *Ibid.* (3) *Ibid.* (4) *Ibid.*
(5) *Ibid.* (6) *Ibid.* (7) *Ibid.* (8) *Ibid.*

as is hereinbefore provided (1) with respect to notices of meetings of committees of visitors, nor unless three visitors concur in and sign such order: Provided also, that where any such expenditure as aforesaid is incurred otherwise than for ordinary repairs, the visitors shall report the same to the next general or quarter sessions of the county or borough, or each county and borough, on behalf of which such expenditure has been incurred.

Sec. XXXIX. It shall be lawful for every committee of visitors, with the consent of one of Her Majesty's principal Secretaries of State under his hand, to determine and dissolve any union, (2) whether such union have been formed under this Act or under any former Act, and upon such dissolution to divide and allot the lands, buildings, hereditaments, chattels, monies, and effects of or belonging to such union between or among every such county(3) and borough(4) and the subscribers (if any) between which and whom such union existed, in the proportions in which they respectively have contributed thereto or are interested therein, or in such other proportions and manner as the said visitors, with the approbation of the said Secretary of State, think fit; and if on any such division or allotment there cannot be conveniently allotted to any county or borough or subscribers the proper proportion of such county, borough, or subscribers in the lands, buildings, hereditaments, chattels, monies, and effects of such union, there shall be paid to such county, borough, or subscribers such sum of money as the said visitors, with the approbation of the said Secretary of State, may direct, in full or in part satisfaction, as the case may require, of the aforesaid proportion of such county, borough, or subscribers; and every such sum of money shall be raised by the county or counties, borough or boroughs, to or between or among which the lands, buildings, hereditaments, monies, chattels, and effects of the said union shall be allotted (if more than one) in such shares as the said visitors, with the approbation of the said Secretary of State, think fit, in the same manner and by the same means as other monies are appointed to be raised by counties or boroughs for the purposes of this Act: Provided always, that no union shall be so dissolved by any committee of visitors except under a resolution of such committee at a meeting specially convened for the purpose of determining the question of such dissolution by a notice given in such manner and so long before the time appointed for such meeting as is hereinbefore provided with respect to notices of meetings of committees of visitors, (5) nor unless the majority of the whole number of the committee of visitors shall at such meeting have concurred in such resolution: Provided always, that in the case of a dissolution of union, where any county or borough having an asylum(6) shall be united with any county or counties, borough or boroughs, not having an asylum, and have erected additional buildings and incurred any other expense for their benefit, and be in the receipt of an annual fixed sum or rent as a remuneration for the expenses so incurred in lieu of the payment of a sum in gross, it shall be lawful for the said county or counties, borough or boroughs, so paying such rent, if they shall think fit, to

(1) *Sec.* 25. (2) *Sec.* 132. (3) *Ibid.*
(4) *Ibid.* (5) *Sec.* 25. (6) *Sec.* 132.

raise, in the same manner as is provided in the Act for the purpose of erecting county asylums, such a sum of money for the purpose of compensating the county or borough receiving such rent for the cessation of such rent as may be agreed upon and approved of by the committee of visitors of such county or counties, borough or boroughs, as may have been so united as aforesaid. (1)

Sec. XL. It shall be lawful for every committee of visitors, with the previous consent of one of Her Majesty's principal Secretaries of State under his hand, to sell, either by public auction or private contract, and subject to any conditions, any lands or buildings or parts of lands or buildings which may have belonged to and been used as or together with an asylum, (2) or which may have been purchased or otherwise acquired under any former Act or this Act, for the purposes of an asylum, and found unsuitable or otherwise not required for such purposes, or to give the same in exchange for other lands or buildings, and to pay or receive through the treasurer of such asylum any money by way of equality of exchange; and every conveyance of lands or buildings so sold or given in exchange which shall be executed by the persons in whom the same may then be vested as trustees, or by any three of the members of the committee of visitors who sell the same, shall be effectual to convey the same for all the estate or interest then vested in such trustees, in trust for the purposes of such asylum, and the receipt of any three of the committee of visitors shall be a sufficient discharge for the purchase-monies or for any monies to be received for equality of exchange; and such monies, in case the sale or exchange be made by a committee of visitors of any one county(3) or borough (4) alone, shall be applied in carrying into execution the powers and purposes of this Act, or shall be paid to the treasurer of such county or borough,(5) and be applied for the general purposes thereof, or otherwise, as the justices of such county or borough shall, at some general or quarter sessions for such county, or at some special meeting of the justices of such borough, direct; and in every other case the monies received shall be paid to the treasurer of the county, borough, or subscribers to which or to whom the property sold or exchanged belonged, in case it belonged to any one of them, or if the same was joint property then to the respective treasurers of every county and borough, and of the subscribers, if any, in the proportion in which such county, borough, and subscribers were respectively interested therein; and such monies shall be held and applied by every such treasurer, in the case of a county or borough, as part of the general rates or funds of such county or borough, and in the case of any subscribers, as the majority of such of the subscribers as shall be present at any meeting convened for that purpose shall direct.

Sec. XLI. Where any committee of visitors have (either before or after the passing of this Act) contracted for the purchase of any lands for the purposes of an asylum, (6) or for any exchange of any lands for other lands for such purposes, and the lands so contracted

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(1) 18 & 19 *Vic. c.* 105, *s.* 5.
(2) *Sec.* 132.
(3) *Ibid.*
(4) *Ibid.*
(5) *Ibid.*
(6) *Ibid.*

to be purchased or taken in exchange are found to be unsuitable or are not required for such purposes, such committee, or any other committee appointed in their place, may, with the consent in writing of one of Her Majesty's principal Secretaries of State (notwithstanding such contract may have been approved as required by the said Acts hereby repealed or this Act), procure a release from the said contract, and in consideration of such sum of money (if any) as the said committee, with such consent as aforesaid, may agree to pay; and the said committee or any three of such committee may, in consideration of such release, execute a release to the other party to such contract or other the persons bound thereby; and the consideration money (if any) by the said committee agreed to be paid as aforesaid, and all expenses in relation to the said contract and releases shall be paid, defrayed, and raised in like manner as if the same were payable in respect of the purchase of lands for the purposes aforesaid.

Sec. XLII. It shall be lawful for every committee of visitors to contract (1) with the committee of visitors of any asylum, or with the subscribers to any hospital registered or the proprietor of any house licensed for the reception of lunatics, (2) for the reception into such asylum, (3) hospital, or house of the whole or of a portion of the pauper (4) lunatics (5) of the county (6) or counties, borough (7) or boroughs, or counties and boroughs, or any of them respectively, for which such first-mentioned committee is acting, or for the use and occupation of all or any part of such registered hospital or licensed house, at such sum, either in gross or by way of annual or other periodical payment or rent, and under and subject to such terms, stipulations, and conditions, as such visitors shall think fit; and it shall be lawful for the committee of visitors of any asylum, or the subscribers to any registered hospital, or the proprietor of any licensed house, to contract with any committee of visitors accordingly: Provided always, that no such contract shall be made for any longer period than for the term of five years, and that any such contract may be determined by notice in writing under the hand of one of Her Majesty's principal Secretaries of State, and that every such contract with the proprietor of a licensed house shall determine on such house ceasing to be duly licensed for the reception of lunatics: Provided also, that no such contract shall exempt the justices (8) of any county (9) or borough (10) or any committee from the immediate duty and obligation of erecting or providing, or uniting in erecting or providing, an asylum or additional asylum, or of enlarging or improving any asylum, as required by this Act, where one of Her Majesty's principal Secretaries of State has caused notice to be given as aforesaid for the determination of such contract, although the term for which such contract was entered into has not expired by effluxion of time: Provided also, that the money which may be payable under such contract for the reception of the lunatics of any county or borough into any asylum beyond the weekly sums which may be charged under this Act for the lodging, maintenance, medicine, clothing, and care of lunatics

(1) 18 & 19 *Vic. c.* 105, *ss.* 9, 10. (2) *Sec.* 132. (3) *Ibid.*
(4) *Ibid.* (5) *Ibid.* (6) *Ibid.* (7) *Ibid.* (8) *Ibid.*
(9) *Ibid.* (10) *Ibid.*

in the asylum belonging to the county or borough to which such lunatics shall belong, shall be paid, defrayed, and raised by such county or borough out of any monies in the hands of the treasurer for the county(1) which shall be applicable for the repairs or other ordinary expenses of such asylum; provided also, that any hospital or licensed house with the subscribers or proprietor of which any such committee so contract as aforesaid shall be subject to the visitation of any of the members of such committee for the time being.

Sec. XLIII. Whenever it appears to the committee of visitors of any asylum(2) that such asylum is more than sufficient for the accommodation of all the pauper(3) lunatics(4) of the county(5) or borough(6) or each county and borough to which the same wholly or in part belongs, and of any county or counties, borough or boroughs, with which any existing contract for the reception of all or any of the pauper lunatics thereof in such asylum has been entered into, or which shall otherwise contribute to such asylum, it shall be lawful for the committee of visitors, if they think fit, to give notice thereof by advertisement in some newspaper commonly circulated in such county or borough, or every such county or borough as aforesaid, and (subject nevertheless and without prejudice to any agreement with any voluntary subscribers) by a resolution of the said committee, to permit the admission of so many pauper lunatics of any other county or borough, and (if such committee think fit) lunatics not paupers, but who in the opinion of such committee may be proper objects to be admitted into a public asylum, as to such committee may seem expedient, and at any time to rescind or vary any such resolution; and such committee may, if they think fit, by such resolution require that no pauper lunatic shall be admitted into such asylum thereunder without an undertaking by the minute of the guardians of the union or parish, or signed by two of the overseers of the parish, to which such lunatic is chargeable, or in the case of a lunatic not a pauper by the person signing the order for the admission of such lunatic, for the due payment of the weekly charge for the lodging, maintenance, medicine, clothing, and care of such lunatic during his continuance in such asylum, and of the expenses of his burial in case he die therein, as well as for the removal of such lunatic from such asylum within six days after due notice given in writing by the superintendent of such asylum; and such lunatic not being a pauper shall have the same accommodation in all respects as the pauper lunatics.

Sec. XLIV. No visitor of any asylum (7) shall have or take, or be capable of having or taking, any interest or concern whatsoever, either in his own name or in the name of any other person, in any contract or agreement to be made under the authority of this Act, or in anywise relating to or connected with such asylum, (8) or shall, for any design or plan he may deliver or produce, receive any benefit or emolument whatever, or otherwise have or take any benefit or emolument whatsoever from or out of the funds of the asylum: Provided always, that this enactment shall not extend to any such interest,

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(1) *Sec.* 132. (2) *Ibid.* (3) *Ibid.* (4) *Ibid.*
(5) *Ibid.* (6) *Ibid.* (7) *Ibid.* (8) *Ibid.*

benefit, or emolument which any visitor may have or derive by reason of his being a shareholder of any joint stock company established by Act of Parliament or by charter, with which any contract may be entered into on behalf of such asylum, or which may otherwise receive any benefit or emolument out of the funds of the asylum; provided that no contract or dealing between such company and the visitors of such asylum be at or upon rates or terms more advantageous to such company than in the case of contracts or dealings by such company with other parties.

Sec. XLV. Every committee of justices ([1]) or visitors shall submit all agreements for uniting for the purposes of this Act, and all contracts under this Act, for the reception of the pauper ([2]) lunatics ([3]) of any county ([4]) or borough, ([5]) or any of them, into any asylum, ([6]) registered hospital, or licensed house, or for the use and occupation of all or any part of any such hospital or licensed house, and all plans for building or providing or enlarging or improving any asylum for pauper lunatics, and all contracts for purchases of lands or buildings for any such purpose, to the Commissioners in Lunacy, who shall make such inquiries in reference thereto and to the amount of the accommodation requiring to be provided as they may deem proper, and shall report thereon in writing to one of Her Majesty's principal Secretaries of State, and such committee shall submit to one of such Secretaries of State estimates of the cost and expense of carrying into execution such plans, and no such agreement, contract, or plan shall be carried into effect until the same has been approved by such Secretary of State in writing under his hand.

Sec. XLVI. In order to pay and defray the monies, costs, and expenses payable for any of the purposes of this Act or the said Acts hereby repealed by any county, ([7]) the justices ([8]) of such county at any general or quarter sessions for the same may and shall assess and tax a general county rate ([9]) or rates upon such county, and may and shall fix a sum or rate to be contributed by all places whatsoever within such county (other than any borough ([10]) being within such county or by this Act for the purposes thereof annexed thereto), and whether such places be or be not liable to contribute to an ordinary county rate; and in order to pay and defray the monies, costs, and expenses payable as aforesaid by any borough, the council of such borough may and shall assess a general borough rate in the nature of a county rate upon such borough, and the said rates shall be collected, levied, and recovered in the same manner, and by the same powers, authorities, ways, and means, and under the same penalties, as any ordinary rate for such county or borough respectively may by law be collected, levied, and recovered; and the monies, costs, and expenses to be paid and contributed by any county or borough for the purposes of this Act shall be paid by the treasurer of such county or borough, ([11]) out of the rates aforesaid, to the treasurer of the asylum to which such county or borough shall either alone or jointly pay or contribute: Provided always, that it shall be lawful for the council of any borough, if they think fit, to direct that any monies payable for the purposes

([1]) *Sec.* 132. ([2]) *Ibid.* ([3]) *Ibid.* ([4]) *Ibid.* ([5]) *Ibid.*
([6]) *Ibid.* ([7]) *Ibid.* ([8]) *Ibid.* ([9]) *Ibid.* ([10]) *Ibid.*
([11]) *Ibid.*

of this Act, or any part thereof, shall be paid out of the borough fund of such borough, and such monies shall be paid by the treasurer of such borough out of such fund accordingly.

Sec. XLVII. It shall be lawful for the justices (1) of every county (2) in general or quarter sessions assembled, or the major part of them, such major part not being less than five, and for the council of every borough, (3) from time to time to borrow and take up on mortgage of the rates to be made under this Act for such county or borough, or on mortgage of such rates, together with all other rates or funds, or any of them, of the same county or borough, all or any of the monies required for paying and defraying any such monies, costs, and expenses, as aforesaid, payable by such county or borough; and such money may be so raised at any rate of interest not exceeding £5 per centum per annum, and every such mortgage may be made by an instrument in the form contained in the schedule (B) hereunto annexed, or to that or the like effect, and shall be executed in the case of a county by the chairman, and two or more other justices present at the time of making such mortgage, and in the case of a borough by affixing the common seal of the borough thereto; and every such mortgage shall be effectual for securing to the person advancing the sum of money in such mortgage expressed to be advanced, his executors, administrators, and assigns, the repayment thereof, with interest for the same, after such rate and at such time and in such manner as in such mortgage provided; and the said mortgages shall be numbered in the order of succession in which they are granted; and copies or extracts of all such mortgages shall be kept by the clerk of the peace (4) or other proper officer having the custody of the records of the quarter sessions of such county or of the records of such borough, as the case may be; and every person to whom any such mortgage has been made under the Act hereby repealed or any former Act, or is made under this Act, his executors or administrators, is hereby empowered, by endorsing his or their name or names on such mortgage, to transfer the same, and his and their right to the principal money and interest thereby secured, unto any person, and every assignee under this Act or any former Act of any such mortgage, his executors and administrators, may in like manner transfer the same again, and so *toties quoties;* and the persons to whom such mortgages or such transfer thereof are made, their executors and administrators, shall be creditors upon the rates and funds thereby expressed to be mortgaged in an equal degree one with another, and shall not have any preference or priority other than is provided under the powers of this Act.

Sec. XLVIII. It shall be lawful for the justices (5) and council of any county (6) and borough (7) respectively to make application for any advance of any sum necessary for the purposes of this Act, or the said Acts hereby repealed, to the commissioners acting in the execution of an Act of the session holden in the 14th and 15th years of Her Majesty, chapter 23, "to authorize for a further period the advance of money out of the Consolidated Fund to a limited amount for carrying on public works and fisheries, and employment of the poor,"

(1) *Sec.* 132. (2) *Ibid.* (3) *Ibid.* (4) *Ibid.*
(5) *Ibid.* (6) *Ibid.* (7) *Ibid.*

and any Act or Acts amending or continuing the same, and the said commissioners are hereby empowered, if they think fit, to make such advance upon the security of such mortgage as aforesaid.

Sec. XLIX. The said justices (1) or council, as the case may be, shall in every year charge the rates (2) or funds of such county (3) or borough (4) with the sum for the time being required to pay the interest of the money borrowed on any mortgages under this Act or any former Act, or such of them as for the time being remain unpaid, and also with the payment of a further sum, not less than one-thirtieth part of the whole of such mortgages at the time of the same being first made, and such sums shall be applied under the direction of the said justices or council in discharge of the interest on the said mortgages or such of them as for the time being remain unpaid, and of so many of the principal sums owing on the said mortgages for the time being remaining unpaid, as such sums after payment of the interest as aforesaid will extend to discharge, until the whole of the principal monies for which such mortgages shall have been made, and the interest thereof, shall be fully paid and discharged; and the said justices and council, as the case may be, are and is hereby 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 such payments being regularly made; and the said justices or council, as the case may be, shall by agreement with the parties, or others advancing any money for the purposes of this Act, determine the order or priority in which the several sums advanced shall be respectively discharged; and the justices of every county and the council of every borough so borrowing money on mortgage as aforesaid are and is hereby required to appoint a proper person to keep an exact and regular account of all receipts and payments in respect of principal monies borrowed or taken up as aforesaid under this Act or any former Act, and the interest thereof, in a book or books, separate and apart from all other accounts, and the said book and books, duly adjusted and settled up to the time being, to deliver annually, in the case of a county, into court at some general or quarter sessions for such county, and in the case of a borough, to the council of the borough, at such time as such council shall appoint; and the justices for every such county at such sessions, and the council for every such borough, are and is hereby required carefully to inspect all such accounts, and to make such orders for carrying the several purposes aforesaid into execution as to them shall seem meet.

Sec. L. Provided always, That the justices (5) of every county (6) and the council of every borough (7) borrowing money as aforesaid shall make provision by means of the rates (8) which they are hereby respectively authorized to make, and by the orders and directions which they are hereby authorized to give, that the whole principal money to be borrowed under the authority of this Act by such county or borough, and all interest for the same, shall be fully paid and discharged within a time to be limited by such justices or council, not exceeding 30 years from the time of borrowing the same.

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(1) *Sec.* 132. (2) *Ibid.* (3) *Ibid.* (4) *Ibid.* (5) *Ibid.*
(6) *Ibid.* (7) *Ibid.* (8) *Ibid.*

Sec. LI. No person lending money to any justices (1) of any county (2) or the council of any borough, (3) and taking a mortgage for securing repayment of the same, executed in manner directed by this Act, and purporting to be made under the authority of this Act, shall be bound to require proof that the several provisions of this Act or of any former Act or Acts have been duly complied with; and if there be an order of the justices of any county in general or quarter sessions, or of the council of any borough making application for the loan, and any mortgage have been thereupon duly executed, either before or after the passing of this Act, as by any Act then in force or this Act is provided, the justices or council (as the case may be) shall have and be deemed to have had full power to levy the rates so mortgaged for repayment of the money so borrowed, with interest, notwithstanding that the provisions of this Act or any former Act or Acts may not have been complied with; and it shall not be competent to any ratepayer or other person to question the validity of any such rate or mortgage on the ground that such provisions had not been complied with.

Sec. LII. Provided also, That in every case in which any monies have been borrowed under the powers of any former Act or this Act, it shall be lawful for the justices (4) of the county (5) or council of the borough (6) for which such monies shall have been borrowed (with the consent of the parties to whom the same shall be owing) to pay off the monies so borrowed, and to raise and borrow the monies necessary for that purpose, and also to repay the said last-mentioned monies and the interest thereof, under the powers of this Act, as if such monies were borrowed under the powers hereinbefore contained; but so, nevertheless, that all monies borrowed shall be discharged within 30 years from the time of first borrowing the same.

Sec. LIII. Every committee of visitors shall, within 12 months after the passing of this Act, in the case of every asylum (7) already established, and general rules for the government whereof have not been already submitted to one of Her Majesty's principal Secretaries of State, and within 12 months after the completion of every asylum hereafter established, submit the existing general rules, or general rules to be prepared by such committee, for the government of the asylum under their superintendence to one of Her Majesty's principal Secretaries of State for his approval; and such rules, when approved by him, shall be printed, abided by, and observed; and every such committee shall have power, with the like approbation, to alter and vary such rules from time to time as they think necessary; and every such committee shall make from time to time such regulations and orders as they think fit, not inconsistent with the general rules for the time being in force for the management and conduct of the asylum, and in such regulations there shall be set forth the number and description of officers and servants to be kept, the duties to be required of them, and the salaries to be paid to them respectively; and every such committee shall from time to time determine the diet of the patients; and in and by such regulations such committee may

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(1) *Sec.* 132. (2) *Ibid.* (3) *Ibid.* (4) *Ibid.*
(5) *Ibid.* (6) *Ibid.* (7) *Ibid.*

direct that any number of beds in such asylum, and in such respective parts thereof as such committee may think fit, shall be always reserved for such cases as in and by such regulations shall be in this behalf mentioned; and in such case such asylum shall for the purposes of this Act, as respects the admission of all cases not within the description or class for which such beds are reserved, be deemed full when there are no vacant beds in such asylum except those so reserved, but nevertheless it shall be in the power of the committee of visitors of such asylum for the time being to fill the beds so reserved as they may deem expedient; and any such committee may, if they see fit, by any such regulations or order, exclude from admission into the asylum persons afflicted with any disease or malady which such committee may deem contagious or infectious, and persons coming from any district or place in which any such disease or malady may be prevalent.

Sec. LIV. Every committee of visitors shall fix a weekly sum to be charged for the lodging, maintenance, medicine, clothing, and care of each pauper(1) lunatic(2) confined in such asylum,(3) of such amonut that the same may be sufficient to defray the whole expense of the lodging, maintenance, care, medicine, and clothing, and other expenses requisite for each pauper lunatic, and that the total amount of such weekly sums, after defraying such expenses, may also be sufficient to pay the salaries of the officers and attendants, and such committee may from time to time alter the amount of such weekly sum as occasion may require; provided always, that any such committee may, if they think fit, fix a greater weekly sum to be charged as aforesaid in respect of pauper lunatics other than those sent to such asylum from or settled in some parish or place situate in any county or borough to which such asylum belongs; provided also, that such sum shall in no case exceed the rate of 14s. per week; but if the aforesaid rate of 14s. be found insufficient for the purposes aforesaid, it shall be lawful for the major part of the justices(4) of the county(5) or borough,(6) or of each county or borough to which such asylum may belong, present at any general or quarter sessions for such county, or at a special meeting of the justices of such borough, or each such county or borough respectively, to make such addition to such rate as to them respectively shall seem fit and necessary, and to make an order or orders accordingly, which order or orders shall be signed by the clerk of the peace(7) for the county, or clerk to the justices for the borough, and forthwith published in some newspaper commonly circulated within such county or borough.

Sec. LV. The committee of visitors of every asylum (8) shall appoint a chaplain for the same, who shall be in priest's orders, and shall be licensed by the bishop of the diocese, and the licence of any such chaplain as aforesaid shall be revocable by the bishop whenever he shall think fit; (9) and such chaplain, or his substitute approved by the visitors, shall perform and celebrate, in the chapel of or in some convenient place within or belonging to such asylum, Divine service according to the rites of the Church of England as established by

(1) *Sec.* 132. (2) *Ibid.* (3) *Ibid.* (4) *Ibid.*
(5) *Ibid.* (6) *Ibid.* (7) *Ibid.* (8) *Ibid.*
(9) 9 *Geo.* 4, *c.* 40, *s.* 36; *R. v. Middlesex Justices*, 2 Q. B. 433.

law, on every Sunday, Christmas Day, and Good Friday, and shall also perform and celebrate such service within the said asylum at such other times, and also such other services according to the rites of the Church of England as established by law, at such times as the visitors shall direct; and if any patient be of a religious persuasion differing from that of the Established Church, a minister of such persuasion, at the special request of such patient or his friends, shall, with the consent of the medical officer of such asylum, and under such regulations as he shall direct, be allowed to visit such patient at proper and reasonable times; and the committee of visitors of every asylum shall appoint a medical officer, who shall be resident in such asylum, and who shall not be clerk or treasurer of such asylum, and a clerk and treasurer, and such other officers and servants for the asylum as the committee may think fit; and the committee shall have power to remove the chaplain, medical officer, clerk, and treasurer, or any other officer or servant, and shall from time to time, upon every vacancy, by death, removal, or otherwise, in the office of the chaplain, medical officer, clerk, or treasurer of the asylum, appoint some other person to such office, subject to the conditions and restrictions affecting the original appointment to such office, and may from time to time fill up or not, as in their discretion they may think fit, vacancies among other officers and servants of the asylum; and the committee shall, if they think fit, have power to appoint a visiting physician or surgeon to every such asylum, and shall from time to time appoint the medical officer or one of the medical officers (if more than one) of the asylum, or where there is a separate medical officer of each division, then the medical officer or one of the medical officers (if more than one) of each division, to be the superintendent of the asylum or of such respective division thereof, and may remove any such officer from being such superintendent, and such superintendent shall be resident in the asylum; and the committee shall from time to time fix the salaries and wages to be paid to the officers and servants of the asylum: Provided always, that it shall be lawful for the said committee, with the sanction and approbation of one of Her Majesty's principal Secretaries of State, to appoint any person other than such medical officer to be such superintendent: Provided also, that where, on the 10th day of February, 1853, any person, other than a resident medical officer, was the superintendent of any asylum, such person may continue to be such superintendent as if this Act had not been passed unless and until the committee otherwise direct.

Sec. LVI. The clerk of every asylum(1) shall, within one week after the dismissal for misconduct of any nurse or attendant employed in such asylum, transmit to the Commissioners in Lunacy, by the post, information in writing under his hand of such dismissal, and of the cause thereof; and every such clerk neglecting to transmit such information to the said commissioners within one week after the dismissal of any such nurse or attendant shall for every such offence forfeit any sum not exceeding £10.

Sec. LVII. In case any superintendent, chaplain, matron, or any officer or servant of any asylum,(2) become, from confirmed sickness,

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(1) *Sec.* 132. (2) *Ibid.*

age, or infirmity, incapable of executing the office in person, or have been an officer or servant in the asylum for not less than 20 years, and be not less than 50 years of age, it shall be lawful for the committee of visitors of such asylum, if in their discretion they think fit so to do, but not otherwise, to grant to such superintendent, chaplain, matron, or other officer or servant such annuity by way of superannuation as they in their discretion think proportionate to the merits and time of service of such superintendent, chaplain, matron, or other officer or servant (whether incapable from sickness, age, or infirmity, or retiring from long service and age), and every such annuity shall be payable out of the rates lawfully applicable to the building or repairing of such asylum : Provided always, that the annual amount paid by way of superannuation to any retired superintendent, chaplain, matron, or other officer or servant of any asylum shall not exceed the amount of two-thirds of the salary payable at the time of his or her retirement, and that no such superannuation shall be granted unless notice of the meeting at which the same shall be granted, and of the intention to determine thereat the question of such superannuation, have been given, in such manner and so long before the time appointed for such meeting as is hereinbefore provided with respect to notices of meetings of committees of visitors, (1) nor unless three visitors concur in and sign the order granting the same.

Sec. LVIII. The clerk of every asylum (2) shall keep all books, documents, and instruments which the visitors of the asylum are required to keep or direct to be kept, and shall also keep an account of all monies received or paid on account of the asylum, either to or by the treasurer of the asylum or otherwise, and shall in the month of March in every year send an abstract of such account for the year previous ending on the 31st day of December to one of Her Majesty's principal Secretaries of State, and to the clerk or clerks of the peace (3) of the county(4) or borough,(5) or of each county or borough, to which the asylum shall belong, and also to the Commissioners in Lunacy, such abstract to contain such particulars and be in such form as the Commissioners in Lunacy may direct ; and such commissioners shall, within one month from the receipt of such abstract, cause a copy thereof to be laid before both Houses of Parliament.

Sec. LIX. The treasurer of every asylum(6) shall keep accounts of all monies received and paid by him.

Sec. LX. The committee of visitors of every asylum(7) shall, previously to the month of March in every year, audit the accounts of the treasurer and clerk of such asylum, and shall report the same to the next General or Quarter Sessions of the county(8) or each of the counties, and to the council of the borough (9) or each of the boroughs, to which the asylum wholly or in part belongs.

Sec. LXI. Not less than two members of every committee of visitors shall together, once at least in every two months, inspect every part of the asylum(10) of which they are visitors, and see and examine, as far as circumstances will permit, every lunatic(11) therein, and the order and certificate for the admission of every lunatic(12) admitted since

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(1) *Sec.* 25. (2) *Sec.* 132. (3) *Ibid.* (4) *Ibid.* (5) *Ibid.* (6) *Ibid.*
(7) *Ibid.* (8) *Ibid.* (9) *Ibid.* (10) *Ibid.* (11) *Ibid.* (12) *Ibid.*

the last visitation of the visitors, and the general books kept in such asylum, and shall enter in a book to be kept for that purpose any remarks which they may deem proper in regard to the condition and management of such asylum and the lunatics therein, and shall sign such book upon every such visit.

Sec. LXII. The committee of visitors of every asylum (1) shall in every year lay before the justices (2) of every county (3) and borough (4) to which such asylum wholly or in part belongs, at the court of general or quarter sessions to be holden next after the 20th day of December in every year for such county, or at a special meeting of the justices of such borough to be holden within 20 days after the 20th day of December in every year, a report in writing of the state and condition of such asylum, and as to its sufficiency for the proper accommodation of the number of lunatics (5) for whom it may be requisite to provide accommodation, and as to the management of such asylum, and the conduct of the officers and servants thereof, and the care of the patients therein, and such committee may in such report make such remarks or observations in relation to any matters connected with such asylum as they may think fit; and the clerk to such committee shall transmit a copy of such report to the Commissioners in Lunacy, and if any such clerk neglect so to do for 21 days after the laying of such report before the justices of any county or borough, he shall for such offence forfeit any sum not exceeding £10.

Sec. LXIII. The clerk of every asylum (6) shall, on the 1st day of January and the 1st day of July in every year, prepare a list of all pauper (7) lunatics (8) then in such asylum, according to the form in schedule (C) No. 1 to this Act annexed, and within 15 days after such list shall have been prepared one copy thereof shall be laid by such clerk before the visitors of the asylum, and another shall be transmitted by him to the clerk of the peace (9) of every or any county (10) and to the clerk to the justices (11) of every or any borough (12) to which such asylum solely or jointly belongs, to be by him laid before the justices of such county or borough, and another copy of such list shall within the same time be transmitted by such clerk to the Commissioners in Lunacy; and the clerk of every asylum receiving private patients shall also on the 1st day of January and 1st day of July in every year prepare a list containing the christian names and surnames of all the private patients in such asylum in the form in schedule (C) No. 2 to this Act annexed, and shall within 15 days after such list shall have been prepared transmit the same to the Commissioners in Lunacy; and shall also within the same time transmit to such clerk of the peace and clerk to the justices as aforesaid, for the purposes aforesaid, a certificate under his hand of the number of such private patients of each sex.

Sec. LXIV. The clerk of the board of guardians of every union, (13) and of every parish (14) under a board of guardians, (15) and the over-

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(1) *Sec.* 132. (2) *Ibid.* (3) *Ibid.* (4) *Ibid.* (5) *Ibid.*
(6) *Ibid.* (7) *Ibid.* (8) *Ibid.* (9) *Ibid.* (10) *Ibid.*
(11) *Ibid.* (12) *Ibid.* (13) *Ibid.* (14) *Ibid* (15) *Ibid.*

seers (1) of every parish not in a union nor under a board of guardians, shall, on the 1st day of January in every year, or as soon after as may be, make out and sign a true and faithful list of all lunatics (2) chargeable to the union or parish in the form in schedule (D) hereunto annexed, and shall, on or before the 1st day of February next succeeding, lay one copy of such list before the visitors of the asylum, (3) or before the visitors of each asylum (if more than one) of the county (4) or borough (5) in which such union or parish is situate, and shall transmit one copy of such list to the clerk of the peace (6) of the county, or the clerk to the justices (7) of the borough within which the union or parish to which each such lunatic is chargeable is situate, to be by him laid before the justices acting for such county at their next general or quarter sessions, or before the justices of such borough, and another copy of such list to the Commissioners in Lunacy, and another copy thereof to the poor law board; and any such clerk or overseer neglecting to make out and sign such list, or to transmit copies thereof, as herein directed, shall for every such offence forfeit any sum not exceeding £20.(8)

Sec. LXV. Any physician, surgeon, or apothecary (9) to be appointed by the guardians(10) of any union(11) or parish(12) or the overseers(13) of any parish, and also the guardians of any union or parish, and the overseers of any parish, shall be permitted, whenever they see fit, between the hours of eight in the morning and six in the evening, to visit and examine any or every pauper(14) lunatic(15) chargeable to such union or parish confined in any asylum, (16) registered hospital, or licensed house: Provided always, that if the medical officer of any asylum be of opinion that it will be injurious to any lunatic to permit such visit and examination, and such medical officer state in writing the reasons why such lunatic should not be visited and examined, and sign such statement, and deliver the same to the person or persons so requiring to visit and examine such lunatic, then and in such case it shall be lawful for such medical officer to refuse such visit and examination; and in every such case such medical officer shall forthwith enter in the Medical Journal the reasons set forth in such statement for such refusal, and shall sign such entry.

Sec. LXVI. Every pauper(17) lunatic(18) not in an asylum,(19) or a hospital registered or a house licensed for the reception of lunatics,(20) shall be visited once in every quarter of a year (reckoning the several

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(1) *Sec.* 132. (2) *Ibid.* (3) *Ibid.* (4) *Ibid.* (5) *Ibid.*
(6) *Ibid.* (7) *Ibid.* (8) 5 & 6 *Vic. c.* 57. *s.* 6. (9) *Sec.* 132.
(10) *Ibid.* (11) *Ibid.* (12) *Ibid.* (13) *Ibid.* (14) *Ibid.*
(15) *Ibid.* (16) *Ibid.* (17) *Ibid.* (18) *Ibid.* (19) *Ibid.*

(20) See 8 & 9 *Vic. c.* 126, *s.* 48; *R.* v. *Barnsley*, 12 Q. B. 193. By 4 & 5 Wm. 4, c. 76, s. 45, it is enacted that nothing in that Act contained shall authorize the detention in any workhouse of any *dangerous* lunatic, insane person, or idiot for any longer period than 14 days; and every person wilfully detaining in any workhouse any such lunatic, insane person, or idiot for more than 14 days shall be guilty of a misdemeanor: Provided that nothing in that Act contained shall extend to any place duly licensed for the reception of lunatics and other insane persons, or to any workhouse being also a county lunatic asylum.

quarters of the year as ending on the 31st day of March, the 30th day of June, the 30th day of September, and the 31st day of December), by the medical officer of or for the parish(1) or union(2) or district of a parish or union in which such lunatic is resident; and such medical officer shall be paid the sum of 2s. 6d. for each such quarterly visit to any pauper not being in a workhouse, which sum shall be paid by the same persons, and be charged to the same account as the relief of such pauper; and within seven days after the end of every such quarter such medical officer shall prepare and sign a list according to the form in the schedule (E) to this Act of all such lunatics, and shall state therein whether in the opinion of such medical officer all or any of such lunatics are or are not properly taken care of, and may or may not properly remain out of an asylum, and such medical officer shall within the time aforesaid deliver or send such list to the clerk to the guardians (3) of such parish or union, or if such parish be not under a board of guardians to one of the overseers (4) thereof; and the forms for such lists shall be from time to time furnished to the medical officer of every parish under a board of guardians, and to the medical officer of every union, by the guardians of such parish or union; but nothing in this enactment shall be taken or construed to relieve any medical officer from any obligation by this Act imposed upon him to give notice to a relieving officer or overseer where it appears to such medical officer that any pauper lunatic ought to be sent to an asylum; and such clerk or overseer receiving any such list as aforesaid shall, within three days after the receipt thereof, transmit the same to the Commissioners in Lunacy, and a copy thereof to the clerk to the visitors of the asylum for the county (5) or borough (6) in which the parish or union for which he is clerk or overseer is situate; and every such medical officer, clerk, or overseer failing to comply with this enactment shall for every such offence forfeit any sum not exceeding £20 nor under £2.

Sec. LXVII. Every medical officer of a parish (7) or union (8) who shall have knowledge that any pauper resident (9) in such parish, or in any parish within the district of such medical officer, is or is deemed to be a lunatic,(10) and a proper person to be sent to an asylum,(11) shall within three days(12) after obtaining such knowledge give notice thereof in writing to a relieving officer of such parish, or if there is no relieving officer then to one of the overseers(13) of such parish, and every relieving officer of any parish within a union or under a board of guardians, (14) and every overseer of a parish of which there is no relieving officer, who shall have knowledge, either by such notice or otherwise, that any pauper resident in such parish is or is deemed to be a lunatic and a proper person to be sent to an asylum, shall within three days after obtaining such knowledge give notice thereof to some justice (15)

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(1) *Sec.* 132. (2) *Ibid.* (3) *Ibid.* (4) *Ibid.*
(5) *Ibid.* (6) *Ibid.* (7) *Ibid.* (8) *Ibid.*
(9) 8 & 9 *Vic. c.* 126, *s.* 48; *R.* v. *Leaden Roothing*, 12 Q. B. 181; *R.* v. *Winsford*, 3 N. Sess. Ca. 629.
(10) *Sec.* 132. (11) *Ibid.*
(12) *R.* v. *Guardians of Anglesea and Carnarvon Union*, 3 N. Sess. Ca. 708.
(13) *Sec.* 132. (14) *Ibid.* (15) *Ibid.*

of the county (1) or borough (2) within which such parish is situate; (3) and thereupon the said justice shall, by an order under his hand and seal, (4) require such relieving officer or overseer to bring such pauper (5) before him, or some other justice of the said county or borough, at such time and place within three days from the time of such notice being given to such justice as shall be appointed by the said order; and the said justice before whom such pauper shall be brought shall call to his assistance a physician, surgeon, or apothecary,(6) and examine such person; and if such physician, surgeon, or apothecary shall sign a certificate with respect to such pauper, according to the form in schedule (F) No. 3 to this Act annexed, and such justice be satisfied, upon view, or personal examination of such pauper, or other proof, that such pauper is a lunatic, (7) and a proper person to be taken charge of and detained under care and treatment, he shall, by an order under his hand according to the form in the said schedule (F) No. 1 to this Act annexed, direct such pauper to be received into such asylum as hereinafter mentioned, or, where hereinafter authorized in this behalf, into some hospital registered or some house duly licensed for the reception of lunatics; and such relieving officer or overseer shall immedietely convey or cause the said lunatic to be conveyed to such asylum, hospital, or house, and such lunatic shall be received and detained therein: Provided always, that it shall be lawful for any justice, upon notice being given to him as aforesaid, or upon his own knowledge, without any such notice as aforesaid, to examine any pauper deemed to be lunatic at his own abode or elsewhere, and to proceed in all respects as if such pauper were brought before him in pursuance of an order for that purpose; provided also, that in case any pauper deemed to be lunatic cannot, on account of his health or other cause, be conveniently taken before any justice, such pauper may be examined at his own abode or elsewhere by an officiating clergyman of the parish in which he is resident, together with a relieving officer, (8) or if there be no relieving officer an overseer (9) of such parish, and such officiating clergyman, together with such relieving officer ro overseer, shall call to their assistance ap hysician, surgeon, or apothecary; and if such physician, surgeon, or apothecary shall sign a certificate with respect to such pauper according to the said form in the said schedule (F) No. 3, and if upon view or examination of such pauper such officiating clergyman and such relieving officer or overseer be satisfied that such pauper is a lunatic, and a proper person to be taken charge of and detained under care and treatment, such officiating clergyman, together with such overseer or relieving officer, shall, by an order under their hands according to the said form in the said schedule (F) No. 1, direct such pauper to be received into such asylum as hereinafter mentioned, or, where hereinafter authorized in this behalf, into some such registered hospital or licensed house as aforesaid, and such relieving officer or overseer shall immediately

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(1) *Sec.* 132. (2) *Ibid.*
(3) 9 *Geo.* 4, *c.* 40, *s.* 38; *R. v. Cornwall J.*, 1 N. Sess. Ca. 499.
(4) 18 & 19 *Vic. c.* 105, *s.* 15. (5) *Sec.* 132. (6) *Ibid.*
(7) *Ibid.* (8) *Ibid.* (9) *Ibid.*

convey or cause such pauper to be conveyed to such asylum, hospital, or house, and such pauper shall be received and detained therein; provided also, that if the physician, surgeon, or apothecary by whom any such pauper shall be examined shall certify in writing that he is not in a fit state to be removed, his removal shall be suspended until the same or some other physician, surgeon, or apothecary shall certify in writing that he is fit to be removed; and every such physician, surgeon, and apothecary is required to give such last-mentioned certificate as soon as in his judgment it ought to be given; provided also, that where a certificate in the form in the said schedule (F) No. 3 is signed by the medical officer of the parish or union (1) in which the pauper named therein is resident, as well as by some other person being a physician, surgeon, or apothecary called to the assistance of the justice or clergyman and overseer or relieving officer, as hereinbefore mentioned, such joint certificate, or such two certificates (as the case may be), shall be received by the justice or clergyman and overseer or relieving officer by whom such person is examined as hereinbefore mentioned as conclusive evidence that the person named therein is a lunatic, and a proper person to be taken charge of and detained under care and treatment, and he or they shall make an order in the form in the said schedule (F) No. 1 accordingly.

Sec. LXVIII. Every constable of any parish (2) or place, and every relieving officer and overseer (3) of any parish, who shall have knowledge that any person wandering at large (4) within such parish or place (whether or not such person be a pauper (5) is deemed to be a lunatic, shall immediately apprehend and take or cause such person to be apprehended and taken before a justice; (6) and it shall also be lawful for any justice, upon its being made to appear to him by the information upon oath of any person whomsoever that any person wandering at large within the limits of his jurisdiction is deemed to be a lunatic, by an order under the hand and seal (7) of such justice, to require any constable of the parish or place, or relieving officer or overseer of the parish where such person may be found, to apprehend him and bring him before such justice, or some other justice having jurisdiction where such person may be found; and every constable of any parish or place, and every relieving officer and overseer of any parish, who shall have knowledge that any person in such parish or place not a pauper and not wandering at large as aforesaid is deemed to be a lunatic, and is not under proper care and control, or is cruelly treated or neglected by any relative or other person having the care or charge of him, shall, within three days after obtaining such knowledge, give information thereof upon oath to a justice, and in case it be made to appear to any justice, upon such information or upon the information upon oath of any person whomsoever, that any person within the limits of his jurisdiction not a pauper, and not wandering at large, is deemed to be a lunatic, and is not under proper care and control, or is

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(1) *Sec.* 132. (2) *Ibid.* (3) *Ibid.*
(4) See 17 *Geo.* 2, *c.* 5, *s.* 20; 9 *Geo.* 4, *c.* 40, *s.* 44; *Anon.*, 2 Atk. 52; 8 & 9 *Vic. c.* 126, *s.* 49.
(5) *Sec.* 132. (6) *Ibid.*
(7) 18 & 19 *Vic. c.* 105, *s.* 15.

cruelly treated or neglected by any relative or other person having the care or charge of him, (1) such justice shall either himself visit and examine such person and make inquiry into the matters so appearing upon such information, or by an order under his hand and seal direct and authorize some physician, surgeon, or apothecary to visit and examine such person, and make such inquiry, and to report in writing to such justice his opinion thereupon; and in case, upon such personal visit, examination, and inquiry by such justice, or upon the report of such physician, surgeon, or apothecary, it appear to such justice that such person is a lunatic, and is not under proper care and control, or is cruelly treated or neglected by any relative or other person having the care or charge of him, it shall be lawful for such justice, by an order under his hand and seal, to require any constable of the parish or place, or any relieving officer or overseer of the parish, where such person is alleged to be, to bring him before any two justices of the same county or borough; and the justice or justices (as the case may be) before whom any such person as aforesaid in the respective cases aforesaid is brought, under this enactment, shall call to his or their assistance a physician, surgeon, or apothecary, (2) and shall examine such person, and make such inquiry relative to such person as he or they shall deem necessary; and if upon examination of such person or other proof such justice be satisfied that such person so brought before him is a lunatic, and was wandering at large, and is a proper person to be taken charge of and detained under care and treatment, or such two justices be satisfied that such person so brought before them is a lunatic, and is not under proper care and control, or is cruelly treated or neglected by any person having the care or charge of him, and that he is a proper person to be taken charge of and detained under care and treatment, and if such physician, surgeon, or apothecary sign a certificate with respect to every such person so brought either before one justice or two justices according to the form in the schedule (F) No. 3 to this Act, it shall be lawful for the said justice or justices, by an order under his or their hand and seal or hands and seals, (3) according to the form in the schedule (F) No 1 to this Act, to direct such person to be received into such asylum as hereinafter mentioned, (4) or, where hereinafter authorized in this behalf, (5) into some hospital registered or house licensed for the reception of lunatics, and the said constable, relieving officer, or overseer who may have brought such person before the said justice or justices, or any constable whom such justice or justices may require so to do, shall forthwith convey such person to such asylum, hospital, or house accordingly: Provided always, that it shall be lawful for any justice, upon such information on oath as aforesaid, or upon his own knowledge, and alone, in the case of any such person as aforesaid wandering at large and deemed to be a lunatic, or with some other justice, in any other of the cases aforesaid, to examine the person deemed to be a lunatic at his own abode or elsewhere, and to proceed in all respects as if such person were brought before him or them as hereinbefore mentioned; provided also, that it shall be lawful for the

(1) See Common Law: *R.* v. *Pelham*, 8 Q. B. 959. (2) *Sec.* 132.
(3) But see 18 & 19 *Vic. c.* 105, *s.* 15. (4) *Sec.* 72. (5) *Ibid.*

said justice or justices to suspend the execution of any such order for removing any such person as aforesaid to any asylum, hospital, or house for such period not exceeding 14 days as he or they may deem meet, and in the meantime to give such directions or make such arrangements for the proper care and control of such person as he or they shall consider necessary; provided also, that if the physician, surgeon, or apothecary by whom such person is examined certify in writing that he is not in a fit state to be removed, the removal of such person shall be suspended until the same or some other physician, surgeon, or apothecary certify in writing that such person is fit to be removed; and every such physician, surgeon, and apothecary is hereby required to give such last-mentioned certificate as soon as in his judgment it ought to be given; provided also, that nothing herein contained shall be construed to extend to restrain or prevent any relation or friend from retaining or taking such lunatic under his own care, if such relation or friend shall satisfy the justice or justices before whom such lunatic shall be brought, or the visitors of the asylum in which such lunatic is or is intended to be placed, that such lunatic will be properly taken care of.

Sec. LXIX. It shall be lawful for any justice(1) or justices causing any person to be examined by any physician, surgeon, or apothecary,(2) under the provisions hereinbefore(3) contained, if he or they think fit so to do, to make an order(4) under his or their hand and seal or hands and seals(5) upon the guardians(6) of the union(7) or parish(8) or the overseers(9) of the parish to which such person is chargeable, under the provisions herein contained, for the payment of such reasonable remuneration to any such physician, surgeon, or apothecary, for the examination of such person, and of all other reasonable expenses in or about the examination of such person, and the bringing him before such justice or justices, and in case he be ordered to be conveyed to any asylum,(10) registered hospital, or licensed house, of conveying him thereto, as to such justice or justices may seem proper.

Sec. LXX. If any medical officer of any parish(11) or union(12) omit for more than three days after obtaining knowledge of any pauper(13) resident in such parish, or in any parish within his district, being or being deemed to be lunatic,(14) and a proper person to be sent to an asylum,(15) to give such notice thereof as is hereinbefore required,(16) or if any relieving officer of any parish, or any overseer of any parish of which there is no relieving officer, omit for more than three days after obtaining knowledge of any pauper resident in such parish, being deemed to be a lunatic, and a proper person to be sent to an asylum, to give notice thereof to a justice as hereinbefore required,(17) or if any constable, relieving officer, or overseer omit to apprehend and take before a justice, as hereinbefore required,(18) any person wandering

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(1) *Sec.* 132. (2) *Ibid.* (3) *Sec.* 68.
(4) See 8 & 9 *Vic. c.* 126, *s.* 48; *R.* v. *Rhyddlan*, 14 Q. B. 327. See also *Sec.* 103, *post.*
(5) But see 18 & 19 *Vic. c.* 105, *s.* 15. (6) *Sec.* 132.
(7) *Ibid.* (8) *Ibid.* (9) *Ibid.* (10) *Ibid.*
(11) *Ibid.* (12) *Ibid.* (13) *Ibid.* (14) *Ibid.*
(15) *Ibid.* (16) *Sec.* 67. (17) *Sec.* 68. (18) *Ibid.*

at large and deemed to be a lunatic, or omit for three days after obtaining knowledge that any person deemed to be a lunatic (not a pauper and not wandering at large) is not under proper care and control, or is cruelly treated or neglected by any person having the care or charge of him, to give information thereof to a justice as hereinbefore required, (1) such medical officer, relieving officer, overseer, or constable, as the case may be, shall for every such offence forfeit any sum not exceeding £10.

Sec. LXXI. If any relieving officer, overseer, (2) or constable by this Act required (3) to convey any person to any asylum, (4) registered hospital, or licensed house, in pursuance of any order under this Act, refuse or wilfully neglect to execute such order with all reasonable expedition, he shall for every such offence forfeit any sum not exceeding £10.

Sec. LXXII. Every such order by a justice (5) or justices, or by a clergyman and overseer (6) or relieving officer as aforesaid, for the reception of a lunatic (7) into an asylum, may authorize his admission, not only into any lunatic asylum of the county (8) or borough (9) in which the parish (10) or place from which the lunatic is sent is situate, but also into any other asylum for the reception of pauper lunatics of such county or borough, and also into any asylum (11) for any other county or borough, or any hospital registered or house licensed for the reception of lunatics; but every lunatic shall under every such order be sent to an asylum of the county or borough in which the parish or place from which he is sent is situate, unless there be no such asylum, or there be a deficiency of room, or unless there be some special circumstances by reason whereof such lunatic cannot conveniently be taken to such asylum, which deficiency of room or special circumstances shall be stated in the order for the reception of such lunatic into any asylum other than such asylum as aforesaid, or into any registered hospital or licensed house; and no lunatic shall be sent to any registered hospital or house licensed for the reception of lunatics, by virtue of such order, except there be no such asylum, or no such asylum in which he can be received, or there be some special circumstances by reason whereof he cannot be taken thereto, which shall be stated in like manner as aforesaid. (12)

Sec. LXXIII. No pauper (13) shall be received into any asylum, (14) registered hospital, or licensed house (save under the provisions herein contained with respect to removal of lunatics) without an order according to the form required in the said schedule (F) No. 1, under the hands of one justice, (15) or under the hands of an officiating clergy-

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(1) *Secs.* 67, 68. (2) *Sec.* 132. (3) *Sec.* 68.
(4) *Sec.* 132. (5) *Ibid.* (6) *Ibid.*
(7) *Ibid.*
(8) See 9 *Geo.* 4, *c.* 40, *s.* 38; *R.* v. *Cornwall J.*, 2 Dowl. & L. 775; 8 & 9 *Vic. c.* 126, *s.* 48; and *post*, *Sec.* 132.
(9) *Sec.* 132. (10) *Ibid.* (11) *Ibid.*
(12) See *R.* v. *Ellis*, 6 Q. B. 501; 9 *Geo.* 4, *c.* 40, *s.* 38: also 8 & 9 *Vic. c.* 126, *s.* 48.
(13) *Sec.* 132. (14) *Ibid.*
(15) *Ibid.* And see *R.* v. *Hatfield Peverel*, 14 Q. B. 316.

man,(1) and of one of the overseers (2) or the relieving officer of the parish (3) or union (4) from which such pauper is sent as aforesaid, together with such statement of particulars as is contained in the same schedule, nor without a medical certificate according to the form in the said schedule (F) No. 3, signed by one physician, surgeon, or apothecary,(5) who shall have personally examined him not more than seven clear days previously to his reception; and every person who receives any pauper into any asylum without such order and medical certificate (save under any of the said provisions) shall be guilty of a misdemeanor.(6)

Sec. LXXIV. No person, not a pauper, (7) shall be received into any asylum (8) save under the provisions herein contained) without an order under the hand of some person according to the form in schedule (F) No. 2 to this Act annexed, together with such statement of particulars as is contained in the same schedule, nor without the medical certificate, according to the form and containing the particulars required in schedule (F) No. 3 annexed to this Act, of two persons, each of whom shall be a physician, surgeon, or apothecary, (9) and shall not be in partnership with or an assistant to the other, and each of whom shall separately from the other have personally examined the person to whom it relates, not more than seven clear days previously to the reception of such person into such asylum, and such order as aforesaid may be signed before or after the medical certificates or either of them; and every person who receives any person, not a pauper, into any asylum, save under the provisions herein contained, without such order and medical certificates as aforesaid, shall be guilty of a misdemeanor: Provided always, nevertheless, that any person may, under special circumstances preventing the examination of such person by two medical practitioners as aforesaid, be received into any asylum upon the certificate of one physician, surgeon, or apothecary alone, provided that the statement accompanying such order set forth the special circumstances which prevent the examination of such person by two medical practitioners; but in every such case two other such certificates shall, within three clear days after the reception of such patient into such asylum, be signed by two other persons, each of whom shall be a physician, surgeon, or apothecary, not in partnership with or an assistant to the other, or the physician, surgeon, or apothecary who signed the certificate on which the patient was received, and shall within such time, and separately from the other of them, have personally examined the person so received as a lunatic; and any person who, having received any person into any asylum as aforesaid upon the certificate of one medical practitioner alone as aforesaid, shall keep or permit such person to remain in such asylum beyond the said period of three clear days, without such further certificates as aforesaid, shall be guilty of a misdemeanor.

Sec. LXXV. Every physician, surgeon, and apothecary(10) signing

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(1) *Sec.* 132. (2) *Ibid.* (3) *Ibid.* (4) *Ibid.* (5) *Ibid.*

(6) The confinement, it seems, is not illegal by reason of there having been no regular certificate, or of the medical man who certified not having been properly qualified: *R.* v. *Minster*, 14 Q. B. 349. And see *Sec.* 87.

(7) *Sec.* 132. (8) *Ibid.* (9) *Ibid.* (10) *Ibid.*

any certificate under or for the purposes of this Act, shall specify therein the facts upon which he has formed his opinion that the person to whom such certificate relates is a lunatic, an idiot, or a person of unsound mind, distinguishing in such certificate facts observed by himself from facts communicated to him by others; and no person shall be received into any asylum (1) under any certificate which purports to be founded only upon facts communicated by others.

Sec. LXXVI. No physician, surgeon, or apothecary (2) who, or whose father, brother, son, partner, or assistant, shall sign the order for the reception of a patient, shall sign any certificate for the reception of the same patient, and no patient shall be received into any asylum(3) upon or under any certificate signed by any medical officer of such asylum.

Sec. LXXVII. It shall be lawful for any two of the visitors of any asylum,(4) being justices,(5) by an order in writing under their hands and seals,(6) to order any pauper(7) lunatic (8) chargeable to any parish (9) or union (10) within the county (11) or borough (12) or any county or borough to which such asylum wholly or in part belongs, or to such county, and who may be confined in any other asylum, or in any registered hospital or licensed house, to be removed to such first-mentioned asylum; and it shall be lawful for any two of the visitors of any asylum, being justices, in manner aforesaid, to order any pauper lunatic to be removed from such asylum to some other asylum, or to some registered hospital or licensed house; but no such lunatic shall be removed as last aforesaid without the consent in writing of two of the Commissioners in Lunacy, except to an asylum within or belonging wholly or in part to the county within which the asylum from which the lunatic is removed is situate, or the county in some parish of which the lunatic may have been adjudged to be settled, or a registered hospital or licensed house within any such county as aforesaid, or an asylum, registered hospital, or licensed house into which the lunatic can be received under a subsisting contract for the reception of lunatics therein; and it shall be lawful for the justices making any such order in and by the same to direct or require any overseer(13) or relieving(14) or other officer of the parish, union, or county, to which such lunatic is chargeable, or to authorize any other person, to execute the same; and every such order and consent shall be made and given respectively in duplicate, and one duplicate shall be delivered to and left with the superintendent or proprietor of the asylum, hospital, or licensed house from which the patient is removed, and the other shall be delivered to and left with the superintendent or proprietor of the asylum, hospital, or licensed house to which the patient is removed, and such order, with such consent in writing (where such consent is required), shall be a sufficient authority for the removal of such patient, and also for his reception into the asylum, hospital, or licensed house to which he is ordered to be removed: Provided always, that no person shall be removed under any such order without a medical certificate, signed by the medical officer

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(1) *Sec.* 132. (2) *Ibid.* (3) *Ibid.* (4) *Ibid.* (5) *Ibid.*
(6) 18 & 19 *Vic. c.* 105, *s.* 15. (7) *Sec.* 132. (8) *Ibid.* (9) *Ibid.*
(10) *Ibid.* (11) *Ibid.* (12) *Ibid.* (13) *Ibid.* (14) *Ibid.*

of the asylum, or the medical practitioner, or one of the medical practitioners, keeping, residing in, or visiting the hospital or licensed house from which such person is ordered to be removed, certifying that he is in a fit condition of bodily health to be removed in pursuance of such order; and the superintendent or proprietor of such asylum, hospital, or licensed house shall, at the time of delivering the person ordered to be removed to the overseer, officer, or person having the execution of the order for removal, deliver to such overseer or officer, free of any charge for the same, the certificate of such medical officer, and also a copy (certified under the hand of such superintendent or proprietor to be a true copy) of the order and certificate under which such person was received into and detained in such asylum, hospital, or licensed house, and the said certificate and certified copies, with one duplicate of the order for removal, shall be delivered by such overseer, officer, or person to the superintendent or proprietor of the asylum, hospital, or licensed house to which such person is ordered to be removed, or any other officer of such asylum, hospital, or licensed house into whose care such person is delivered.(1)

Sec. LXXVIII. Provided always, that no lunatic(2) being a pauper(3) shall be received under any order made by virtue of this Act into any asylum,(4) other than an asylum belonging wholly or in part to the county(5) or borough(6) in which the parish(7) or place from which such lunatic is sent, or the parish in which he is adjudged to be settled, is situate, except there be a subsisting contract for the reception of lunatics of such county or borough therein, or such borough otherwise contributes to such asylum, unless such order be endorsed by a visitor of such asylum; and it shall not be compulsory on the superintendent of any registered hospital or the proprietor of any licensed house to receive any lunatic under any such order, except in pursuance of any subsisting contract.

Sec. LXXIX. It shall be lawful for any three of the visitors of any asylum,(8) by writing under their hands and seals,(9) to order the discharge of any person detained in such asylum, whether such person be recovered or not, and also for any two of such visitors, with the advice in writing of the medical officer of such asylum, to discharge any person detained therein, or to permit any such person to be absent from the asylum upon trial for such period as such visitors think fit;(10) and it shall be lawful for such visitors to make such allowance to such last-mentioned person, not exceeding what would be the charge for such person if in the asylum, which allowance, and no greater sum, shall be charged for him and be payable as if he were actually in the asylum; and in case any person so allowed to be absent on trial for any period do not return at the expiration of such period, and a medical certificate as to his state of mind, certifying that his detention in an asylum is no longer necessary, be not sent to the visitors, he may at any time within fourteen days after the expiration of such period be retaken, as herein provided(11) in the case of an escape.

Sec. LXXX. When the visitors of any asylum (12) shall order a

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(1) See 18 & 19 *Vic. c.* 105, *s.* 8. (2) *Sec.* 132. (3) *Ibid.*
(4) *Ibid.* (5) *Ibid.* (6) *Ibid.* (7) *Ibid.*
(8) *Ibid.* (9) See 18 & 19 *Vic. c.* 105, *s.* 15.
(10) See 18 & 19 *Vic. c.* 105, *s.* 17. (11) *Sec.* 88. (12) *Sec.* 132.

pauper(1) lunatic(2) confined therein to be discharged therefrom, it shall be lawful for them, when they shall see occasion, to send notice in writing, signed by their clerk, through the post or otherwise, of their intention to discharge such lunatic, to the overseers(3) of the parish(4) wherein it shall have been adjudged that such lunatic is settled, or, if no such adjudication shall have been made, to the overseers of the parish from which such lunatic shall have been sent to such asylum, unless such lunatic shall be chargeable to the common fund of any union,(5) and in any such last-mentioned case to some one relieving officer of such union; and upon receipt of such notice the overseers or relieving officers respectively shall cause such lunatic, upon his discharge, to be forthwith removed to their parish, or to the workhouse of the union at the cost and charge of their parish or of the common fund of the union, as the case shall require; and any overseer or relieving officer who shall refuse or wilfully neglect to remove such lunatic from the said asylum within the space of seven days after such notice shall have been sent to him shall be guilty of an offence against this Act, and shall forfeit for such offence any sum not exceeding £10, to be recovered as other penalties imposed by this Act are recoverable.(6)

Sec. LXXXI. Where application is made to the committee of visitors of any asylum(7) by any relative or friend of a pauper(8) lunatic(9) confined therein, requiring that he may be delivered over to the custody and care of such relative or friend, it shall be lawful for any two of the visitors aforesaid, if they think fit, and upon the undertaking in writing of such relative or friend to the satisfaction of such visitors that such lunatic shall be no longer chargeable to any union,(10) parish,(11) or county,(12) and shall be properly taken care of, and shall be prevented from doing injury to himself or others, to dicharge such lunatic.(13)

Sec. LXXXII. It shall be lawful for the Commissioners in Lunacy, or any two of them, by writing under their hands and seals, to order and direct the removal of any lunatic (14) from any asylum,(15) registered hospital, or licensed house to any other asylum, registered hospital, or licensed house; and every such order shall be made in duplicate, and one duplicate shall be delivered to and left with the superintendent or proprietor of the asylum, hospital, or licensed house from which the patient is removed, and the other shall be delivered to and left with the superintendent or proprietor of the asylum, hospital, or licensed house to which the patient is removed, and such order shall be a sufficient authority for the removal of such patient, and also for his reception into the asylum, hospital, or licensed house to which he is ordered to be removed.

Sec. LXXXIII. If and when any person who signed the order on which any patient (not being a pauper(16) was received into any asylum(17) (whether or not such patient have since been removed under

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(1) *Sec.* 132. (2) *Ibid.* (3) *Ibid.* (4) *Ibid.*
(5) *Ibid.* (6) *Sec.* 127. (7) *Sec.* 132. (8) *Ibid.*
(9) *Ibid.* (10) *Ibid.* (11) *Ibid.* (12) *Ibid.*
(13) See also *Sec.* 68. (14) *Sec.* 132. (15) *Ibid.* (16) *Ibid.*
(17) *Ibid.*

any order made under this Act or otherwise to any other asylum) shall by writing under his hand direct that such patient be discharged or removed, then and in such case such patient shall forthwith be discharged or removed as the person who signed the order for his reception may direct. (1)

Sec. LXXXIV. If the person who signed the order on which any patient (not being a pauper(2) was received into any asylum(3) be dead, or be incapable, by reason of insanity, absence from England, or otherwise, of giving an order for the discharge or removal of such patient, then the person who made the last payment on account of such patient, or the husband or wife, or (if there be no husband, or the husband or wife be incapable as aforesaid) the father, or (if there be no father, or he be incapable as aforesaid) the mother of such patient, or if there be no mother, or she be incapable as aforesaid, then any one of the nearest of kin for the time being of such patient may, by writing under his or her hand, give such direction as aforesaid for the discharge or removal of such patient, and thereupon such patient shall be forthwith discharged or removed accordingly. (4)

Sec. LXXXV. Provided always, that no patient shall be discharged under either of the two last foregoing provisions if the medical officer of the asylum (5) in which such patient is certify in writing under his hand that in the opinion of such medical officer such patient is dangerous and unfit to be at large, together with the grounds on which such opinion is founded, unless two of the visitors of such asylum, being justices, (6) shall, after such certificate shall have been produced to them, give their consent in writing to such patient's being so discharged ; provided that nothing in this enactment shall prevent the transfer of any patient so certified to be dangerous and unfit to be at large from any asylum to any other asylum, or to any registered hospital or licensed house, but in such case the patient shall be placed under the control of an attendant belonging to the asylum, hospital, or house from or to which he is about to be removed for the purpose of such removal, and shall remain under such control until such time as the removal has been duly effected.

Sec. LXXXVI. Any person having authority to order the discharge of any patient (not being a pauper) (7) from any asylum, (8) registered hospital, or licensed house, or of any single patient, may, with the previous consent in writing of two of the commissioners, direct, by an order in writing under his hand, the removal of such patient to any asylum, registered hospital, or licensed house, or to the care or charge of any person mentioned or named in such order; and every such order and consent shall be made and given respectively in duplicate, and one of the duplicates shall be delivered to and left with the superintendent or proprietor of the asylum, hospital, or house from which or the person from whose care or charge the patient is ordered to be removed, and the other duplicate shall be delivered to and left with the superintendent or proprietor of the asylum, hospital,

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(1) But see *Sec.* 85.
(2) *Sec.* 132.
(3) *Ibid.*
(4) But see *Sec.* 85.
(5) *Sec.* 132.
(6) *Ibid.*
(7) *Ibid.*
(8) *Ibid.*

or house into which or the person into whose care or charge the patient is ordered to be removed; and such order for removal, together with such consent in writing, shall be a sufficient authority for the removal of such patient, and also for his reception into the asylum, registered hospital, or licensed house into which or by the person into whose care or charge he is ordered to be removed: Provided always, that a copy of the order and certificates upon which such patient was received into the asylum, hospital, or house from which he is removed, or as a single patient, by the person from whose care he is removed, certified under the hand of the superintendent or proprietor of such asylum, hospital, or house, or of such person as last aforesaid, to be a true copy, shall be furnished by him free of expense, and shall be delivered, with one duplicate of the said order of removal and consent, to the superintendent or proprietor of the asylum, hospital, or house to which, or to the person to whose care or charge, such patient is removed.

Sec. LXXXVII. If after the reception of any lunatic(1) into any asylum(2) it appear that the order or the medical certificate, or (if more than one) both or either of the medical certificates, upon which he was received, is or are in any respect incorrect or defective, such order and medical certificate or certificates may be amended by the person or persons signing the same at any time within 14 days next after the reception of such lunatic; provided nevertheless, that no such amendment shall have any force or effect unless the same shall receive the sanction of one or more of the commissioners in lunacy.

Sec. LXXXVIII. Every person received into any asylum, (3) registered hospital, or licensed house under such order as is required by this Act, accompanied by the requisite medical certificate, may be detained therein until he be removed or discharged as authorized by this Act, and in case of escape may, by virtue of such order and certificate or certificates, be retaken at any time within 14 days after his escape by the superintendent or proprietor of such asylum, hospital, or house, or any officer or servant belonging thereto, or any other person authorized in writing in this behalf by such superintendent or proprietor, and conveyed to and received and detained in such asylum, hospital, or house.

Sec. LXXXIX. The clerk of every asylum shall, (4) immediately on the admission of any person as a lunatic (5) into such asylum, make an entry with respect to such lunatic in a book to be kept for that purpose, to be called "the Register of Patients," according to the form and containing the particulars specified in the schedule (G) No. 1 to this Act, except as to the form of disorders, the entry as to which is to be supplied by the medical officer of the asylum within one month after the admission of the patient, and after the second and before the end of the seventh clear day from the day of the admission of any person as a lunatic into any asylum shall transmit to the Commissioners in Lunacy a copy of the order and statement and certificate or certificates on which such lunatic has been so received, together with a statement, to be made and signed by the medical officer of

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(1) *Sec.* 132. (2) *Ibid.* (3) *Ibid.* (4) *Ibid.* (5) *Ibid.*

the asylum, not sooner than two clear days after such admission, according to the form in the said schedule (F) No. 4 to this Act annexed; and any clerk omitting so to make such entry, or to transmit such copy and statement within the time aforesaid, and every medical officer omitting to make or sign such statement, shall for every such offence forfeit any sum not exceeding £20. (1)

Sec. XC. In every asylum (2) the medical officer thereof shall once in every week enter in a book to be kept for that purpose, to be called "The Medical Journal," a statement according to the form in the said schedule (G) No. 3, showing the number of patients of each sex then in such asylums, the christian name and surname of every patient who is or has been under restraint or in seclusion since the last entry, and when and for what period and reasons, and in case of restraint by what means, and the christian name and surname of every patient under medical treatment, and for what, if any, bodily disorder, and every death, injury, and violence which shall have happened to or affected any patient since the then last preceding entry, and shall also enter into a book to be called "The Case Book," as soon as may be after the admission of any patient, the mental state and bodily condition of every patient at the time of his admission, and also the history from time to time of his case whilst he shall continue in the asylum; and such books shall from time to time be regularly laid before the visitors for their inspection and signature, and every medical officer omitting to make such entries or any of them, shall for every such offence forfeit any sum not exceeding £20. (3)

Sec. XCI. The clerk of every asylum (4) shall, within three days after every visit to such asylum of two or more of the Commissioners in Lunacy, transmit to the office of such commissioners a true and perfect copy of any entries of any remarks or observations made by such visiting commissioners in any of the books of such asylum, and every such clerk omitting to transmit as aforesaid any such copy shall for every such offence forfeit any sum not exceeding £10. (5)

Sec. XCII. In case of the death of any patient in any asylum (6) a notice and statement according to the form in schedule (F) No. 5 of the death and cause of the death of such patient, and the name of any person or persons who was or were present at the death, shall be drawn up and signed by the clerk and medical officer of such asylum and a copy thereof shall be by the clerk transmitted to the registrar of deaths for the district and to the Commissioners in Lunacy within 48 hours of the death of such patient, and also to the relieving officer (7) or the overseers(8) of the union (9) or parish (10) to which such lunatic(11) (if a pauper (12) was chargeable, and if not a pauper to the person who shall have signed the order for the admission of the lunatic, or who made the last payment on account of such lunatic; and every clerk or medical officer who neglects or omits to draw up, sign, or

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(1) *Sec.* 127. (2) *Sec.* 132. (3) *Sec.* 127. (4) *Sec.* 132.
(5) *Sec.* 127. (6) *Sec.* 132. (7) *Ibid.* (8) *Ibid.*
(9) *Ibid.* (10) *Ibid.* (11) *Ibid.* (12) *Ibid.*

transmit such notice or statement as aforesaid, within the time aforesaid, shall respectively forfeit and pay any sum not exceeding £20.(1)

Sec. XCIII. The clerk of every asylum (2) shall, within three clear days after the death, discharge, or removal of any patient, make an entry thereof in the said register of patients, and also in a book to be kept for that purpose according to the form and containing the particulars in schedule (G) No. 2 to this Act, and shall also, within three clear days after the discharge, removal, escape, or recapture of any patient, transmit a written notice of such discharge or removal, according to the form in the said schedule (F) No. 5, or of such escape or recapture, to the Commissioners in Lunacy; and every such clerk who neglects or omits to make such entry as aforesaid, or transmit such notice as aforesaid within the time aforesaid, shall forfeit and pay any sum not exceeding £10; (3) and every such clerk who shall knowingly and wilfully in such entry untruly set forth any of the particulars required shall be guilty of a misdemeanor.

Sec. XCIV. Where any lunatic(4) shall be sent to an asylum, (5) registered hospital, or licensed house, under any order made by virtue of the authority hereinbefore given to two justices, (6) if it appear to such justices that such lunatic hath an estate applicable to his maintenance, and more than sufficient to maintain his family (if any), it shall be lawful for such justices to make an application in writing under their hands and seals (7) to the nearest known relative or friend of such lunatic, for the payment of the charges of the examination, removal, lodging, maintenance, clothing, medicine, and care of such lunatic; and in case such charges be not paid within one month after such application, it shall be lawful for the same or any other justices, by an order under their hands and seals, to direct a relieving officer(8) or overseer (9) of the (10) parish from which such lunatic shall be sent, or where any property of such lunatic shall be, to seize so much of the money, and to seize and sell so much of the goods and chattels, and take and receive so much of the rents and profits of the lands and tenements of such lunatic, and of any other income of such lunatic, as may be necessary to pay the charges of the examination, removal, lodging, maintenance, clothing, medicine, and care of such lunatic, accounting for the same to the same or any other justices, such charges having been first proved to the satisfaction of the said justices, and the amount set forth in such order; and if any trustee or other person having the possession, custody, or charge, of any property of such lunatic, or if the governor and company of the Bank of England, or any other body or person having in their or his hands any stock, interest, dividend, or annuity belonging or due to such lunatic, pay the whole or any part thereof to any overseer(11) or relieving officer,(12) to defray the charges set forth in such order, the receipt of such overseer or relieving officer shall be a good discharge to such trustee, governor, and company, or other body or person as aforesaid: Provided always, that, notwithstanding it may appear to the said justices that such

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(1) *Sec.* 127. (2) *Sec.* 132. (3) *Sec.* 127. (4) *Sec.* 132.
(5) *Ibid.* (6) *Ibid.* (7) See 18 & 19 *Vic. c.* 105, *s.* 15.
(8) *Sec.* 132. (9) *Ibid.* (10) *Ibid.* (11) *Ibid.*
(12) *Ibid.*

lunatic hath such estate as aforesaid, it shall be lawful for such justices, in the meantime and until such charges as aforesaid shall be paid, in pursuance of such application or order as aforesaid, to make an order on the guardians(1) of the union(2) or parish,(3) or the overseers of the parish, from which such lunatic shall be sent for confinement, for payment of the charges of the removal, lodging, maintenance, clothing, medicine, and care of such lunatic; and such guardians or overseers shall be reimbursed such charges under any order to be made as aforesaid for payment of such charges, out of the property of the lunatic, unless the same be sooner repaid by some relative or friend of such lunatic in pursuance of such application as aforesaid. (4)

Sec. XCV. When any pauper(5) lunatic(6) is confined under the provisions of this Act he shall, for the purposes of this Act, be chargeable to the parish(7) from which, or at the instance of some officer or officiating clergyman(8) of which, he has been sent,(9) unless and until such parish shall have established, under the provisions herein contained, that such lunatic is settled in some other parish, or that it cannot be ascertained in what parish such lunatic is settled; and every pauper lunatic who is chargeable to any parish shall, whilst he resides in an asylum,(10) registered hospital, or licensed house, be deemed for the purposes of his settlement to be residing in the parish to which he is chargeable. (11)

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(1) *Sec.* 132. (2) *Ibid.* (3) *Ibid.*

(4) See *Sec.* 104; and by 7 & 8 Vic. c. 101, s. 27, it is also enacted: "If it be made to appear to any two justices that any insane person, lunatic, or idiot, chargeable to any parish, hath an estate more than sufficient to maintain his family, they shall, by order under their hands and seals, direct the overseers of the parish to which such person is chargeable to seize so much of any money, to seize and sell so much of any goods and chattels, or to receive so much of the rent of the lands or tenements of such person as is proved to such justices to be necessary to pay any charges incurred in providing for the removal, maintenance, clothing, medicine, and care of such person; and if any trustee or other person having the possession, custody, or charge of any property of an insane person, lunatic, or idiot, or if the governor and company of the Bank of England, or any other person or persons, having in his or their hands any stock, interest, dividend, or annuity due to any such insane person, lunatic, or idiot, pay any money to any overseer or to any guardians of the poor to defray the charges incurred by any parish in the removal, maintenance, clothing, medicine, or care of such insane person, lunatic, or idiot, the receipt of such overseer, or of the clerk of such guardians, shall be a good discharge to such trustee or other person aforesaid."

(5) *Sec.* 132. (6) *Ibid.* (7) *Ibid.* (8) *Ibid.*

(9) 8 & 9 *Vic. c.* 126, *ss.* 49, 57; *R.* v. *Winsford*, 13 Q. B. 880.

(10) *Sec.* 132.

(11) 9 *Geo.* 4, *c.* 40; *R.* v. *Whissendine*, 2 Q. B. 450; *R.* v. *Leaden Roothing*, 12 Q. B. 181. By 12 & 13 Vic. c. 103, s. 4, it is also enacted "that the removal of any lunatic pauper to an asylum, licensed house, or registered hospital, under the authority of the statutes in that behalf, shall not be deemed to be an interruption of the residence of the pauper within the meaning of the Act 9 & 10 Vic. c. 99; but the time spent in such lunatic asylum, licensed house, or registered hospital, shall be wholly excluded from the computation of the time of residence which according to that Act will exempt a poor person from being removed."

Sec. XCVI. It shall be lawful for the justice(1) by whom any pauper(2) lunatic(3) is sent to an asylum,(4) registered hospital, or licensed house under the powers of this Act, or for any two justices of the county(5) or borough(6) in which the asylum, registered hospital, or licensed house in which any pauper lunatic is confined is situate, or from any part of which any pauper lunatic has been sent, or for any two justices being visitors of such asylum or licensed house, to make an order upon the guardians(7) of the union(8) or parish(9) or the overseers(10) of the parish (if not in a union or under a board of guardians) from which, or at the instance of any officer or officiating clergyman(11) of which, such lunatic is or has been sent for confinement, for payment to the treasurer,(12) officer, or proprietor of the asylum, registered hospital, or licensed house, of the reasonable charges of the lodging, maintenance, medicine, clothing, and care of such lunatic in such asylum, hospital, or house, and any such order may be retrospective(13) or prospective, or partly retrospective and partly prospective; and the guardians or overseers on whom such order shall be made shall from time to time pay to the said treasurer, officer, or proprietor the charges aforesaid.

Sec. XCVII. It shall be lawful for any two justices(14) for the county(15) or borough(16) in which any asylum,(17) registered hospital, or licensed house in which any pauper(18) lunatic(19) is or has been (20) confined is situate, or to which such asylum wholly or in part belongs, or from any part of which any pauper lunatic is or has been sent(21) for confinement, at any time to inquire into the last legal settlement of such pauper lunatic,(22) and if satisfactory evidence can be obtained as to such settlement in any parish, such justices shall, by order(23) under their hands and seals,(24) adjudge such settlement accordingly, and order the guardians(25) of the union(26) to which the parish(27) in which such lunatic is adjudged to be settled belongs, or of such parish in case such parish be in a union or be under a board of guardians, and if not, then the overseers(28) of such parish to pay to the guardians of any union or parish, or the overseers of any parish, all expenses incurred by or

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(1) *Sec.* 132. (2) *Ibid.* (3) *Ibid.* (4) *Ibid.*
(5) *Ibid.* (6) *Ibid.* (7) *Ibid.* (8) *Ibid.*
(9) *Ibid.* (10) *Ibid.* (11) *Ibid.* (12) *Ibid.*

(13) 5 *Geo.* 4, *c.* 71; *R.* v. *Maulden*, 8 B. & C. 81; 9 *Geo.* 4, *c.* 40, *ss.* 38, 44; *R.* v. *St. Nicholas, Leicestershire*, 3 A. & E. 79; *R.* v. *Darton*, 12 A. & E. 78.

(14) *Sec.* 132. (15) *Ibid.*

(16) 8 & 9 *Vic. c.* 126, *s.* 49; *R.* v. *Somerset J.*, 14 Jur. 109.

(17) *Sec.* 132. (18) *Ibid.* (19) *Ibid.*

(20) 8 & 9 *Vic. c.* 126, *s.* 58; *R.* v. *Wolverhampton*, 14 Q. B. 318.

(21) 8 & 9 *Vic. c.* 100, *s.* 48; 8 & 9 *Vic. c.* 126, *s.* 58; *R.* v. *Hatfield Peverel*, 14 Q. B. 316; 8 & 9 *Vic. c.* 126, *s.* 49; *R.* v. *Winsford*, 13 Q. B. 880, and see *Sec.* 118.

(22) 8 & 9 *Vic. c.* 126, *ss.* 58–62; *R.* v. *Wolverhampton*, 14 Q. B. 318; *R.* v. *Leaden Roothing*, 12 Q. B. 181.

(23) An adjudication of settlement and order for maintenance might, under 8 & 9 Vic. c. 126, have been contained in one order: *R.* v. *Tyrrhwitt*, 12 Q. B. 292.

(24) 18 & 19 *Vic. c.* 105, *s.* 15. (25) *Sec.* 132. (26) *Ibid.*
(27) *Ibid.* (28) *Ibid.*

on behalf of such union or parish in or about the examination of such lunatic, and the bringing him before a justice or justices, and his conveyance to the asylum, hospital, or house,(1) and of all monies paid by such last-mentioned guardians or overseers to the treasurer, officer, or proprietor of the asylum, hospital, or house, for the lodging, maintenance, medicine, clothing, and care of such lunatic, and incurred within 12 calendar months previous to the date of such order, (2) and, if such lunatic is still in confinement, also to pay to the treasurer, officer, or proprietor of the asylum, hospital, or house, the reasonable charges of the future lodging, maintenance, medicine, clothing, and care of such lunatic; and the guardians or overseers on whom any such order is made shall immediately pay to the guardians or overseers to whom the same are ordered to be paid the amount of the expenses and monies by such order directed to be paid to them, and from time to time pay to the said treasurer, officer, or proprietor of the asylum, hospital, or house the future charges aforesaid. (3)

An idiot cannot be emancipated: *R.* v. *Much Cowarne*, 2 B. & Ad. 861; and as to birth settlement, there is no difference between an idiot child and any other child.(4)

The order under this section must mention the sum to be paid. (5)

Sec. XCVIII. If any pauper (6) lunatic (7) be not settled in the parish(8) by which, or at the instance of some officer or officiating clergyman(9) of which, he is sent to any asylum, (10) registered hospital, or licensed house, and it cannot be ascertained in what parish (11) such pauper lunatic is settled, and if a relieving officer (12) of such first-mentioned parish, or of the union (13) in which the same is situate, or the overseers of such first-mentioned parish, shall give ten days' notice to the clerk of the peace (14) of the county (15) in which such lunatic was found to appear for such county before two justices (16)

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(1) Under 8 & 9 Vic. c. 126, s. 62, it was held that the house might be a part of the workhouse of the parish to be recouped, and that the keepers might be the master and physician of such workhouse: *St. Pancras* v. *St. Marylebone*, 16 Q. B. 973.

(2) It seems that the limit of 12 months applies only to the expenses of lodging, maintenance, medicine, clothing, and care: 8 & 9 *Vic. c.* 126, *s.* 62; *R.* v. *Minster*, 14 Q. B. 344; *R.* v. *Wolverhampton*, 14 Q. B. 318.

(3) When both parishes are in the same union: see 8 & 9 *Vic. c.* 126, *s.* 62; *R.* v. *East Arsdley*, 14 Jur. 393. The adjudication and order may, it seems, be without notice to the parish affected thereby: 8 & 9 *Vic. c.* 126, *s.* 58; *Ex parte Monkleigh*, 5 Dowl. & L. 404; *R.* v. *Hatfield Peverel*, 14 Q. B. 298; *R.* v. *Cornwall, J.*, 1 N. Sess. Ca. 499; *R.* v. *Minster*, 14 Q. B. 344; and the order need not set forth any adjudication of chargeability; it should however show that the maintenance has been at the charge of the parish to be reimbursed: *R.* v. *Minster*, 14 Q. B. 344.

(4) *Hard's case*, Salk. 427.

(5) *R.* v. *Cornwall J.*, 1 N. Sess. Ca. 499.

(6) *Sec.* 132. (7) *Ibid.* (8) *Ibid.* (9) *Ibid.*

(10) *Ibid.* (11) *Ibid.* (12) *Ibid.* (13) *Ibid.*

(14) *Ibid.* (15) *Ibid.* (16) *Ibid.*

thereof, at a time and place to be appointed in such notice, it shall be lawful for such two justices, or any two or more justices of such county, upon the appearance of such clerk of the peace, or any one on his behalf, or, in case of his non-appearance, upon proof of his having been served with such notice, to inquire into the circumstances of the case, and to adjudge such pauper lunatic to be chargeable to such county, and to order the treasurer (1) of such county to pay to the guardians (2) of any union or parish or the overseers (3) of any parish all expenses incurred by or on behalf of such union or parish in or about the examination of such lunatic, and the bringing him before a justice or justices, and his conveyance to the asylum, hospital, or house, and all monies paid by such guardians or overseers to the treasurer, officer, or proprietor of the asylum, hospital, or house, for the lodging, maintenance, medicine, clothing, and care of such lunatic, and incurred within 12 calendar months previous to the date of such order, and (if such lunatic is still in confinement) also to pay to the treasurer, officer, or proprietor of the asylum, hospital, or house the reasonable charges of the future lodging, maintenance, medicine, clothing, and care of such lunatic; and every such treasurer of a county (4) on whom any such order is made shall, out of any monies which may come into his hands by virtue of his office, immediately pay to such guardians or overseers the amount of the expenses and monies by such order directed to be paid to them, and from time to time pay to the said treasurer, officer, or proprietor of the asylum, hospital, or house the future charges aforesaid: Provided always, that such justices may direct such inquiry to be made to ascertain the parish (5) in which any pauper lunatic is settled as they think fit, and delay adjudging such pauper lunatic to be chargeable to any county until such further inquiry has been made: Provided also, that every county to which any pauper lunatic is adjudged to be chargeable as aforesaid may at any time thereafter inquire as to the parish in which such lunatic is settled, and may procure such lunatic to be adjudged to be settled in any parish.

Sec. XCIX. If, after any pauper (6) lunatic (7) has been sent to an asylum, (8) registered hospital, or licensed house as aforesaid, and has been adjudged to be chargeable to a county, (9) such county procure such lunatic to be adjudged to be settled in any parish, (10) it shall be lawful for any two justices (11) of the county or borough (12) in which the asylum, registered hospital, or licensed house in which such lunatic is confined is situate, or from any part of which such lunatic was sent for confinement, or for any two justices (13) being visitors of such asylum or licensed house, to make an order upon the guardians (14) of the union (15) to which such parish belongs, or of any such parish, if such parish be in a union or be under a board of guardians, or if not, then upon the overseers (16) of such

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(1) *Sec.* 132. (2) *Ibid.* (3) *Ibid.* (4) *Ibid.*
(5) *Ibid.* (6) *Ibid.* (7) *Ibid.* (8) *Ibid.*
(9) *Ibid.* (10) *Ibid.* (11) *Ibid.* (12) *Ibid.*
(13) *Ibid.* (14) *Ibid.* (15) *Ibid.* (16) *Ibid.*

parish, for payment to the treasurer (1) of the said county (2) of all expenses and monies paid by such treasurer as hereinbefore is provided, and of all monies paid by such treasurer to the treasurer, officer, or proprietor of the asylum, hospital, or house, for the lodging, maintenance, medicine, clothing, and care of such lunatic, and incurred within 12 calendar months previous to such order, and (if such lunatic is still in confinement) also for payment to the treasurer or officer or proprietor of the asylum, hospital, or house of the reasonable charges of the future lodging, maintenance, medicine, clothing, and care of such lunatic; and such guardians or overseers shall immediately pay to the treasurer of such county the amount of the expenses and monies by such order directed to be paid to him, and from time to time pay to the said treasurer, officer, or proprietor of the asylum, hospital, or house the future charges aforesaid. (3)

Sec. C. It shall be lawful for any justices hereinbefore authorized to make any such order as aforesaid upon the guardians of any union or parish, or upon the overseers of any parish, to make such order upon such guardians or overseers, although such union or parish be not within the jurisdiction of such justices. (4)

Sec. CI. Where any order has been made for the payment of the future charges of the lodging, maintenance, medicine, clothing, and care of any lunatic (5) in any asylum, (6) registered hospital, or licensed house, such order shall extend to and be applicable in respect of the charges of the lodging, maintenance, medicine, clothing, and care of such lunatic in any asylum, registered hospital, or licensed house to which he may be removed under the powers of this or any other Act, in like manner as if such charges had by such order been directed to be paid to the treasurer or an officer or the proprietor of the asylum, registered hospital, or licensed house in which such lunatic may for the time being be confined.

Sec. CII. Provided always, That all the expenses incurred since the 29th day of September, 1853, or hereafter to be incurred, in and about the examination, bringing before a justice (7) or justices, removal, lodging, maintenance, medicine, clothing, and care of a pauper (8) lunatic heretofore or hereafter removed to an asylum, (9) registered hospital, or licensed house under the authority of this or any other Act, who would, at the time of his being conveyed to such asylum, hospital, or house, have been exempt from removal to the parish (10) of his settlement or the country of his birth (11) by reason of some provision in the Act of the session holden in the 9th and 10th years of

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(1) 9 *Geo.* 4, *c.* 40, *s.* 42; *R.* v. *Darton*, 12 A. & E. 78; *R.* v. *St. Andrew's, Worcester*, 4 Q. B. 729; *R.* v. *Pixley*, 4 Q. B. 711.

(2) 9 *Geo.* 4, *c.* 40, *s.* 42; *R.* v. *Pixley*, 4 Q. B. 711.

(3) 8 & 9 *Vic. c.* 126, *ss.* 59, 63; *Wilson* v. *Overseers of Liverpool*, 17 Q. B. 303.

(4) The order might, under 9 Geo. 4, c. 40, have been on the overseers of a parish situate in another county, though that parish did not contribute to the maintenance of the county lunatic asylum: *R.* v. *Pixley*, 4 Q. B. 711.

(5) *Sec.* 132. (6) *Ibid.* (7) *Ibid.*

(8) *Ibid.* (9) *Ibid.* (10) *Ibid.*

(11) *R.* v. *Arnold*, 18 Q. B. 553.

Her Majesty, chapter 66,(1) shall be paid by the guardians(2) of the parish wherein such lunatic shall have acquired such exemption if such parish be subject to a separate board of guardians, or by the overseers (3) of such parish where the same is not subject to such separate board, and where such parish shall be comprised in any union, (4) the same shall be paid by the guardians, and be charged to the common fund of such union so long as the cost of the relief of paupers rendered irremoveable by the lastmentioned Act shall continue to be chargeable upon the common funds of unions; (5) and no order shall be made under any provision contained in this or any other Act upon the parish of the settlement in respect of any such lunatic pauper during the time that the above-mentioned charges are to be paid and charged as herein provided; and section 5 of the Act of the session holden in the 12th and 13th years of Her Majesty, chapter 103, shall be repealed. (6)

Under this section the following cases have been decided:—

An *irremoveable* pauper was taken from a parish in an union to the workhouse of the union, and when there the expense of his relief was charged to another parish in the same union, by the consent (under mistake of law) of the guardians of the latter parish. After the passing of the Act 7 & 8 Vict. c. 101 (which enacts, s. 56, that for the purposes of relief, settlement, or removal of poor persons, &c., the workhouse of every union is to be deemed to be situate in the parish to which each poor person respectively to be relieved, removed, &c., is or has been chargeable), he was duly removed to a lunatic asylum, where he remained for some time, still at the charge of the latter parish; the charge was afterwards transferred for a time to the common fund of the union and then re-transferred. No adjudication of his settlement was ever made. It was held that the expense of the lunatic was rightly charged under 16 & 17 Vic. c. 97, s. 102, to the common fund. (7)

A pauper lunatic was sent to a county asylum from a township

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(1) See 9 & 10 *Vic. c.* 99; *R.* v. *St. Ann's, Blackfriars*, 22 L. J. N. S. M. C. 137; *R.* v. *Leaden Roothing*, 12 Q. B. 181. Lunacy is not "sickness" within the meaning of 9 & 10 Vic. c. 99, s. 4: *R.* v. *Guardians of Manchester*, and *R.* v. *Overseers of Hunslett*, 5 W. R. 20; s. c. 2 Jur. N. S. 1205–1207.

(2) *Sec.* 132. (3) *Ibid.* (4) *Ibid.*

(5) The cost continues to be so chargeable: 12 & 13 *Vic. c.* 103, *s.* 1; 13 & 14 *Vic. c.* 101, *s.* 1; 14 & 15 *Vic. c.* 105, *s.* 1; 15 & 16 *Vic. c.* 14; 16 & 17 *Vic. c.* 77; 17 & 18 *Vic. c.* 66; 18 & 19 *Vic. c.* 47; 20 *Vic. c.* 18.

(6) See 12 & 13 *Vic. c.* 103, *s.* 5; *R.* v. *St. Leonard's, Shoreditch*, 14 Q. B. 340; *Wigton* v. *Snaith*, 16 Q. B. 496; *R.* v. *Priest Hutton*, 17 Q. B. 59; and *R.* v. *Arnold*, 18 Q. B. 553.

(7) *R.* v. *West Ward Union*, 5 W. R. 87.

A. (not a township in any union, and where, by residence, she had become irremoveable); in 1851 justices adjudged her settlement to be in parish B., and directed the overseers of parish B. to pay the expenses of her maintenance in the asylum. The overseers paid these expenses to 30th September, 1853, when they refused further payment, upon the ground that from that date the Act 16 & 17 Vic. c. 97, s. 102, transferred the burden of maintenance on A. by reason of the residence there of the lunatic; the treasurer of the asylum obtained a distress warrant against the overseers of B. for the recovery of the arrears, and under that warrant goods of one of the overseers of B. were seized. In action of trespass by him against the justices who had granted the warrant it was held by the Court of Exchequer (reversing the decision of the Queen's Bench), that 16 & 17 Vic. c. 91, s. 102, by implication, annulled the order of 1851, and that no proceeding on the part of parish B. was necessary in order to transfer its liability to the maintenance to township A.(1)

Where a person having acquired exemption from removal becomes lunatic and chargeable, the parish of irremoveability is under the above section liable for the cost of his maintenance, although he may have been removed to the lunatic asylum from another parish.(2)

Sec. CIII. Provided also, That any guardians(3) or overseers(4) who would be liable under any provision contained in this Act to have an order made upon them for the payment of any money may pay the same without any such order being made, and may charge the same to such account as they could have done if such order had been made.

Sec. CIV. If it appear to any justice(5) or justices by this Act authorized to make any order for the payment of money for the maintenance of any lunatic(6) that such lunatic has an estate, real or personal, applicable to his maintenance, and more than sufficient to maintain his family, if any, he or they shall, by an order under his or their hand and seal or hands and seals,(7) direct the overseers(8) of the parish, or a relieving officer(9) of the parish or union, or the treasurer(10) or some other officer of the county to which such lunatic is chargeable, or in which

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(1) *Knowles* v. *Trafford*, 29 L. T. 248.
(2) *R.* v. *Leeds Guardians*, 5 W. R. 259; s. c. 3 Jur. N. S. 292.
(3) *Sec.* 132. (4) *Ibid.* (5) *Ibid.* (6) *Ibid.*
(7) 18 & 19 *Vic. c.* 105, *s.* 15. (8) *Sec.* 132. (9) *Ibid.*
(10) *Ibid.*

any property of the lunatic may be, or an officer of the asylum (1) in which the lunatic may be, to seize so much of any money, and to seize and sell so much of the goods and chattels, and to take and receive so much of the rents and profits of the lands and tenements of such lunatic and other income of such lunatic, as may be necessary to pay the charges of the examination, bringing before a justice or justices, removal, lodging, maintenance, clothing, medicine, and care of such lunatic, accounting for the same to such justice or justices, such charges having been first proved to the satisfaction of such justice or justices, and the amount set forth in such order; and if any trustee or other person having the possession, custody, or charge of any property of such lunatic, or if the governor and company of the Bank of England, or any other body or person having in their or his hands any stock, interest, dividend, or annuity belonging or due to such lunatic, pay any money according to any such order, or pay any money without any such order, to the guardians (2) of any union or parish, or of to any overseer of any parish not in a union or under a board guardians, or to the treasurer of any county, (3) or any other officer of any county authorized to receive the same, to defray the charges paid or incurred by or on behalf of such parish, union, or county for the examination, bringing before a justice or justices, removal, lodging, maintenance, clothing, medicine, and care of such lunatic, the receipt of the person authorized to receive such money under such order, or of such guardians, overseer, or treasurer, or other officer, shall be a good discharge to such trustee, governor, and company, or other body or person as aforesaid. (4)

Sec. CV. The liability of any relation or person to maintain any lunatic (5) shall not be taken away or affected where such lunatic is sent to or confined in any asylum, (6) registered hospital, or licensed house, by any provision herein contained concerning the maintenance of such lunatic. (7)

Sec. CVI. If any person feel aggrieved by any refusal of an order of any justice or justices (8) as aforesaid, such person may appeal to the next General or Quarter Sessions of the peace for the county (9) or borough (10) where the matter of appeal has arisen, the person so appealing having given to the justice or justices against whom such appeal is made 14 clear days' notice of such appeal, and such Sessions are hereby authorized and required to hear and determine the matter of such appeal in a summary way, and their determination shall be final and conclusive.

Sec. CVII. The overseers (11) of any parish, (12) and the guardians (13) of any union (14) or parish, and the clerk of the peace (15) of any county, obtaining any order under this Act adjudging the settle-

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(1) *Sec.* 132. (2) *Ibid.* (3) *Ibid.*

(4) See 7 & 8 *Vic. c.* 101, *s.* 27; *antè*, 181, n. 13; and 8 & 9 *Vic. c.* 126; *R. v. St. Peter in Barton-on-Humber*, 17 Q. B. 630.

(5) *Sec.* 132. (6) *Ibid.*

(7) See 43 *Eliz. c.* 2, *s.* 7; 59 *Geo.* 3, *c.* 12, *s.* 26; 4 & 5 *Wm.* 4, *c.* 76, *s.* 78; 13 & 14 *Vic. c.* 101, *s.* 5.

(8) *Sec.* 132. (9) *Ibid.* (10) *Ibid.* (11) *Ibid.*

(12) *Ibid.* (13) *Ibid.* (14) *Ibid.* (15) *Ibid.*

ment of any lunatic(1) to be in any parish, shall, within a reasonable time after such order has been made, send or deliver, by post or otherwise, to the overseers or guardians of the parish in which such lunatic is adjudged to be settled, a copy or duplicate of such order, and also a statement in writing under their or his hands or hand, or where they are the guardians of a union or parish under the hands of any three or more of such guardians, stating the description and address of the overseers, guardians, or clerk of the peace obtaining such order, and the place of confinement of the lunatic, and setting forth the grounds of such adjudication, including the particulars of any settlement or settlements relied upon in support thereof; and on the hearing of any appeal against any such order, it shall not be lawful for the respondents to go into or give evidence of any other grounds in support of such order than those set forth in such statement.

It seems that the description and address of the guardians subscribing the statement are sufficiently given by adding to their names the words "guardians of the poor of the parish of (*the name of the parish*)." (2)

Sec. CVIII. If the guardians(3) of any union(4) or parish,(5) or the overseers(6) of any parish, feel aggrieved by any such order as aforesaid adjudging the settlement of any lunatic,(7) they or he may appeal(8) against the same to the next General Quarter Sessions of the peace for the county in behalf of which such order has been obtained, or in which the union or parish obtaining such order is situate, or in case such parish or union extend into several jurisdictions, then to the next General Quarter Sessions of the peace for the county(9) or borough(10) in which the asylum,(11) registered hospital, or licensed house in which such lunatic is or has been confined is situate, and such Sessions upon hearing the said appeal shall have full power finally to determine the matter.(12)

Where an order adjudging a settlement is made under this Act upon the overseers of a parish within a union, the overseers may, as well as the guardians of the poor of the union, appeal. If both appeal the appeals ought to be brought on at the same time. (13)

Sec. CIX. The clerk to the justices(14) making any order adjudging the settlement of any lunatic,(15) or the clerk of the peace(16) in the case

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(1) *Sec.* 132. (2) *R.* v. *Manchester Guardians*, 5 W. R. 20.
(3) *Sec.* 132. (4) *Ibid.* (5) *Ibid.* (6) *Ibid.* (7) *Ibid.*
(8) The guardians and overseers might appeal separately or jointly: 8 & 9 *Vic. c.* 126, *s.* 62; *R.* v. *Lancashire J.*, 12 Q. B. 305; *R.* v. *Middlesex J.*, 2 Q. B. 433.
(9) *Sec.* 132. (10) *Ibid.* (11) *Ibid.*
(12) *Heston* v. *St. Bride's*, 1 El. & Bl. 588.
(13) *R.* v. *Yorkshire West Riding J.*, 5 W. R. 73; but see Erle, J., in that case.
(14) *Sec.* 132. (15) *Ibid.* (16) *Ibid.*

hereinafter provided for, shall keep the depositions upon which such order was made, and shall within seven days furnish a copy of such depositions to any party authorized to appeal against such order, if such party apply for such copy, and pay for the same at the rate of twopence for every folio of 72 words; provided that no omission or delay in furnishing such copy of the depositions shall be deemed or construed to be any ground of appeal against the order: Provided also, that on the trial of any appeal against any such order, no such order shall be quashed or set aside either wholly or in part on the ground that such depositions do not furnish sufficient evidence to support, or that any matter therein contained or omitted raises an objection to the order, or grounds on which the same was made: Provided also, that if the justices who make any such order have not any clerk, they shall send or deliver the depositions to the clerk of the peace of the county or borough to the General Quarter Sessions whereof the appeal against such order is given by this Act, and the party obtaining such order shall, in such statement of grounds of adjudication as aforesaid, state that such justices have not any clerk.

Sec. CX. No appeal shall be allowed against any such order if notice in writing of such appeal be not sent or delivered by post or otherwise to the party on whose application the order was obtained within the space of 21 days after the sending or delivery, as hereinbefore directed, of a copy or duplicate of such order and such statement as hereinbefore mentioned, unless within such period of 21 days a copy of the depositions shall have been applied for as aforesaid by the party intending to appeal, in which case a further period of 14 days after the sending of such copy shall be allowed for the giving of such notice of appeal. (1)

Sec. CXI. In every case where notice of appeal against such order is given the appellant shall, with such notice, or 14 days at least (2) before the first day of the sessions at which such appeal is intended to be tried, send or deliver by post or otherwise to the respondent a statement in writing under their or his hands or hand, or where the appellants are the guardians (3) of any union (4) or parish, (5) under the hands of any three or more of such guardians, of the grounds of such appeal; and it shall not be lawful for the appellant on the hearing of any appeal to go into or give evidence of any other grounds of appeal than those set forth in such statement.

Sec. CXII. Upon the hearing of any appeal against any such order no objection whatever on account of any defect in the form of setting forth any ground of adjudication or appeal in any such statement shall be allowed, and no objection to the reception of legal evidence offered in support of any such ground alleged to be set forth in any such statement shall prevail unless the Court be of opinion that such alleged ground is so imperfectly or incorrectly set forth as to be insufficient to enable the party receiving the same to inquire into the

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(1) See 8 & 9 *Vic. c.* 126, *s.* 62; *R.* v. *Glamorganshire J.*, 13 Q. B. 561.

(2) When an act is required by statute to be done so many days at least before a given event the time must be reckoned excluding both the day of the act and that of the event: *R.* v. *Shropshire J.*, 8 A. & E. 173.

(3) *Sec.* 132. (4) *Ibid.* (5) *Ibid.*

subject of such statement, and to prepare for trial: Provided always, that in all cases where the Court is of opinion that any such objection to such statement or to the reception of evidence ought to prevail, it shall be lawful for such Court, if it so think fit, to cause any such statement to be forthwith amended by some officer of the Court, or otherwise, on such terms as to payments of costs to the other party, or postponing the trial to another day in the same sessions, or to the next subsequent sessions, or both payment of costs and postponement, as to such Court appears just and reasonable. (1)

The signature of the guardians of the poor of a township to the statement of grounds of adjudication under s. 107 of this Act is part of such statement and may therefore be amended under this section. (2)

Sec. CXIII. If, upon the trial of any appeal against any such order, or upon the return to a writ of *certiorari*, any objection be made on account of any omission or mistake in the drawing up of such order, and it be shown to the satisfaction of the Court that sufficient grounds were in proof before the justices (3) making such order to have authorized the drawing up thereof free from the said omission or mistake, it shall be lawful for the Court, upon such terms as to payment of costs as it think fit, to amend such order and to give udgment as if no such omission or mistake had existed: Provided always, that no objection on account of any omission or mistake in any such order brought up upon a return to a writ of *certiorari* shall be allowed, unless such omission or mistake have been specified in the rule for issuing such writ of *certiorari*.

Sec. CXIV. If either of the parties to the said appeal shall have included in the statement of grounds of adjudication or of appeal sent to the opposite party any ground or grounds in support of the order or of appeal which, in the opinion of the Court determining the appeal, is or are frivolous and vexatious, such party shall be liable, at the discretion of the said Court, to pay the whole or any part of the costs incurred by the other party in disputing any such ground or grounds.

Sec. CXV. Upon every such appeal the Court before whom the same is brought shall and may, if they think fit, order and direct the party against which the same is decided to pay to the other such costs and charges as may to such Court appear just and reasonable, and shall certify the amount thereof.

Sec. CXVI. The decision of the Court upon the hearing of any appeal against any such order, as well upon the sufficiency and effect of the statement of the grounds in support of the order and appeal, and of the copy or duplicate of the order sent to the appellant parish or county, as upon the amending or refusing to amend the order as

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(1) See 11 & 12 *Vic. c.* 31, *s.* 8; *Killymaenllyd* v. *St. Michael's, Pembroke*, 21 L. J. 79 *m.*

(2) *R.* v. *Manchester Guardians*, 5 W. R. 20.

(3) *Sec.* 132.

aforesaid, or the statement of grounds, shall be final, and shall not be liable to be reviewed in any court by means of a writ of *certiorari* or *mandamus* or otherwise.

Sec. CXVII. In any case in which an order has been made as aforesaid, and a copy or duplicate thereof sent as herein(1) required, it shall and may be lawful for the party who has obtained such order, whether any notice of appeal against such order has or has not been given, and whether any appeal has or has not been entered, to abandon such order, by notice in writing uuder the hand or hands of such party, or, where such order has been obtained by the guardians (2) or any union, (3) under the hands of any three or more of such guardians, to be sent by post or delivered to the appellant or the party entitled to appeal, and thereupon the said order and all proceedings consequent thereon shall become and be null and void to all intents and purposes as if the same had not been made, and shall not be in any way given in evidence, in case any other order for the same purposes shall be obtained: Provided always, that in all cases of such abandonment the party so abandoning shall pay to the appellant or the party entitled to appeal the costs which he has incurred by reason of such order and of all subsequent proceedings thereon; which costs the proper officer of the Court before whom any such appeal (if it had not been abandoned) might have been brought shall, upon application, tax and ascertain at any time, whether the Court be sitting or not, upon production to him of such notice of abandonment, and upon proof to him that such reasonable notice of taxation, together with a copy of the bill of costs, has been given to the overseers, guardians, or clerk of the peace abandoning such order, as the distance between the parties shall in his judgment require; and thereupon the sum allowed for costs, including the usual costs of taxation, which such officer is hereby empowered to charge and receive, shall be endorsed upon the said notice of abandonment, and the said notice so endorsed shall be filed among the records of the said court.

Sec. CXVIII. The provisions of this Act for and concerning the payment of expenses incurred or to be incurred in relation to pauper(4) lunatics(5) shall be applicable with respect to persons confined as pauper lunatics sent to any asylum, (6) registered hospital, or licensed house under any other Act authorizing their reception therein as pauper lunatics, and (save as herein otherwise provided concerning any lunatic who shall appear to have an estate, real or personal, applicable to his maintenance) with respect to all other lunatics sent to any asylum, registered hospital, or licensed house under any order of a justice or justices made under this Act, or the Acts hereby repealed, or any of them, as if such last-mentioned lunatics were at the time of being so sent actually chargeable to the parish from which they have been or shall be sent.(7)

Sec. CXIX. In every case of an inquiry, investigation, dispute, or appeal as to the parish(8) in which a pauper (9) lunatic(10) is settled, the

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(1) *Sec.* 116. (2) *Sec.* 132. (3) *Ibid.*
(4) *Ibid.* (5) *Ibid.* (6) *Ibid.*
(7) See *Sec.* 117; and *R.* v. *Winsford*, 13 Q. B. 880.
(8) *Sec.* 132. (9) *Ibid.* (10) *Ibid.*

guardians,(1) clerks of the guardians, relieving officers,(2) and overseers(3) of every union(4) including any parish, or of any parish, which parish respectively is interested in such inquiry, investigation, dispute, or appeal, and every person duly authorized by them respectively, and the clerk of the peace(5) of any county interested in such inquiry, investigation, dispute, or appeal, and every person duly authorized by such clerk of the peace, shall at all reasonable times be allowed free access, in the presence of the medical attendant to the lunatic, to examine him as to the premises.

Sec. CXX. On the death, discharge, or removal of any pauper(6) from any asylum,(7) registered hospital, or licensed house, the necessary expenses attending the burial,(8) discharge, or removal of such pauper shall be borne by the union(9) or parish(10) (if any) to which such pauper is chargeable, as hereinbefore provided, or if such pauper be chargeable to a county(11) as hereinbefore provided, then by such county, and shall be paid by the guardians(12) of such union or parish, or by the overseers(13) of such parish if not in a union or under a board of guardians, or by the treasurer of such county.(14)

Sec. CXXI. If any overseer,(15) or any treasurer of any county,(16) upon whom any order of justices(17) for the payment of money under the provisions of this Act or of any Act hereby repealed is made, shall refuse or neglect for the space of 20 days next after due notice of such order to pay the money so ordered to be paid, the said money, together with the expenses of recovering the same, shall be recovered by distress and sale of the goods of the overseer or treasurer so refusing or neglecting, by warrant under the hands and seals of any two justices hereby authorized to make the order for payment of the money aforesaid, or by an action at law, or by any other proceeding in any court of competent jurisdiction, against such overseer or treasurer; and if the guardians(18) upon whom any such order is made refuse or neglect for such time as aforesaid to pay the money so ordered to be paid, the same, together with the expenses of recovering the same, may be recovered by an action at law or by any other proceeding in any such court; and in case of any such action or proceeding no objection shall be taken to any default or want of form in any order of admission or maintenance, or in any certificate or adjudication under this Act, if such order or adjudication shall not have been appealed against, or if appealed against shall have been affirmed.

Sec. CXXII. Any physician, surgeon, or apothecary(19) who shall sign any certificate contrary to any of the provisions herein contained shall for every such offence forfeit any sum not exceeding £20;(20) and any physician, surgeon, or apothecary who shall falsely state or certify anything in any certificate under this Act, and any person who shall sign any certificate under this Act, in which he shall be described as a physician, surgeon, or apothecary, not being a physician, surgeon, or

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(1) *Sec.* 132. (2) *Ibid.* (3) *Ibid.* (4) *Ibid.*
(5) *Ibid.* (6) *Ibid.* (7) *Ibid.*
(8) 18 & 19 *Vic. c.* 105, *s.* 11. (9) *Sec.* 132. (10) *Ibid.*
(11) *Ibid.* (12) *Ibid.* (13) *Ibid.* (14) *Ibid.*
(15) *Ibid.* (16) *Ibid.* (17) *Ibid.* (18) *Ibid.*
(19) *Ibid.* (20) *Sec.* 127.

apothecary respectively within the meaning of this Act, shall be guilty of a misdemeanor.

Sec. CXXIII. If any superintendent, officer, nurse, attendant, servant, or other person employed in any asylum(1) strike, wound, ill-treat, or wilfully neglect any lunatic(2) confined therein, he shall be guilty of a misdemeanor, and shall be subject to indictment for every such offence, or to forfeit for every such offence, on a summary conviction thereof before two justices,(3) any sum not exceeding £20 nor less than £2.

Sec. CXXIV. If any superintendent, officer, or servant in any asylum shall, through wilful neglect or connivance, permit any patient in any case to quit or escape from such asylum, or be at large without such order as in this Act mentioned (save in the case of temporary absence authorized under the regulations of the committee of visitors), or shall secrete, or abet or connive at the escape of any such person, he shall for every such offence forfeit and pay any sum not more than £20 nor less than £2.

Sec. CXXV. Every committee of visitors may sue and be sued in the name of their clerk; and no action brought or commenced by or against any such committee of visitors in the name of their clerk shall abate or be discontinued by the death or removal of such clerk, but the clerk for the time being to the visitors shall always be deemed plaintiff or defendant in such action, as the case may be.(4)

In a suit for specific performance of a contract by visitors for the site of a lunatic asylum, it was held on demurrer that the treasurer was not a necessary party, although the purchase-money was to be raised by rates to be received by the treasurer because he was compellable to pay it over to the clerk.(5)

Sec. CXXVI. It shall be lawful for the secretary of the Commissioners in Lunacy, by their order, to prosecute or proceed against any person for any offence against this Act, and for the clerk to any committee of visitors of any asylum,(6) by their order, to prosecute or proceed against any person for any offence against this Act committed by any officer or servant belonging thereto or employed therein; and such secretary or clerk acting as the prosecutor or complainant in any such prosecution or proceeding shall be competent to be a witness therein, in the same manner as if he were not such prosecutor or complainant; and no such prosecution or proceeding shall abate or be discontinued by reason of the death or removal of such secretary or clerk, but his successor shall come and be in his place.

Sec. CXXVII. All penalties and forfeitures imposed by this Act shall and may be recovered summarily before two justices(7) in manner provided by the Act of the 12th year of Her Majesty, "to facilitat the performance of the duties of justices of the peace out of sessions,

(1) *Sec.* 132. (2) *Ibid.* (3) *Ibid.*
(4) 8 & 9 *Vic. c.* 126, *s.* 16; *Kendall* v. *King*, 4 W. R. 389.
(5) *Devenish* v. *Brown*, 2 Jur. N. S. 1043. (6) *Sec.* 132.
(7) *Ibid.*

within England and Wales, with respect to summary convictions and orders;" and such penalties and forfeitures, when recovered upon proceedings taken by the secretary of the commissioners, shall be paid to such secretary, and be applied and accounted for by him in like manner as money received for licenses for the reception of lunatics(1) granted by the said commissioners, and when recovered upon proceedings taken by the clerk to any committee of visitors of any asylum shall be paid to the treasurer of such asylum,(2) to be by him applied for the purposes of such asylum in such manner as such committee may think fit and direct, and in all other cases shall be paid to the treasurer of the county or borough(3) for which the justices by whom the person convicted of such offence have acted in such conviction.

Sec. CXXVIII. Any person who thinks himself aggrieved by any orders or determination of any justices(4) under this Act other than orders adjudicating as to the settlement of any lunatic(5) pauper,(6) and providing for his maintenance, may, within four calendar months after such order or determination made or given, appeal to the General or Quarter Sessions, the person appealing having first given at least 14 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 General or Quarter Sessions, upon proof of such notice and recognizance having been given and entered into, shall in a summary way hear and determine such appeal, or, if they think proper, adjourn the hearing thereof until the next general or quarter sessions, and if they see cause may reduce any penalty or forfeiture to not less than one-fourth of the amount imposed by this Act, and may order any money to be returned which shall have been levied in pursuance of such order or determination, 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 General or Quarter Sessions shall be final, binding, and conclusive upon all parties to all intents and purposes whatsoever.

Sec. CXXIX. The council of every borough which shall within six months after the passing of this Act, by writing under their common seal, give notice to one of Her Majesty's principal Secretaries of State of the intention of such council to take upon itself the duties, powers, and authorities hereinbefore imposed or conferred upon or given to the justices(7) of the borough,(8) shall from and after the giving of such notice be subject to and have and exercise all the duties, powers, and authorities of and for erecting and providing asylums(9) and carrying into execution the purposes of this Act which by this Act are imposed or conferred upon or given to the justices of such borough, or upon any committee of visitors to be appointed as directed by this Act, and all liabilities and contracts incurred or

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(1) *See.* 132. (2) *Ibid.* (3) *Ibid.* (4) *Ibid.* (5) *Ibid.*
(6) *Ibid.* (7) *Ibid.* (8) *Ibid.* (9) *Ibid.*

entered into by such justices or committee on behalf of such borough under this Act, or any Act hereby repealed, shall thereupon become transferred to and obligatory upon such council to the same extent as they would have been binding or obligatory on such justices or committee, and all matters and things which in this Act are required to be done at any general or quarter sessions, or at any meeting of the justices of such borough, may and shall thenceforth be done at any meeting of the council of such borough, and all notices which by this Act are required to be given to or by the clerk of the peace shall and may thenceforth be given to or by the town clerk of such borough.(1)

Sec. CXXX. It shall and may be lawful for the council of any such borough to confer upon any committee to be appointed by such council such of the powers and authorities which by this Act are conferred upon any committee of visitors to be appointed thereunder as to such council shall seem fit.

Sec. CXXXI. Every city, town, liberty, parish,(2) place, or district, not being a borough or part of a borough within the meaning of this Act,(3) shall for all the purposes of this Act be annexed to and be treated and rated as part of the county within which the same is situate, or if such city, town, liberty, parish, place, or district be situate partly in one county and partly in another, then to and as part of such one of the same counties of such city, town, liberty, parish, place, or district may have been annexed to under the said Act of the 8th and 9th years of Her Majesty, hereby repealed, or if not already so annexed, then to and as part of such one of the same counties as one of Her Majesty's principal Secretaries of State shall by writing under his hand and seal direct, and shall contribute rateably to the expenses of the asylum (4) of the county to which it is or shall be so annexed, whether such asylum have been provided before or after the passing of this Act, and shall for the purposes of this Act be within the jurisdiction of the justices(5) of such county; and in every case in which any such city, town, liberty, parish, place, or district as aforesaid is or shall be annexed to a county in which an asylum has been or shall have been already erected or provided, and such city, town, liberty, parish, place, or district shall not have contributed as provided by law towards the expenses incurred in erecting or providing such asylum, the present or any future committee of visitors of such asylum shall, as soon as conveniently may be after the passing of this Act, or after such annexation, fix a sum to be paid by the city, town, liberty, parish, place, or district so annexed towards the expenses then already incurred in erecting or providing such asylum, in due proportion to the population of such city, town, liberty, parish, place, or district, and of the county to which it shall be annexed, according to the last returns under the authority of Parliament, and the same shall be paid by every such city, town, liberty, parish, place, or district, to the treasurer of such asylum, and shall be levied and raised by such city, town, liberty, parish, place, or district, by a rate to be made therein

(1) 18 & 19 *Vic. c.* 105, *s.* 6. (2) *Sec.* 132. (3) *Ibid.* (4) *Ibid.* (5) *Ibid.*

in the same manner as any rate to be made therein for the purpose of levying or raising any other monies hereby directed to be levied and raised for the purposes of this Act; and the justices for the county to which such city, town, liberty, parish, place, or district is or shall be annexed as aforesaid, in general or quarter sessions, are hereby authorized and required to make such rate as aforesaid; and the sum so paid by such city, town, liberty, parish, place, or district shall be applied by the treasurer of the asylum to whom the same shall have been paid in such manner as the committee of visitors shall direct, according to the provisions and for carrying into execution the purposes of this Act.

Sec. CXXXII. In this Act the words and expressions following shall have the several meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction (that is to say),

"County" shall mean every county, riding, and division of a county, county of a city,(1) county of a town, and shall include every city, town, parish, place, or district by this Act annexed to a county for the purposes hereof:

"Borough" shall mean every borough, town and city corporate having a quarter sessions, recorder, and clerk of the peace:

"Parish" shall mean any parish, township, vill, tithing extraparochial place, or place maintaining its own poor:

"Union" shall mean a union of parishes formed under the Act of the 5th year of King William the Fourth, intituled An Act for the Amendment and better Administration of the Laws relating to the Relief of the Poor in England and Wales, or under the Act of the 22d year of King George the Third, intituled An Act for the better Relief and Employment of the Poor, or incorporated or united for the relief or maintenance of the poor under any local Act:

"Lunatic" shall mean and include every person of unsound mind, and every person being an idiot:

"Pauper" shall mean every person maintained wholly or in part by or chargeable to any parish, union, or county:(2)

"Justice" shall mean justice of the peace:

"Officiating clergyman of the parish" shall include the chaplain of the workhouse of the same parish, or of the workhouse of a union to which such parish belongs:

"Guardian" shall mean guardians, governors, directors, managers, or acting guardians, entitled to act in the ordering of relief to the poor from poor rates:

"Overseer" shall mean overseer of the poor of any parish, or any person acting as such:

"Relieving officer" and "clerk of the guardians" shall respectively mean such relieving officer and clerk of the guardians, and any persons acting as such respectively:

"Clerk of the peace" shall mean every clerk of the peace, and every person acting as such, or any deputy duly appointed:

"Physician," "surgeon," and "apothecary" shall respectively

(1) *R.* v. *St. Maurice*, 16 Q. B. 908.
(2) 8 & 9 *Vic. c.* 126; *R.* v. *Winsford*, 13 Q. B. 880.

mean a physician, surgeon, and apothecary duly authorized or licensed to practise as such by or as a member of some college, university, company, or institution legally established, and qualified to grant such authority or licence, in some part of the United Kingdom, or having been in practice as an apothecary in England or Wales on or before the 15th day of August, 1815, and being in actual practice as a physician, surgeon, or apothecary:

"Treasurer of the borough" shall mean every officer who has the custody of any monies raised by a borough rate:

"Treasurer of the county" shall mean every officer who has the custody of any county rate, or of any rate of any city, town, parish, place, or district by this Act annexed to a county for the purposes hereof:

"County rate" shall mean a county rate and any funds assessed upon or raised in or belonging to any county in the nature of county rates, and applicable to the purposes to which county rates are applicable:

"Borough rate" shall mean a borough fund or rate, and any fund assessed upon or raised in or belonging to any borough in the nature of borough rates, and applicable to the purposes to which borough rates are applicable:

"Asylum" shall mean any asylum, house, building, or place already erected or provided under the provisions of an Act passed in the 48th year of King George the Third, chapter 96, or an Act of the 9th year of King George the Fourth, chapter 40, or the said Acts hereby repealed, or any of them, or subject to the provisions of the said Acts or any of them, or to be erected or provided under the provisions of this Act.

Sec. CXXXIII. Nothing in this Act shall affect the provisions of any of the following Acts (that is to say), an Act of the session holden in the 39th and 40th years of King George the Third, chapter 94; an Act of the session holden in the first and second years of Her Majesty, chapter 14; and an Act of the session holden in the 3d and 4th years of Her Majesty, chapter 54; or any other provisions relating to criminal lunatics.

Sec. CXXXIV. This Act shall commence and come into operation on the first day of November, 1853.

Sec. CXXXV. This Act shall extend only to England and Wales.

Sec. CXXXVI. This Act may be cited as "The Lunatic Asylums Act, 1853."

SCHEDULES REFERRED TO BY THE FOREGOING ACT.

SCHEDULE (A).

Form of agreement for uniting under the foregoing Act for the purpose of erecting or providing an asylum for the reception of lunatics.

It is agreed this day of by and between the committees of justices of the peace for the county [*or* counties] and the borough [*or* boroughs] of and the committee of the subscribers of the lunatic hospital of [*as the case may be*], severally appointed to treat for the uniting of the said county and borough [*or* counties and boroughs] [and lunatic hospital, *as the case may be*], for the purposes of an Act passed in the year of Her Majesty Queen Victoria, intituled "An Act" [*here insert the title of this Act*], that the said county [*or* counties] and borough [*or* boroughs, and the said lunatic hospital, *as the case may be*], shall henceforth be united for the purposes of the said Act; and that an asylum for the reception of lunatics, with all necessary buildings, courts, yards, and outlets, shall be immediately provided and properly fitted up and accommodated for the purposes mentioned in the said Act; and that the necessary expenses attending the providing, building, fitting up, repairs, and maintenance of the said asylum shall be defrayed by the said county [*or* counties] and borough [*or* boroughs and lunatic hospital], so united, in the following proportions (that is to say),

The county of	five ninths of the said expenses.
The borough of	two ninths of the same.
The lunatic hospital of	two ninths of the same [*as the case may be*].

And it is further agreed, that the committee of visitors to superintend the building, erection, and management of the said asylum shall be appointed in the following proportions: the justices of the peace for the said county of shall appoint* , the justices of the peace for the borough of shall appoint* , and the subscribers to the said lunatic hospital of shall appoint* and the proportions in which the said committee of visitors are to be appointed as aforesaid may be from time to time varied, with the consent in writing under the hands of the greater number of visitors of the said county and borough [*or* each of the said counties and boroughs], and of the greater number of the visitors appointed by the said body of subscribers, and with the consent of the Commissioners

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* Insert in these blanks either the number or the proportion of visitors; and where the number of the committee of visitors is not fixed in the agreement, but only the proportions, a provision shall be made by the agreement for fixing from time to time the number of such committee.

in Lunacy: And hereunto we, the undersigned, being the major part of each of the committees of justices of the peace for the said county and borough [*or* counties and boroughs] respectively, and the major part of the committee of subscribers to the said lunatic hospital, do, on behalf of the said county and borough [*or* counties and boroughs] and lunatic hospital, set our hands and seals, this day of in the year (1)

Schedule (B).

Form of mortgage and charge upon the county or borough rates for securing the money borrowed.

We, the chairman of the court of quarter sessions of the peace of the county of holden at the day of and two other of Her Majesty's justices of the peace for the said county, assembled in the said court [*or* we, the mayor and council of the borough of *as the case shall be*], in pursuance of the powers to us given by an Act passed in the year of Her Majesty Queen Victoria, intituled "An Act" [*here insert the title of this Act*], do hereby mortgage and charge all the rates and funds to be raised and paid within the said county [*or* borough, *as the case may be*], under the description of county rates [*or* borough fund or rates], with the payment of the sum of which of hath advanced and paid towards defraying the expenses of purchasing lands, and for building and repairing, &c. [*as the case shall be*] a lunatic asylum for the said county [*or* borough, *or* the united counties and boroughs of, &c., *as the case may be*], and we do hereby grant and confirm the same rates and funds 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 [*or* borough, &c., *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 discharged, at the times and in the manner agreed upon between the said and the said justices [*or* the said mayor and council, *as the case may be*], pursuant to the directions of the said Act.

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(1) 18 & 19 *Vic. c.* 105, *s.* 3.

SCHEDULE (C), No. 1.

Names of all pauper lunatics in the asylum at
for the county [*or* borough, *&c., as the case may be*] of
on the day of 18

Names of those chargeable to a Parish.	Date of Admission.	Names of those chargeable to County.	Date of Admission.	Names of Criminals.

This is a correct return.

(Signed)

Dated

Clerk of the asylum.

SCHEDULE (C), No. 2.

Names of all private lunatics in the asylum at
for the county [*or* borough, *&c., as the case may be*] of
on the day of 18

Names.	Date of Admission.

This is a correct list.

(Signed)

Dated

Clerk of the asylum.

Schedule (D).

Form of Annual Return.

A true list of all lunatics, idiots, and other persons of unsound mind, chargeable to the common fund, or to the parishes comprised within [such part of] the union [as is situate] *or* to the parish of] in the county of specifying the names, sex, and age of each, and whether dangerous or otherwise, and for what length of time they have been supposed to be of unsound mind, and where detained, or how otherwise disposed of.*

Name.	Age.	Sex.	Parish to which chargeable.	Where maintained.					Weekly cost of Maintenance and Clothing.	Whether Lunatic or Idiot.	Dangerous to himself or others.	Of dirty Habits.	For what Length of Time supposed to be of Unsound Mind.	Observations.
				In a County or Borough Asylum, and what Asylum, and when sent thither.	In a registered Hospital or licensed House, and where, and when sent thither.	In the Work-house.	In Lodgings, or Boarded out, and where, and with whom, by Name.	Residing with Relatives, and where, and with whom, by Name.						

Signed by me this day of 18

A. B.,

Clerk to the board of guardians of the said union [*or* overseer of the said parish].

* Lunatics chargeable to the common fund, who are in the workhouse, should be entered as in the county where the workhouse is situate; and those who are not in the workhouse, as in the county in which they reside.

SCHEDULE (E).

County of
Union [*or* parish] of
District of

Quarterly list of lunatic paupers within the district of the union of [*or* the parish of] in the county *or* borough of not in any asylum, registered hospital, or licensed house.

Name.	Sex.	Age.	Form of Mental Disorder.	Duration of present Attack of Insanity, and, if idiotic, whether or not from Birth.	Where and with whom Resident.	Date of Visit.	In what condition, and if ever restrained, why, by what means, and how often.

I declare that I have personally examined the several persons whose names are specified in this list, on the days set opposite to their names, and that they are all [*or* all except A. B., C. D., and E. F.] properly taken care of, and may properly remain out of an asylum, and that these are the only pauper lunatics, to the best of my knowledge, in the district of the union [*or* in the parish] of who are not in an asylum, registered hospital, or duly licensed house.

(Signed) A. B.,
Medical officer of the district of the union [*or* parish of]

Dated the day of one thousand eight hundred and

SCHEDULE (F), No. 1.

Order for the Reception of a Pauper Patient.

I C.D. [*in the case of a single justice of the peace, or in the case of two justices, or of a clergyman and relieving officer, &c., We* C.D. and E.F.], the undersigned, having called to my [*or* our] assistance a physician [*or* surgeon, *or* apothecary, *as the case may be*], and having personally examined A.B., a pauper [*omit the words* "a pauper" *when the lunatic is not a pauper*], and being satisfied that the said A.B. is a lunatic [*or* an idiot, *or* a person of unsound mind], [*add, where the lunatic is sent as being wandering at large, the words* "wandering at large," *and in the case of a lunatic sent by virtue of the authority given to two justices, add,* "not under proper care and control," *or* "and is cruelly treated [*or* neglected] by the person having the care or charge of him," *as may appear to the justices to be the case*], and a proper person to be taken charge of and detained under care and treatment, hereby direct you to receive the said A.B. as a patient into your asylum [*or* hospital, *or* house]. Subjoined is a statement respecting the said A.B.

(Signed) C.D.

* A justice of the peace for the city or borough of [*or* an *or* the officiating clergyman of the parish of].

(Signed) E.F.

The relieving officer of the union or parish of [*or* an overseer of the parish of].

Dated the day of one thousand eight hundred

To superintendent of the asylum for the County of or the lunatic hospital of or proprietor of the licensed house of [*describing the asylum, hospital, or house*].

NOTE.—Where the order directs the lunatic to be received into any asylum other than an asylum of the county or borough in which the parish or place from which the lunatic is sent is situate, or into a registered hospital or licensed house, it should state that the justice or justices or other persons making the order is or are satisfied that there is no asylum of such county or borough, or that the asylum or asylums thereof is or are full; or (as the case may require) the special circumstances by reason whereof the lunatic cannot conveniently be taken to an asylum for such first-mentioned county or borough.

STATEMENT.

[*If any particulars in this statement be not known, the fact to be so stated.*]

Name of patient, with christian name, at length.
Sex and age.

* To be signed by two justices, where required by the foregoing Act.

Married, single, or widowed.
Condition of life and previous occupation (if any).
The religious persuasion as far as known.
Previous place of abode.
Whether first attack.
Age (if known) on first attack.
When and where previously under care and treatment.
Duration of existing attack.
Supposed cause.
Whether subject to epilepsy.
Whether suicidal.
Whether dangerous to others.
Parish or union to which the lunatic is chargeable (if a pauper or destitute lunatic).
Name and christian name and place of abode of the nearest known relative of the patient, and degree of relationship (if known).

I certify that to the best of my knowledge the above particulars are correctly stated.

(Signed)

[*In the case of a pauper, to be signed by the relieving officer or overseer.*]

SCHEDULE (F), No. 2.

Order for the Reception of a Private Patient.

I, the undersigned, hereby request you to receive A.B., a lunatic [*or* an idiot, *or* a person of unsound mind], as a patient into your asylum. Subjoined is a statement respecting the said A.B.

(Signed) Name.
Occupation (if any).
Place of abode.
Degree of relationship (if any), or other circumstances of connexion with the patient.

Dated this day of one thousand eight hundred and

To superintendent of the asylum for the county [*or* borough] of [*describing the asylum*].

STATEMENT.

[*If any of the particulars in this statement be not known, the fact to be so stated.*]

Name of patient, with christian name at length.
Sex and age.
Married, single, or widowed.
Condition of life and previous occupation (if any).

The religious persuasion as far as known.
Previous place of abode.
Whether first attack.
Age (if known) on first attack.
When and where previously under care and treatment.
Duration of existing attack.
Supposed cause.
Whether subject to epilepsy.
Whether suicidal.
Whether dangerous to others.
Whether found lunatic by inquisition, and date of commission or order for inquisition.
Special circumstances (if any) preventing the patient being examined, before admission, separately by two medical practitioners.

(Signed) Name.

[*Where the person signing the statement is not the person who signs the order, the following particulars concerning the person signing the statement are to be added, viz.:*

Occupation (if any).
Place of abode.
Degree of relationship (if any), or other circumstances of connexion with the patient.]

SCHEDULE (F), No. 3.

Form of Medical Certificate.

I, the undersigned [*here set forth the qualification entitling the person certifying to practise as a physician, surgeon, or apothecary, ex. gra.,* "being a Fellow of the Royal College of Physicians in London,"] and being in actual practice as a [physician, surgeon, *or* apothecary, *as the case may be*], hereby certify, That I, on the day of at [*here insert the street and number of the house (if any) or other like particulars*], in the county of [*in any case were more than one medical certificate is required by this Act, here insert* separately from any other medical practitioner], personally examined A.B. of [*insert residence and profession or occupation, if any,*] and that the said A.B. is a [lunatic, *or* an idiot, *or* a person of unsound mind], and a proper person to be taken charge of and detained under care and treatment, and that I have formed this opinion upon the following grounds, viz.:

1. Facts indicating insanity observed by myself [*here state the facts*].
2. Other facts (if any) indicating insanity communicated to me by others [*here state the information, and from whom*].

(Signed)

Place of abode.

Dated this day of one thousand eight hundred and

SCHEDULE (F), No. 4.

Notice of Admission.

I hereby give you notice, that A.B. was admitted into this asylum as a private [*or* pauper] patient on the day of and I hereby transmit a copy of the order and statement and medical certificates [*or* certificate] on which he was received.

[*If a private patient be received upon one certificate only, the special circumstances which have prevented the patient from being examined by two medical practitioners to be here stated, as in the statement accompanying the order for admission.*]

Subjoined is a statement with respect to the mental and bodily condition of the above-named patient.

(Signed)
Clerk of asylum.

Dated the day of one thousand eight hundred and

STATEMENT.

I have this day [*some day not less than two clear days after the admission of the patient*] seen and examined the patient mentioned in the above notice, and hereby certify that with respect to mental state he [*or* she] , and that with respect to bodily health and condition he [*or* she]

(Signed)
Medical officer of asylum.

Dated the day of one thousand eight hundred and

SCHEDULE (F), No. 5.

Form of Notice of Discharge, Removal, or Death.

I hereby give you notice, that pauper [*or* a private] patient admitted into this asylum on the day of was discharged therefrom recovered [*or* relieved, *or* not improved], *or* was removed to [*mentioning the asylum, &c.*] relieved [*or* not improved], by the authority of , or died therein in the presence of] on the day of

(Signed)
Clerk of the asylum.

Dated the day of one thousand eight hundred and

In case of death, add, "I certify that the apparent cause of death of the said [as ascertained by post mortem examination (*if so*),] was"

(Signed)
Medical officer of the asylum.

SCHEDULE (G), No. 1.

REGISTRY OF ADMISSIONS.

*Register of Patients.**

Date of last previous Admission (if any).	No. in Order of Admission.	Date of Admission.	Christian and Surname at Length.	Sex. M.	Sex. F.	Age.	Condition as to Marriage. Married.	Condition as to Marriage. Single.	Condition as to Marriage. Widowed.	Condition of Life, and previous Occupation.	Previous Place of Abode.	County, Union, or Parish to which chargeable.	By whose Authority sent.	Dates of Medical Certificates, and by whom signed.	Form of Mental Disorder.	Supposed Cause of Insanity.	Bodily Condition, and Name of Disease (if any).	Epileptics.	Congenital Idiots.	Duration of existing Attacks. Years.	Duration of existing Attacks. Months.	Duration of existing Attacks. Weeks.	Number of previous Attacks.	Age on First Attack.	Date of Discharge Removal, or Death.	Discharged or removed. Recovered.	Discharged or removed. Relieved.	Discharged or removed. Not improved.	Died.	Observations.
	1	1846: Jan. 3	William Johnson -	1	-	23	-	1	-	Carpenter	-	- -	-	- -	Melancholia	-	- -	-	-	-	4	-	2	17	1846: Sept. 1.	1				
	2																													
	3																													
	4	1848: June 9	William Johnson -	1	-	25	-	1	-	- -	-	- -	-	- -	- - -	-	- -	-	-	7	-	-	3	-	1848: Dec. 2.	1				
	5																													
	6																													
	7	1852: May 6	William Johnson -	1	-	29	1	-	-	- -	-	- -	-	- -	- - -	-	- -	-	-	3	-	-	4	-	1853: June 8.					
	8																													

* In the case of an asylum receiving both private and pauper patients, a separate register in the above form to be kept for each class.

SCHEDULE (G), No. 2.

*Register of Discharges, Removals, and Deaths.**

Date of Death, Discharge, or Removal.	Date of last Admission.	No. in Register of Patients.	Christian and Surname at Length.	Sex.		Discharged.						Removal, and to what Asylum, registered Hospital, or licensed House.				Died.		Assigned cause of Death.	Age at Death.		Observations.
						Recovered.		Relieved.		Not Improved.		Relieved.		Not Improved.							
				M.	F.	M.	F.	M.	F.	M.	F.	M.	F.	M.	F.	M.	F.		M.	F.	
1846: Sept. 1.	1846: Jan. 3.	1	William Johnson -	1	-	1															
1848: Dec. 2.	1848: June 9.	4	William Johnson -	1	-	1															
1853: June 8.	1852: May 6.	7	William Johnson -	1	-	-	-	-	-	-	-	-	-	-	-	1	-	Phthisis.	27		

* In the case of an asylum receiving both private and pauper patients, a separate register in the above form to be kept for each class.

SCHEDULE (G), No. 3.

*Form of Medical Journal.**

Date.	Number of Patients.		Patients who are, or since the last Entry have been, under Restraint or in Seclusion, when and for what Period, and Reasons, and, in case of Restraint, by what Means.		Patients under Medical Treatment, and for what, if any, bodily Disorder.		Deaths, Injuries, and Violence to Patients since the last Entry.
	M.	F.	Males.	Females.	Males.	Females.	

* In the case of an asylum receiving both pauper and private patients, a separate journal to be kept in the above form for each class.

The Act 18 & 19 Vic. c. 105, is entitled, "*An Act to amend the Lunatic Asylums Act,* 1853, *and the Acts passed in the* 9*th and* 17*th years of Her Majesty for the regulation of the Care and Treatment of Lunatics,*" and runs thus :—

Sec. I. Section 3 of the Lunatic Asylums Act, 1853, shall extend to empower the justices of any one county or borough to authorize any committee of justices elected for such county or borough thereunder to treat and enter into an agreement for uniting with the subscribers to any such hospital as therein mentioned, and it shall not be necessary that any other county or borough be a party to such agreement ; and section 5 of the said Act shall extend to empower any such committee of visitors as therein mentioned to enter into an agreement for uniting with the subscribers to any such hospital alone.

Sec. II. When two or more committees agree to unite under the Lunatic Asylums Act, 1853, or under that Act as amended by this Act, the proportion in which the expenses of carrying into execution the purposes of the said Act shall be charged upon and raised by each county and borough so uniting may be calculated and fixed according to the extent of the accommodation which in the judgment of the committees entering into such agreement will be required for the pauper lunatics of such county and borough respectively, and the power in section 16 of the Lunatic Asylums, Act, 1853, of repealing or altering the stipulations of any agreement for uniting shall extend to authorize the alteration thereof by re-adjusting the proportions in which the expenses aforesaid shall be charged on each county and borough, and the subscribers (if any) uniting, or any of the said parties, and where the committee of visitors think fit, by fixing as aforesaid, according to the probable extent of accommodation required, the proportion in which each county and borough is to contribute to such expenses, and where the proportions of any contributions are fixed according to the probable extent of accommodation required as aforesaid the agreement shall specify that such proportions are fixed according to that basis.

Sec. III. Where an agreement for uniting is hereafter entered into under the Lunatic Asylums Act, 1853, or under that Act as amended by this Act, and the proportion in which the expenses of carrying the purposes of the said Act into execution are to be charged upon each county and borough is not fixed under the foregoing provision, with reference to the probable extent of accommodation required, the agreement shall stipulate that such expenses, or, where any committee of subscribers of a lunatic hospital are a party to the agreement, then that the aggregate amount to be contributed by the counties and boroughs towards such expenses, shall be from time to time charged upon and raised by the counties and boroughs in proportion to their respective populations, as stated in the last return for the time being made of the same under the authority of Parliament, and such agreement shall be varied from the form in schedule A, to the Lunatic Asylums, Act, 1853, accordingly.

Sec. IV. Where an agreement for uniting has been already entered into under the Lunatic Asylums Act, 1853, or any former

Act, the expenses of carrying into execution any such Act, or, where any committee of subscribers is a party to the agreement, the aggregate amount to be contributed by such counties and boroughs shall be from time to time charged upon and raised by the counties and boroughs united in proportion to their respective populations, as stated in the last return for the time being made of the same under the authority of Parliament, save where such expenses are adjusted and fixed under the foregoing provision, according to the probable extent of accommodation required.

Sec. V. To the intent that due provision may be made for the reception and care of the pauper lunatics of counties and boroughs, parties to unions, upon the dissolution of such unions the justices of every county and borough united (either alone or with any subscribers) shall before any dissolution of their union takes effect at a general or quarter sessions for such county, or at a special meeting of the justices of such borough (as the case may require), elect a committee to provide an asylum for their county or borough, and authorize such committee to proceed for that purpose in manner by the Lunatic Asylums Act, 1853, provided in the case of a county or borough not having an asylum, and all the provisions of the said Act and this Act applicable to a committee elected to provide an asylum in the case of a county or borough not having an asylum shall be applicable to the committee elected under this provision.

Sec. VI. Where the council of a borough has taken upon itself, under the Lunatic Asylums Act, 1853, or the Act of the Session holden in the 8th and 9th years of Her Majesty, chapter 126, the duties, powers, and authorities, imposed or conferred upon or given to the justices of the borough, such council shall be subject to and have and exercise the duties, powers, and authorities by this Act imposed or conferred upon the justices of a borough or any committee elected by them, and such council may confer upon any committee appointed by them such of the said duties, powers, and authorities, as under this Act are or may be conferred upon a committee elected by the justices of a borough, and where the council of a borough had, before the commencement of the Lunatic Asylums Act, 1853, taken upon itself, under the said Act of the 8th and 9th years of Her Majesty, chapter 126, the duties, powers, and authorities, imposed or conferred upon or given to the justices of the borough, such council shall, from the commencement of the Lunatic Asylums Act, 1853, be deemed to have been subject to and to have had the duties, powers, and authorities, by that Act imposed or conferred upon the justices of a borough or any committee elected by them, and to have been authorized to confer upon any committee appointed by such council such of the said duties, powers, and authorities, as under such Act may be conferred upon a committee elected by the justices of a borough.

Sec. VII. Any place which has become a borough within the definition contained in section 132 of the Lunatic Asylums Act, 1853, since the commencement of that Act, shall from and after the passing of this Act be deemed to be a borough annexed to the county in which the same is situate, and any place which after the passing of this Act becomes a borough within such definition shall from and after the time of becoming such borough be deemed a borough so

annexed; and the provisions contained in section 9 in the Lunatic Asylums Act, 1853, for the appointment of two justices of a borough annexed thereunder to a county to be members of the committee of visitors of the asylum of such county, and in relation to the contribution by such borough to the expenses of the asylum of such county, shall extend to any borough annexed under this enactment.

Sec. VIII. The power given by section 77 of the Lunatic Asylums Act, 1853, to any two of the visitors of any asylum being justices to order any pauper lunatic chargeable to any parish or union within the county or borough, or any county or borough to which such asylum wholly or in part belongs, or to any such county, and who may be confined in other asylum or in any registered hospital or licensed house to be removed to such first mentioned asylum, shall be extended so as to authorize such visitors to order any pauper lunatic chargeable to any parish or union within any county or borough, or to any county for the reception of the pauper lunatics whereof into such first mentioned asylum there is a subsisting contract, and who may be confined as aforesaid, to be removed to such first mentioned asylum, and also to order any such pauper lunatic as hereinbefore mentioned to be removed from such first mentioned asylum to any asylum, registered hospital, or licensed house, subject nevertheless to the restriction contained in section 78 of the Lunatic Asylums Act, 1853.

Sec. IX. The powers of the commissioners and visitors under the Lunatic Asylums Act, 1853, and the Acts of the 8th and 9th years of Her Majesty, chapter 100, and the 16th and 17th years of Her Majesty, chapter 96, with reference to any licensed house, and the inmates thereof, and all powers and provisions of the said Acts having reference to the discharge, removal, and transfer of such inmates, shall, after the expiration or revocation of any licence granted in respect of such house, continue in force for all purposes so long as any lunatics are detained therein in the same manner as if the licence subsisted.

Sec. X. Whereas doubts have been entertained whether, under the 42d section of the Lunatic Asylums Act, 1853, a contract for the reception of pauper lunatics thereby authorized can be renewed. Be it declared and enacted, That upon or after the expiration or other determination of any contract for any of the purposes of the said section, it shall be lawful for every committee of visitors under and subject to the several provisions of the said Act applicable thereto from time to time to enter into a new contract for any of the purposes mentioned in the said section, with the committee of visitors of any asylum, or with the subscribers to any hospital registered, or the proprietor of any house licensed for the reception of lunatics, and for the committee of visitors of any asylum, or the subscribers to any registered hospital, or the proprietor of any licensed house, to contract with any committee of visitors accordingly.

Sec. XI. Where the visitors of lunatic asylum for counties and boroughs in England, or any of their officers duly authorized in that behalf, shall undertake the burial of any pauper lunatic, and the burial cannot take place in the parish where the death shall have taken place by reason of the public burial ground of such parish having been closed, and no other having been provided, or where, in conse-

quence of the crowded state of such burial ground, the visitors as aforesaid are of opinion that the burial of such dead body therein would be improper, it shall be lawful to bury such body in a public burial ground of or in some other parish as near as conveniently may be to the parish wherein the death shall have taken place, with the consent of the minister and churchwardens of such parish: Provided, that in all cases of burial under the direction of the visitors or their officers as aforesaid, the fee or fees payable by the custom of the place where the burial may be, or under the provisions of any Act of Parliament, shall be paid by the said visitors for the burial of each such body to the person or persons who, by such custom or under such Act of Parliament, shall be entitled to receive such fee or fees.

Sec. XII. The visitors of lunatic asylums in England may from time to time enter into agreements with the proprietors of any cemetery established under the authority of Parliament, or with any burial board duly constituted under the statutes in that behalf for the burial of the dead bodies of any pauper lunatics which such visitors may undertake to bury, and thereupon the burial of any such body under the directions of the said visitors or their officer in such cemetery or in the burial ground of such burial board shall be lawful: Provided, however, that no such agreement shall be valid unless made in such form and with such stipulations as the Commissioners in Lunacy shall approve.

Sec. XIII. "And whereas it is expedient that burial grounds should be provided for persons dying in any county or borough lunatic asylum built or to be built under the authority of any Act of Parliament for the reception of pauper lunatics," Be it therefore enacted, That it shall be lawful for every committee of visitors of any county or borough lunatic asylum, or for any trustees or trustee in whom any land shall be vested for the purposes of an asylum, with the previous consent of one of Her Majesty's principal Secretaries of State, under his hand to give, grant, and convey, to Her Majesty's commissioners for building new churches, and it shall be lawful for them to accept any portion not exceeding two statute acres of any land which belongs to or has been or may be purchased for any such asylum for the purpose of consecration as a burial ground for pauper or other lunatics, or officers or servants dying in such asylum; and that in all such cases the freehold of every burial ground of which Her Majesty's said commissioners shall accept a conveyance under the provisions of this Act for the purpose of consecration shall, after the same burial ground shall have been consecrated, vest in the visitors or trustees or trustee, as the case may be, for the time being of the county or borough lunatic asylum to which such burial ground shall belong, and be for ever thereafter exclusively appropriated for the burial of pauper and other lunatics dying in such asylum, and of the officers and servants belonging to such asylum and dying therein; and that from and after the consecration of such land the incumbent of the parish in which such burial ground is situate shall not be entitled to any fee for the interment therein of any pauper or other lunatic dying in such asylum, or of any of the officers and servants belonging to such asylum and dying therein.

Sec. XIV. "And whereas doubts are entertained as to the chargeability of pauper lunatics found in boroughs whose settlements

cannot be ascertained, and it is expedient to remove such doubts," Section 3 of the Act of the session holden in the 12th and 13th years of Her Majesty, chapter 82, shall be repealed, and where any pauper lunatic is not settled in the parish by which, or at the instance of some officer or officiating clergyman of which, he is sent to an asylum, registered hospital, or licensed house, and it cannot be ascertained in what parish such pauper lunatic is settled, and such lunatic was found in a borough having a separate court of quarter sessions of the peace, and which is not liable under the Act of the session holden in the 5th and 6th years of King William the 4th, chapter 76, section 117, to the payment of a proportion of the sums expended out of the county rate, such lunatic may be adjudged to be chargeable to such borough by any two justices of such borough, and it shall not be lawful for any justices to adjudge such lunatic to be chargeable to any county, nor to make any order upon the treasurer of any county for the payment of any expenses whatsoever incurred or to be incurred in respect of the said lunatic, and all the provisions in the Lunatic Asylums Act, 1853, as to the mode of determining that a pauper lunatic is chargeable to a county, and as to the order to be made for the maintenance of such pauper lunatic, shall extend and be applied to such borough as fully and effectually to all intents and purposes as if all the said provisions were repeated and re-enacted in this Act and made applicable to such borough in the same manner in all respects as though for the purposes of this provision such borough were a separate and distinct county.

Since this section applies only to boroughs "not liable under the Act 5 & 6 Wm. 4, c. 76, to the payment of any proportion of the sums expended out of the county rate," no order of chargeability in respect of such expense can now be made against a borough which is liable to contribute to the county rate.(1)

Sec. XV. In all cases in which, under the Lunatic Asylums Act, 1853, or the Act of the session holden in the 8th and 9th years of Her Majesty, chapter 100, or the Act of the session holden in the 16th and 17th years of Her Majesty, chapter 96, any order or other instrument is required to be under the hand and seal or hands and seals of any visitor or visitors, justice or justices, it shall be sufficient for such order or instrument to be signed only, and all such orders and instruments as aforesaid which have been signed before the passing of this Act, and have not had a seal or seals affixed to them as by law required, shall be and be deemed to have been valid and sufficient to justify any proceeding thereon or thereunder.

Sec. XVI. So much of section 6 of the said Act of the 16th and 17th years of Her Majesty, chapter 96, as requires such assent as therein mentioned of two of the commissioners not to be given until after such commissioners have, by personal examination

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(1) *Guardians of Poor of Birmingham* v. *Beaumont*, 6 W. R. 231.

of the patient, satisfied themselves of his desire to remain, shall be repealed.

Sec. XVII. The superintendent of any registered hospital may, with the consent in writing of two members of the committee, having the management or government of such hospital, send or take under proper control any patient to any specified place for any definite time for the benefit of his health, and any such consent and any consent under section 86 of the said Act of the 8th and 9th years of Her Majesty, chapter 100, may be from time to time renewed and the place varied.

Sec. XVIII. If after the lapse of two months from the expiration of any licence for the use of any house for the reception of lunatics which has not been renewed, or if after the revocation of any such licence there be in any such house two or more lunatics, every person keeping such house or having the care and charge of such lunatics shall be guilty of misdemeanour.

Sec. XIX. This Act, so far as the same amends or affects the said Acts of the 8th and 9th years of Her Majesty, chapter 100, and of the 16th and 17th years of Her Majesty, chapter 96, or either of them, shall be read and construed together with the said Acts as one Act, and the provision contained in section 106 of the said Act of the 8th and 9th years of Her Majesty shall extend to offences against this Act, and this Act so far as the same amends or affects the Lunatic Asylums Act, 1853, shall be read and construed therewith as one Act.

By the Act 19 & 20 Vic. c. 87, entitled, "*An Act to amend the Lunatics' Asylum Act*, 1853," it is enacted:

"Where a committee is or shall hereafter be appointed to provide an asylum for any county under the Lunatics' Asylum Act, 1853, the Recorder of every borough now or hereafter annexed to such county for the purposes of the said Act shall, at the quarter or general sessions next after such appointment as aforesaid, or where such committee has been already appointed, shall, at the general or quarter sessions next after the passing of this Act, appoint two justices of such borough to be members of such committee."(1)

By 19 Vic. c. 15, "*An Act for regulating the Payment of the Outpensioners of Greenwich and Chelsea Hospitals*," it is enacted:

"In case any Chelsea or Greenwich pensioner shall be or become insane, it shall be lawful for the Secretary-at-War for the time being, upon being satisfied of such insanity, to order that the pension of such insane pensioners, or so much thereof as shall appear to the said Secretary-at-War to be necessary for his care and maintenance, shall be paid to such guardians of the poor or heritors, and kirk session, or to the wife, child, or any other person to whom the care of such insane pensioner may be intrusted, or who may be chargeable for or liable to the expense of his care and maintenance; and the receipt of the

(1) 16 & 17 *Vic. c.* 97, *s.* 2.

person or persons to whom the same shall be so paid shall be a sufficient voucher and discharge for so much money as shall appear to have been paid thereon: Provided always, that where no claim or demand shall be made for the support of any such insane pensioner, or where the charge for his care and maintenance does not amount to the full rate of his pension, then and in every such case it shall be lawful for the Secretary-at-War at his discretion to order his pension or so much thereof as may not be necessary for his care and maintenance as aforesaid to be paid to his wife or children."

In the computation of the five years' residence, which, by 9 & 10 Vic. c. 66, prevents the removal of a person as a pauper from any parish, the time during which such person shall be confined in a lunatic asylum or house duly licensed or hospital registered for the reception of lunatics is excluded, and the removal of a pauper lunatic to a lunatic asylum under the provisions of any Act relating to the maintenance and care of a lunatic is not deemed a removal within the meaning of 9 & 10 Vic. c. 66.(1)

Paupers idiot, lunatic, or of unsound mind, may not be admitted into any registered hospital or house licensed for the reception of lunatics without a certain order and certificate;(2) and the guardians of any parish or union may, by a minute of their board or an officiating clergyman of any parish not under a board of guardians, and one of the overseers thereof, or any two justices of the county or borough in which such last mentioned parish is situate, by writing under the hands respectively of such clergyman and overseer, or of such justices, direct that any pauper patient belonging to such parish or union, and detained in any licensed house or any hospital, shall be discharged or removed therefrom, and may direct the mode of such discharge or removal; and if a copy of such minute or such writing be produced to the proprietor or superintendent of such licensed house or such hospital, he shall forthwith discharge or remove such patient, or cause or suffer such patient to be discharged or removed accordingly.(3) Further, the superintendents or proprietors of every hospital and licensed house, upon the recovery of any pauper patient therein, must transmit notice of such

(1) 9 & 10 *Vic. c.* 66, *s.* 1.
(2) 16 & 17 *Vic. c.* 96, *s.* 7.
(3) 8 & 9 *Vic. c.* 100, *s.* 74; but see *Ibid. s.* 7.

recovery to the guardians of the pauper's union or parish, or if there be no such guardians to one of the overseers of the poor of his parish, or if such pauper be chargeable to any county to the clerk of the peace thereof.(1) Any one or more of the Commissioners in Lunacy may, on such day or days, and at such hours in the day, and for such length of time as he or they shall think fit, visit all parish and union workhouses in which there shall be or be alleged to be any lunatic, as the commissioners shall, by any resolution or resolutions of their board, direct, and shall inquire whether the provisions of the law as to lunatics in such parish or union have been carried out, and also as to the dietary accommodation and treatment of the lunatics in such workhouses, and shall report in writing thereon to the poor law board ;(2) and the commissioners may, where for any reasons to be entered upon the minutes of their board any case appears to them specially to call for immediate investigation, authorize and direct by an order under their common seal any competent person or persons to visit and examine and report to them upon the mental and bodily state and condition of any pauper lunatic in a workhouse or elsewhere.(3)

The visitors of any licensed house may determine and regulate the dietary of the pauper patients therein, and the visiting Commissioners in Lunacy may determine and regulate the dietary of the pauper patients in any licensed house or hospital; and if the determinations and regulations of the visitors and the commissioners disagree, then the determination and regulation of the latter is to be obeyed.(4)

For every licence under the Act 8 & 9 Vic. c. 100 for a house for the reception of lunatics 2s. 6d. and no more is payable for every patient being a pauper proposed to be received into such house.(5)

By the Poor Law Amendment Act, 7 & 8 Vic. c. 101, it is provided that so long as it may appear that the husband of any woman is in confinement in a licensed house or asylum as a lunatic or idiot, all relief given to such woman or to her child or

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(1) 16 & 17 *Vic. c.* 96, *s.* 19.
(2) 16 & 17 *Vic. c.* 96, *s.* 28.
(3) 16 & 17 *Vic. c.* 96, *s.* 29.
(4) 8 & 9 *Vic. c.* 100, *s.* 82.
(5) 8 & 9 *Vic. c.* 100, *s.* 32.

children shall, notwithstanding her coverture, be given to her in the same manner and subject to the same conditions as if she were a widow, without prejudice however to the obligations or liabilities of such husband in respect of such relief.(1)

Wilfully to detain for a longer period than 14 days any dangerous lunatic, insane person, or idiot, in a workhouse not being also a county lunatic asylum, or a place duly licensed for the reception of idiots, lunatics, and persons of unsound mind, is a misdemeanour. (2)

No bastard child, born of any lunatic, insane person, or dangerous idiot, in any asylum erected under the Act 48 Geo. 3, c. 96, thereby gains a settlement in the parish in which such asylum is situated; but the place of the legal settlement of such child is the parish where his or her mother was last legally settled; (3) and where any money is payable, under 7 & 8 Vic. c. 101, to the mother of a bastard, any two justices may, whilst the mother is of unsound mind, from time to time, by order under their hands, appoint any person, other than an officer of a parish or union, who, with his own consent, shall have the custody of the bastard so long as the bastard is not chargeable to any parish or union; and any two such justices may revoke the appointment and appoint another person in his stead; and every such appointee, so long as such bastard is not chargeable to any parish or union, may apply for the recovering of the money so payable in the same manner as the mother, if not of unsound mind, might have done. If however the bastard becomes chargeable to a parish or union by the neglect of his or her putative father to make payments pursuant to an order under the Act, any board of guardians of a union or parish, or if there be no such board, the overseers of any parish or place, may in the place of the mother apply for the enforcement of the order; all payments consequent on such application must however be to the appointee of the justices, and on condition that the bastard shall cease to be chargeable to such parish or union. Every such person who

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(1) 7 & 8 *Vic. c.* 101, *s* 25.
(2) 4 & 5 *Wm.* 4, *c.* 76. *s.* 45.
(3) 51 *Geo.* 3, *c.* 78, *s.* 7. See also 16 & 17 *Vic. c.* 97, *s.* 95.

may misapply monies paid by the putative father for the support of such child, or may withhold proper nourishment from such child, or otherwise abuse and maltreat such child shall, on conviction before any two justices, forfeit and pay a sum not exceeding £10. (1)

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(1) 7 & 8 *Vic. c.* 101, *ss.* 5, 7, 8.

CHAPTER VII.

As to the Custody of Idiots, Lunatics, and Persons of unsound mind by the Sovereign.

THE Sovereign, as *parens patriæ*, is *jure protectionis suæ regiæ* entitled to the custody of the body and estate (1) of every idiot,

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(1) It has been laid down that if an idiot has only a title to land by way of entry or action, but no possession, the Sovereign shall not enter and have the custody of such land, and so the King shall not have custody of the chose in action of an idiot: *Vin. Abr.* "*Lun.*" (*B*), *pl.* 1, (*L*), *pl.* 12; *Staundford de Prer. Reg. c.* 9; *Brooke's Abr.* "*Chose in Action*," *pl.* 12; *Ibid.* "*Idiot*," *pl.* 2, 3; 1 *Hen.* 7; *Year Book, p.* 24. And it has also been laid down in *Beverley's case*, 4 Rep. 126: "The King shall not have the custody of the 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, it would be a great prejudice to the lord of the manor; but yet an alienation made by an idiot of his copyhold after office found shall be avoided: *vide* 13 *Eliz.*; *Dyer*, 302." In *Dyer*, 302, above referred to, is *Vivian's case*, which does not appear to be in point; but there is a marginal note to that case which runs thus: "*Le rule de Court de Gards est que si ideot had auscun biens ou chattels ou terrs forsque copyhold ters tenus de common person le Roy naver le custody mes le sur de quel copyhold est tenus mes s'il ad auscun auter donque le copyhold ter auxi:* Pas. 13 Eliz., *John Rogers' case*, C. W. 74." And in the text of *Dyer*, 302 *a*, is the following note: "*Nota que fuit clerement agre per concilium cûr que un copyhold q'est ideot ne doit estre ordered in cest Court pur son copyhold mes ceo serra fait in Curiâ Domini Manerii.*" However, in *Cox* v. *Darson*, Hobart, C.J., referring to a grant by the lord of a manor of the custody of the copyhold of his lunatic tenant, said: "I do not agree that the lord hath power over the lunatic's land without a *custom*, for the imitation of the King's power over freeholds makes not consequence, for though I take the statute to be but an affirmance of the common law in the case of the King, yet the collateral incidents of estates, as dower, tenancy by the curtesy, wardships, and the like, are not without special custom." And the same judge and the Court, in *Drury* v. *Fitch*, Hutt. 17, agreed "that the lord of a manor hath not power to commit or dispose of the copyhold of a lunatic without special *custom*, no more than a man shall be tenant by the curtesy, &c., of a copyhold without custom, nor the lord cannot commit during the minority of an infant copyholder without custom." See also *Eaves* v. *Skinner*, Cro. Jac. 105. But the doctrine on this subject is now of little importance, for see 16 & 17 *Vic. c.* 70, *ss.* 40-45.

lunatic, and person of unsound mind, being her subject, (1) although resident abroad, (2) or being an alien in England. (3) This right in the Sovereign is "*regium manus*," (4) and the whole prerogative is this, (5) that it falls to the Sovereign to take care of those who cannot take care of themselves; (6) it is not founded on the Act 17 Edw. 2, st. 1, (7) though it is defined thereby; (8) and it gives to the Sovereign no estate in the lands of the idiot, lunatic, or person of unsound mind. (9)

The Act 17 Edw. 2, st. 1, runs thus: Chapter 9—"*Rex habet custodiam terrarum fatuorum naturalium capiendo exitus earundem sine vasto et destructione et inveniet eis necessaria* (10) *sua de cujuscunque feodo terre ille fuerint et post mortem eorum reddat eas rectis hæredibus ita quod nullatenus per eosdem fatuos alienentur vel eorum heredes exheredentur.*" Chapter 10—"*Item habet providere quando aliquis qui prius habuit memoriam et intellectum non fuerit compos mentis sue sicut quidam sunt per lucida intervalla quod terre et tenementa eorundem salvo custo diantur sine vasto et destructione et quod ipse et familia sua de exitibus earundem vivant et sustineantur competenter* (11) *et residuum ultra sustentationem eorundem rationabilem custodiatur ad opus ipsorum liberandum eis quando memoriam recuperaverint.*

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(1) *Beverley's case*, 4 Rep. 126; *Tourson's case*, 8 Rep. 170 a. Lord Redesdale, C., in *Att.-Gen.* v. *Mayor of Dublin*, 1 Bli. N. S. 347, 348; and in *Re Fitzgerald*, 2 Sch. & Lef. 436. Lord Somers, C., in *Cary* v. *Bertie* 2 Vern. 342. Lord Hardwicke, C., in *Smith* v. *Smith*, 3 Atk. 304, 305.

(2) *Ex parte Southcote*, Ambl. 109; s. c. 2 Vez. 401; *Re Webb*, 2 Coo. *t.* Cott. 145; *Re Lyon* and *Re Stevens* referred to in 2 Coo. *t.* Cott. 150 n.

(3) *Re Princess Bariatinski*, 1 Phil. 379.

(4) *Ash's case*, Freem. 259. See also De Grey, C.J., in *Ex parte Grimstone*, 4 Bro. C. C. 236 n.

(5) *Beverley's case*, 4 Rep. 126; *Tourson's case*, 8 Rep. 170. Lord Loughborough, C., in *Oxenden* v. *Compton*, 2 Ves. 71. Abinger, C.B., in *R.* v. *Chambers*, 11 M. & W. 777, 778; 3 Bl. Com. 303.

(6) Lord Eldon, C., in *Ex parte Cranmer*, 12 Ves. 449.

(7) *Beverley's case*, 4 Rep. 126. Lord Hardwicke, C., in *Ex parte Southcote*, Ambl. 111; s. c. 2 Vez. 405. De Grey, C.J., in *Ex parte Degge*, 4 Bro. C. C. 236. Lord Apsley, C., in *Ex parte Grimstone*, Ambl. 706. But see Lord Redesdale, C., in *Re Fitzgerald*, 2 Sch. & Lef. 436-439.

(8) *Beverley's case*, 4 Rep. 124; *Cocks* v. *Darson*, Hob. 215. Lord Loughborough, C., in *Oxenden* v. *Compton*, 2 Ves. 71. De Grey, C.J., in *Ex parte Degge*, 4 Bro. C. C. 236. But see 2 *Inst.* 14; and *Fleta*, *b.* 1, *c.* 11, *s.* 10.

(9) *Beverley's case*, 4 Rep. 126; *Blewitt's case*, Ley. 47; *Staundford de Prer. Reg.* 34-36; *Knipe* v. *Palmer*, 2 Wils. 130; *Ex parte Dikes*, 8 Ves. 80.

(10) See *Staundford de Prer. Reg. c.* 9, 35.

(11) See *Holmes' case*, Dyer, 25 b.

Ita quod prædicte terre et tenementa infra predictum tempus non 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."

The object of the Act was, it is said, (1) to restrain the abuse of treating the estates of lunatics as the estates of idiots, the Sovereign being in respect of lunatics' property but a trustee. (2) The words "*sine vasto et destructione*" must be taken in their *ordinary* not technical sense, (3) and the ordinary now takes "*residuum*" in trust for those who, if the deceased person had been sane, would have at his death become entitled to his personalty. (4) The Sovereign may consistently with the Act take the property of an idiot and keep it in order and maintain him thereout and his family, and retain the surplus income to his own use during the life of the idiot. No person, however, is now found an idiot, in order that questions as to the Crown's rights may be avoided; the evidence as to the date of the commencement of the insanity is not carried back to the birth. (5)

It would of course be impracticable for the Sovereign to take upon himself or herself personally the burden of the actual custody of the body and estate of every individual in England, and of every English subject abroad, being an idiot, lunatic, or person of unsound mind; and it would be highly inconvenient that the Sovereign should personally consider and determine the appointment of the bailiffs of such custody. (6) To avoid personal applications to the Sovereign on the subject of such custody, the practice has been that

The Sovereign has always delegated the grant of the custody of idiots, lunatics, and persons of unsound mind,

To one or more of his or her chief officers; (7) and for a long

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(1) Lord Loughborough, C., in *Oxenden* v. *Compton*, 2 Ves. 71.

(2) Lord Redesdale, C., in *Lysaght* v. *Royse*, 2 Sch. & Lef. 153; and *Re Fitzgerald*, 2 Sch. & Lef. 436-439. Lord Lyndhurst, C., in *Re Bariatinski*, 1 Phil. 378.

(3) Lord Thurlow, C., in *Ex parte Bromfield*, 3 Bro. C. C. 510; s. c. 1 Ves. 461. Lord Loughborough, C., in *Oxenden* v. *Compton*, 4 Bro. C. C. 234.

(4) 31 *Edw.* 3, *c.* 11; 22 & 23 *Car.* 2, *c.* 10.

(5) See also Lord St. Leonards, in *Stanton* v. *Percival*, 5 H. L. Ca. 284; and 16 & 17 *Vic. c.* 70, *s.* 47.

(6) Lord Apsley, C., *in Ex parte Grimstone*, 4 Bro. C. C. 237 n.

(7) Lord Loughborough, C., in *Oxenden* v. *Compton*, 2 Ves. 71.

period previously to the appointment of the Lords Justices of Appeal in the Court of Chancery, the Lord Chancellor was almost invariably selected as the delegate: (1) it seems he was selected either in consideration of it being his duty as Chancellor to issue the writ or commission for inquiry into every case of alleged idiotcy, lunacy, or unsoundness of mind, (2) or because he alone, as keeper of the royal conscience, could act after the grant in the exercise of this branch of the royal prerogative. (3) But the Lord Chancellor is not necessarily the delegate; (4) *e.g.*, the Lord High Treasurer once filled the office. (5) The delegation is by warrant under the royal sign manual, and the warrant is nothing but a special authority to select the person to whom the grant shall be made; (6) it confers no jurisdiction, but only a power of administration. (7) Against any error or abuse of exercise of the prerogative by the delegate, an appeal lies only to the Sovereign in council. (8)

At the present moment

The delegates of the grant of the custody of idiots, lunatics, and persons of unsound mind, are:

The Lord Chancellor and the Lords Justices of the Court of Appeal in Chancery.

Under the Lunacy Regulation Act, 16 & 17 Vic. c. 70, the Lord Chancellor may act separately or jointly with the Lords Justices or either of them, and the Lords Justices may act jointly apart from the Lord Chancellor; (9) the respective powers of the Lord Chancellor and Lord Justices, *dehors* that Act, are to

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(1) Lord Redesdale, C., in *Re Fitzgerald*, 2 Sch. & Lef. 433. Lord Eldon, C., in *Sanderson* v. *Sherwood*, 19 Ves. 283.

(2) Lord Redesdale, C., in *Lysaght* v. *Royse*, 2 Sch. & Lef. 153, 438; *Page's case*, 5 Rep. 52.

(3) Lord Apsley, C., in *Ex parte Grimstone*, 4 Bro. C. C. 237 n.

(4) Lord Loughborough, C., in *Oxenden* v. *Compton*, 4 Bro. C. C. 233. Lord Thurlow, C., in *Wigg* v. *Tiler*, 2 Dick. 553. Lord St. Leonards, in *Stanton* v. *Percival*, 5 H. L. 284.

(5) Lord Thurlow, C., in *Wigg* v. *Tiler*, 2 Dick. 553.

(6) *Ibid.*

(7) Lord Loughborough, C., in *Oxenden* v. *Compton*, 2 Ves. 72.

(8) Lord Loughborough, C., in *Oxenden* v. *Compton*, 2 Ves. 72; *Pitt's case*, 3 P. Wms. 107 n. (a). Lord Apsley, C., in *Ex parte Degge*, 4 Bro. C. C. 235 n.; *Rochfort* v. *Ely*, 1 Bro. P. C. 450.

(9) 16 & 17 *Vic. c.* 70, *s.* 2.

be learned from the sign manual or manuals only; the Lords Justices will not set aside any general rule affecting the practice in lunacy without having the benefit of the opinion of the Lord Chancellor. (1)

Hereafter, for brevity's sake, we will speak of these delegates under the title of the Lord Chancellor, their chief.

The officers of the Lord Chancellor acting in the affairs of idiots, lunatics, and persons of unsound mind,

Are the "Masters in Lunacy," the "Registrar in Lunacy," the "visitors of lunatics," the "secretary of such visitors;" lastly, the "committees of the persons and estates of idiots, lunatics, and persons of unsound mind," and the "receivers" of such estates.

As to the

Powers and duties of the officers of the Lord Chancellor acting in the affairs of idiots, lunatics, and persons of unsound mind:

Those of the Masters in Lunacy, the Registrar in Lunacy, the visitors of lunatics, and the secretary to such visitors, are set forth in the Act 16 & 17 Vic. c. 70, (2) which enacts as follows:—

Sec. VI. There shall be two *Masters in Lunacy*, who shall hold their offices during good behaviour, and the present (3) *Masters in Lunacy* shall be continued and be the *Masters in Lunacy* during good behaviour, and the Lord Chancellor (4) shall from time to time as any vacancy shall occur in the office of Masters in Lunacy appoint a fit person being a serjeant or barrister at law of not less than 10 years' standing at the bar to fill the vacancy, and the person to be so appointed shall, before being capable of acting as *Master in Lunacy*, take before the Lord Chancellor in the manner now used the oath set

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(1) *Re Burton*, 18 L. T. 85.

(2) This Act took effect from the 28th day of October, 1853, and may be cited as the Lunacy Regulation Act, 16 & 17 Vic. c. 70.

(3) The present Masters in Lunacy are Francis Barlow and Edward Winslow, Esqrs.

(4) In this Act, unless there be something in the subject matter or context repugnant to the construction, the "Lord Chancellor" shall be construed to mean the Lord High Chancellor of Great Britain for the time being, and to include and be applicable to the Lord Keeper or Lords Commissioners for the custody of the Great Seal of the United Kingdom for the time being: 16 & 17 *Vic. c.* 70, *s.* 2.

forth in the schedule (1) hereunder written, and the *Masters in Lunacy* for the time being shall have the same rank and precedence as the Masters (2) now (3) take.

Sec. VII. The *Masters in Lunacy* shall have, perform, and execute all the powers, duties, and authorities which were at the time of the passing of the Act of the Session of Parliament holden in the 5th and 6th years of the reign of Her Majesty, chapter 84, had, performed, and executed by commissioners named in commissions in the nature of writs *de lunatico inquirendo*.

Sec. VIII. All the inquiries and matters connected with the persons and estates of lunatics (4) which were at the time of the passing of the last mentioned Act of Parliament usually referred to the Masters in Ordinary of the High Court of Chancery (except inquiries and matters which may be or might have been referred under the Trustee Act, 1850, or any Act thereby repealed), shall henceforth where references shall be made be referred to the *Masters in Lunacy*, who shall have, perform, and execute all the powers, duties, and authorities relating to the inquiries and matters so to be referred to them as aforesaid, which were at the time last aforesaid had, performed, and executed by the Masters in Ordinary of the High Court of Chancery, and shall perform such other duties for the security and advantage of lunatics and their estates as the Lord Chancellor, intrusted as aforesaid, (5) shall from time to time direct.

Sec. IX. All the powers and authorities by or under this Act

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(1) Sch. 2: "I —— do swear that I will faithfully, impartially, and honestly, according to the best of my skill and knowledge, execute the several powers and trusts given to and reposed in me as one of the Masters in Lunacy, and that without favour or affection, prejudice or malice. So help me, God."

(2) In this Act, unless there be something in the subject matter or context repugnant to the construction, the expression "the Masters" shall be construed to mean the Masters in Lunacy for the time being jointly or severally: 16 & 17 *Vic. c.* 70, *s.* 2.

(3) *I.e.*, the same rank as the Masters in Ordinary of the High Court of Chancery: 8 & 9 *Vic. c.* 100, *s.* 2.

(4) In this Act, unless there be something in the subject matter or context repugnant to the construction, the word "lunatic" shall be construed to mean any person found by inquisition idiot, lunatic, or of unsound mind, and incapable of managing himself or his affairs: 16 & 17 *Vic. c.* 70, *s.* 2.

(5) In this Act, unless there be something in the subject matter or context repugnant to the construction, "the Lord Chancellor intrusted as aforesaid" shall be construed to mean the Lord High Chancellor of Great Britain for the time being intrusted by virtue of the Queen'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 when and so long as the Lords Justices of the Court of Appeal in Chancery for the time being shall be intrusted as aforesaid concurrently with the Lord Chancellor, then and so long the last-mentioned expression shall be construed to include or be applicable to the Lords Justices aforesaid; so that all the powers, authorities, and duties to be had, exercised, and performed under this Act by the Lord Chancellor intrusted as aforesaid, shall and may be had, exercised, and performed, as well by the Lord Chancellor acting either alone or jointly with both or either of the Lords Justices aforesaid, as by both of the Lords Justices aforesaid acting jointly apart from the Lord Chancellor: 16 & 17 *Vic. c.* 70, *s.* 2.

vested or to be vested in *the Masters* shall be joint and several, and they shall execute commissions (1) and conduct inquiries connected with lunatics or their estates, and perform all other duties committed or to be committed to them by or by virtue of any Act hereby repealed (2) or this Act either separately or together, and at such places, within such times, and in such manner, as any general order in

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(1) In this Act, unless there be something in the subject matter or context repugnant to the construction, the word "commission" shall be construed to mean a commission in the nature of a writ *de lunatico inquirendo*, and to comprehend the general commission by this Act authorized to be issued: 16 & 17 *Vic. c.* 70, *s.* 2. For form of commission to Masters, see *Elmer*, 88.

(2) 16 & 17 *Vic. c.* 70, *s.* 1: "The several Acts of Parliament mentioned in the first schedule hereunder written, shall be and the same are hereby repealed to the extent specified concerning the same Acts respectively in the third column of the said schedule, but so that the validity of any proceeding taken or pending under the said Acts, or any of them, before or at the commencement of this Act, or any appointments, salaries, annuities, compensations, or allowances, made or given by or under the said Acts, or any of them, before the commencement of this Act, shall not be taken away, diminished, or in any wise injuriously affected by the repeal aforesaid; and no new or further order, minute, or direction whatsoever, shall be deemed to be necessary by reason or in consequence of the repeal aforesaid respecting any such appointment, salary, annuity, compensation, or allowance as aforesaid, except where by this Act any salary or other payment is made payable out of a fund not heretofore chargeable therewith; and all proceedings respecting the person or estate of every person before the commencement of this Act found by inquisition idiot, lunatic, or of unsound mind, and incapable of managing himself or his affairs, or any proceedings for the purpose of procuring such a finding, shall be carried on as far as may be practicable according to the provisions of this Act and subject thereto according to the provisions of the said Acts, or any of them, which shall for that purpose be deemed to continue in force notwithstanding the repeal aforesaid, or in case of doubt as to the mode of procedure in such of the modes aforesaid as the Masters in Lunacy shall direct."

THE SCHEDULES ABOVE REFERRED TO.

Schedule 1—Section 1.

The Acts repealed by this Act wholly or in part.

Date of Act.	Title of Act.	Extent of Repeal.
6 Geo. 4, c. 53 (22d June, 1825).	An Act for limiting the time within which inquisitions of Lunacy, Idiotcy, and *Non Compos Mentis* may be Traversed, and for making other Regulations in the proceedings pending a Traverse.	The whole Act, except so far as it relates to Ireland.
1 Wm. 4, c. 65 (23d July, 1830).	An Act for Consolidating and Amending the Laws relating	So much of the Act as relates to or affects

lunacy, and subject thereto as any special order of the Lord Chancellor intrusted as aforesaid, shall from time to time direct.

The Lord Chancellor shall have as at present an officer called the "*Registrar in Lunacy*,(1) who shall perform the duties committed to him by or by virtue of this Act, and such other duties connected with lunatics and their estates at such places within such times and in such manner as the Lord Chancellor shall from time to time direct.

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	to Property belonging to Infants, *Femes Covert*, Idiots, Lunatics, and Persons of unsound mind.	idiots, lunatics, and persons of unsound mind, or their property, except so far as it relates to Ireland, but excluding from this exception section 41, which is in substance re-enacted by this Act.
3 & 4 Wm. 4, c. 36 (24th July, 1833).	An Act for diminishing the inconvenience and expense of Commissions in the nature of Writs *de Lunatico Inquirendo*, and to provide for the better care and treatment of Idiots, Lunatics, and Persons of unsound mind found such by Inquisition.	The whole Act.
3 & 4 Wm. 4, c. 84 (28th August, 1833).	An Act to provide for the performance of the duties of certain offices connected with the Court of Chancery, which have been abolished.	So much of the Act as relates to the office or place of the "Secretary of Lunatics."
5 & 6 Vic. c. 84 (5th August, 1842).	An Act to alter and amend the Practice and course of Procedure under Commissions in the nature of Writs *de Lunatico Inquirendo*.	The whole Act except sections 10, 12, and 16, which relate to the abolition of an office, and to the Suitors' Fee Fund, and to certain compensations.
15 & 16 Vic. c. 48 (30th June, 1852).	An Act for the Amendment of the Law respecting Property of Lunatics.	Sections 1, 2, and 3, except so far as the same relate to Ireland.
15 & 16 Vic. c. 87 (1st July, 1852).	An Act for the Relief of the Suitors of the High Court of Chancery.	Sections 14, 30, 31, 32, and 33, all which are in substance re-enacted in this Act.

(1) The present Registrar in Lunacy is Charles Norris Wilde, Esq.

Sec. XI. *The Masters* and *the Registrar*(1) respectively shall continue to discharge all duties which formerly belonged to the office of clerk of the custodies of idiots and lunatics, and which were under the provisions of the Act of the session of Parliament holden in the 5th and 6th years of the reign of Her Majesty, chapter 84, on the abolition of that office transferred to them respectively, so far as the same may be necessary to be discharged, according to the practice for the time being subsisting in lunacy.

Sec. XII. *The Masters* shall receive salaries of £2000 per annum each, and the Lord Chancellor may, on a petition presented to him for that purpose, order (if he shall so think fit) annuities not exceeding the sum of £1200 each to be paid to the persons continued, and to be appointed *Masters* respectively, if and when they respectively shall be afflicted with some permanent infirmity disabling them respectively from the due execution of their respective offices, and shall be desirous of resigning the same.

Sec. XIII. The Lord Chancellor may by order remove any one of the *Masters in Lunacy* to be appointed after the commencement of this Act, who shall be afflicted with any permanent infirmity, disabling him from the due execution of his office, and who shall refuse to resign or be incapable of resigning the same, and may, upon such removal, order to be paid to him an annuity or retiring allowance not exceeding in amount two equal third parts of his yearly salary.

Sec. XIV. The *Registrar* shall receive such salary as the Lord Chancellor, with the approbation of the Commissioners of Her Majesty's Treasury, has directed or shall from time to time direct.

Sec. XV. Such *officers, clerks, and messengers* shall and may be from time to time appointed by *the Masters* and *the Registrar* respectively in their respective offices as the Lord Chancellor, with the approbation of the Lords Commissioners of Her Majesty's Treasury, has directed or shall from time to time direct; but the appointment of the chief clerk of the masters shall be made with the approbation of the Lord Chancellor, and the present officers, clerks, and messengers shall be continued as if this Act had not been passed, and without prejudice to any right or claim of them or any of them in respect of length of service or otherwise, and the officers, clerks, and messengers for the time being shall respectively receive such salaries as the Lord Chancellor, with the approbation of the said Commissioners of the Treasury, has directed or shall from time to time direct.

Sec. XVI. There shall be two *medical visitors* and one *legal visitor of lunatics*, who shall hold their office during pleasure, and the present *visitors*(2) shall be continued and be the visitors during pleasure, and the Lord Chancellor shall, from time to time, as any

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(1) In this Act, unless there be something in the subject matter or context repugnant to the construction, the expression "the Registrar" shall be construed to mean the Registrar in Lunacy for the time being: 16 & 17 *Vic. c.* 70, *s.* 2.

(2) The present medical visitors are Henry Herbert Southey, M.D., and John Bright, M D. The present legal visitor is William Phillimore, Esq.

vacancy shall occur in the office of *medical visitor* or *legal visitor*, appoint by writing under his hand a fit person, being a physician in actual practice, to succeed a medical visitor, and a fit person, being a barrister of not less than five years' standing, to succeed a *legal visitor*.

Sec. XVII. *The Masters* for the time being shall, by virtue of their appointment to be *Masters*, become and be *visitors of lunatics* jointly with *the visitors* for the time being.

Sec. XVIII. No person shall be appointed to be a *visitor* who shall be or shall have been, within the two years then next preceding, directly or indirectly interested in the keeping of any house licensed for the reception of insane persons, and if any person shall, after his appointment, become so interested, his appointment as *visitor* shall *ipso facto* become null and void and thereupon his salary shall cease.

Sec. XIX. The *medical visitors* shall receive such salaries not exceeding the sum of £500 per annum each, and the *legal visitor* to be appointed after the commencement of this Act shall receive such salary not exceeding the like sum as the Lord Chancellor, with the approbation of the said Commissioners of the Treasury, shall from time to time order, and the salary of the present *legal visitor* shall remain at its present (1) amount.

Sec. XX. *The medical* and *legal visitors* and *the Masters* or so many of them not being less than three in number as may from time to time be able, consistently with the discharge of their other duties, to attend, shall from time to time form themselves into a *board* for their mutual guidance and direction, or matters connected with the visiting of lunatics, (2) and the *board* shall be at liberty to report to the Lord Chancellor, intrusted as aforesaid, upon any matter connected with the duties of the *visitors* or of the *board* as they think proper.

Sec. XXI. Where a *medical or legal visitor* is temporarily prevented from discharging his duty by illness or unavoidable absence but not otherwise, he may, with the approbation of the Lord Chancellor, instructed as aforesaid, appoint a physician in actual practice, or a barrister of not less than five years' standing (as the case may require) to act in his stead during his illness or unavoidable absence; and the physician or the barrister so appointed shall, while his appointment remains in force, have, perform, and execute all the powers, duties, and authorities belonging to the office of *medical visitor* or of *legal visitor*, as the case may be, with full validity and effect to all intents and purposes.

Sec. XXII. There shall be a *secretary to the visitors*, who shall hold his office during pleasure, and the present *secretary*(3) shall be continued and be the *secretary* during pleasure, and the Lord Chancellor shall, from time to time, as a vacancy shall occur in the office of *secretary*, appoint by writing under his hand a fit person to fill the vacancy.

Sec. XXIII. *The secretary* shall receive such salary, not exceeding the sum of £300 per annum, as the Lord Chancellor has ordered or shall from time to time order, and *a clerk to the secretary* may be

(1) £300 per annum.
(2) 16 & 17 *Vic. c.* 70, *s.* 2.
(3) The present secretary is Henry Enfield, Esq.

appointed by him with the approbation of the Lord Chancellor, who shall receive such salary not exceeding the sum of £150 as the Lord Chancellor shall from time to time order.

Sec. XXIV. Such allowances as the Lord Chancellor, with the approbation of the said Commissioners of the Treasury, shall from time to time order, shall be made to the *Masters* and the *visitors* for their respective travelling and other expenses, and to the *Masters* and the *Registrar* and the *secretary to the visitors* (but in the latter case under the direction of the *visitors*) for providing and maintaining suitable offices, and for the other expenses incident to the discharge of the duties of their respective offices.

Sec. XXV. All salaries and annuities continued or given by or under this Act (inclusive of the salaries of the *visitors* and their *secretary* as from the day on which the account entitled "the account of the *board* of *visitors* for the better care and treatment of lunatics" shall be closed as hereinafter mentioned), shall grow due from day to day, and the same with all allowances continued or given by or under this Act (inclusive of the allowances to the *visitors* and their *secretary* as from the same day), shall be payable and paid under order of the Lord Chancellor to the several persons entitled thereto, or to their respective executors or administrators, out of the fund standing in the name of the Accountant-General of the Court of Chancery to the account entitled "the Suitors' Fee Fund Account," on the 3d day of February, the 3d day of May, the 3d day of August, and the 3d day of November in every year, or on such other days as the Lord Chancellor shall from time to time direct free from deduction; and all such salaries, annuities, and allowances as aforesaid, which are continued by or under this Act, shall be payable out of the aforesaid fund in such priority as they respectively would have had if the several Acts hereby repealed had not been repealed; and all such salaries, annuities, and allowances as aforesaid, which are or shall be originally by or under this Act charged upon the aforesaid fund, shall be payable and paid out of the same fund, subject and without prejudice to the payment of all other sums by any former Act or Acts now in force directed or authorized to be paid thereout.

Sec. CIV. Each lunatic(1) shall be personally visited and seen by one at least of the *visitors*, according to the provisions of the next following section, once at the least in each year or oftener, and at such times as the Lord Chancellor intrusted as aforesaid (2) may direct, or in the absence of his directions as the *board* of *visitors* may think expedient.

Sec. CV. The *medical visitors* shall continue to visit lunatics(3) as at present, and the *legal visitors* to be appointed after the commencement of this Act shall also respectively visit lunatics, and the visits of the several visitors shall be from time to time regulated as the Lord Chancellor intrusted as aforesaid (4) may direct, or in the absence of his directions as the *board of visitors* may deem necessary or advisable in such manner, that as far as circumstances will admit every lunatic may, from time to time, and in due succession, be visited by the *legal visitor*, either alone or in company with one of the *medical visitors*.

(1) 16 & 17 *Vic. c.* 70, *s.* 2.
(2) *Ibid.*
(3) *Ibid.*
(4) *Ibid.*

Sec. CVI. The *visitors* shall respectively within a convenient time after each visit make a report in writing to the Lord Chancellor, intrusted as aforesaid, (1) of the state of mind and bodily health, and of the general condition, and also of the care and treatment, of each person visited and seen by them respectively, which reports shall annually or oftener, as the Lord Chancellor intrusted as aforesaid may direct, or the *board of visitors* may think expedient, be submitted to the Lord Chancellor intrusted as aforesaid, and the *visitors* respectively shall make separate or special reports on any case to the Lord Chancellor intrusted as aforesaid as and when they or the *board of visitors* may think expedient, and in particular shall report to him without delay any instance in which they respectively on proceeding to visit have been unable to discover the then residence of or have been by any other circumstance prevented from actually seeing on that occasion the lunatic (1) whom they intended to visit.

Sec. CVII. The reports of the *visitors* shall be filed and kept secret in their office, and shall be open to the inspection of no person save the members of the *board of visitors*, their *secretary* and his *clerk*, and the Lord Chancellor intrusted as aforesaid(2) and such persons as he may specially appoint. And all the reports relating to any particular patients shall be destroyed on the death of the patient, and shall also be destroyed on the inquisition in his case being superseded, or being vacated and discharged on a traverse, unless the Lord Chancellor intrusted as aforesaid, within 14 days after the supersedeas, or the vacating and discharge on a traverse, specially order that the same be not destroyed until the death.

In addition to the above provisions of the Act 16 & 17 Vic. c. 70, the Lord Chancellor has, in reference to the duties of the Masters in Lunacy and of the visitors of lunatics, issued the following General Orders, 12th Jan. 1855 :

1. That the *Masters in Lunacy* do from time to time furnish the *visitors of lunatics* with abstracts of their reports as to the fortune, income, and maintenance of each lunatic, and of the orders confirming such reports, and inform the said *visitors* of any increase which may have accrued in the fortune of, and of any change which may have been made in the allowance or scheme for the maintenance of, any lunatic, so that at all times the said *visitors* may be fully acquainted with the amount of the fortune and income of every lunatic, and with the scheme approved and the allowance made for his maintenance.

2. That the *medical visitors of lunatics* do, on each occasion of visiting any lunatic, inquire and examine whether such lunatic is maintained in a suitable and proper manner, having regard to the then existing amount of the allowance ordered to be paid, and the then existing scheme approved of for the maintenance of such lunatic, and also whether, having regard to the then fortune and income of such lunatic, it appears expedient that any and what addition should be

(1) 16 & 17 *Vic. c. 70, s. 2.*

(2) *Ibid.*

made to his comforts, or any and what alterations should be made in the scheme for or manner of his maintenance.

3. That if the said *visitors* shall on such inquiry and examination consider that the lunatic (1) is not maintained in such suitable and proper manner as is aforesaid, or that the allowance provided for his maintenance is not duly applied, or that any provision in the scheme for his maintenance, either for his personal comfort or enjoyment or otherwise, is not duly observed, or that any addition to the comforts or any alteration in the manner of the maintenance of the lunatic should be made which his then fortune or income is capable of providing, they shall forthwith make a special report, stating such their opinion, and the grounds thereof to the *board of visitors*.

4. That the *board of visitors* shall proceed to consider such report of the medical visitors at their next meeting, and shall, if they think fit, refer the same to the *Masters in Lunacy*, or take such other steps thereon as may appear to them to be expedient.

5. That the *Masters in Lunacy* shall, on any such report as aforesaid being referred to them by the *board of visitors*, proceed to investigate the matters thereby reported upon, and may if they deem it expedient summon the committee of the person or estate to attend before them to give explanations thereon, and the said *Masters* shall then make such report if any on the said matters to the Lord Chancellor as the said *Masters* may deem proper.

6. That the *medical visitors* do in the annual report made by them to the Lord Chancellor in the case of each lunatic, pursuant to the Lunacy Regulation Act, state the result of the examination and inquiry as to the maintenance of each lunatic, (2) to be made by them pursuant to the foregoing order, and do also, in any case in which they shall have made any special report to the *board of visitors* pursuant to the above order, state so far as they may be able what steps have been taken in consequence of such special report.

The Masters have also duties in reference to the percentage payable under the Lunacy Regulation Act, which will presently appear and take an important part in the management of the property and persons of idiots, lunatics, or persons of unsound mind, found so by inquisition, which will be explained when we come to treat of the details of such management. We may here, however, remark that the Masters do not entertain any question of law arising in such management, (3) and may not take the whole direction of such property. (4)

Of the duties of the committees of the persons and estates of idiots, lunatics, and persons of unsound mind, and of the receivers of such estates, it will be perhaps more convenient to

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(1) 16 & 17 *Vic.* c. 70, *s.* 2.
(2) *Re Skinyley*, 3 Mac. & Gor. 231.
(3) *Ibid.*
(4) *Re Brown*, 1 Mac. & Gor. 207.

treat when the manner of their appointment shall have been explained. We proceed now to consider—

The mode in which the charges incident to the administration of the estates of idiots, lunatics, and persons of unsound mind, under authority of the Lord Chancellor, are now defrayed.

These are defrayed in part by means of a percentage graduated in an equitable manner as between the richer and poorer estates, and in part by means of fees on proceedings. The payment of this percentage is regulated by the Act 16 & 17 Vic. c. 70 which enacts—

Sec. XXVI. A percentage on the respective clear annual incomes of all lunatics (1) shall be paid according to the several rates following, that is to say,

The rate of four per centum for each clear annual income, amounting to £100 and not amounting to £1000, but so that no larger sum be payable in any such case in any one year than £30.

The rate of three per centum for each clear annual income, amounting to £1000, and not amounting to £5000, but so that no larger sum be payable in any such case in any one year than £100; and

The rate of two per centum for each clear annual income, amounting to £5000 or upwards, but so that no larger sum be payable in any such case in any one year than £200.

And in every case the fractional parts less than one moiety of the pound sterling shall be disregarded in the calculation of the amount payable for percentage, and shall not be levied or paid.

Sec. XXVII. The Masters shall from time to time certify what is the amount of each such clear annual income as aforesaid, and of the percentage payable thereon; and who is the committee or other person who is to pay the same; and thereupon such committee or other person as aforesaid shall pay the same out of the first monies coming to his hands in respect of the income of the lunatic. (2)

Sec. XXVIII. The percentage aforesaid, or a proper proportionate part thereof (as the case may require), shall be chargeable and charged upon the estate of a lunatic (3) and be payable thereout although before payment thereof he die, or the inquisition in his case be superseded or be vacated and discharged on a traverse; but in either of the two cases last aforesaid the Lord Chancellor intrusted as aforesaid (4) may if he see fit remit or reduce the amount of the sum to be paid, and the payment of the amount in every case shall be enforced in such manner and under such regulations as the Lord

(1) 16 & 17 *Vic. c.* 70, *s.* 2.
(2) *Ibid.*
(3) *Ibid.*
(4) *Ibid.*

Chancellor, with the advice and assistance of the Lords Justices, (1) being intrusted as aforesaid, shall from time to time direct.

Sec. XXIX. All fees non-payable in relation to proceedings in lunacy shall be and the same are hereby abolished, and in lieu thereof there shall be paid the following fees only, that is to say,

	£
For each order or fiat of the Lord Chancellor intrusted as aforesaid, (2)	2
For each report or certificate of the masters and taxing masters respectively (other than a certificate of the masters respecting income and percentage only),	1
For attending any court by the clerk, per diem,	1

And for all engrossments, transcripts, and copies of documents and papers, the actual amount of the stationer's charges paid by the Masters and Registrar respectively for the same (3).

Sec. XXX. The Lord Chancellor (4) may, with the advice and assistance aforesaid, (5) by order from time to time, reduce the several rates of percentage aforesaid, or any of them; and again, if it shall seem to him expedient from time to time, raise the same several rates or any of them; but not to rates higher than those respectively hereinbefore prescribed: and also may, with the like advice and assistance, by order from time to time vary or abolish the fees aforesaid, or any of them, or other, the fees for the time being payable in relation to proceedings in lunacy, or any of them; and if, and when it shall seem to him necessary or expedient, fix and impose other fees or fee of altered amount.

Sec. XXXI. The percentage and the fees for the time being payable under this Act, shall be collected by means of stamps which shall be under the management of the Commissioners of Inland Revenue, and the provisions of the Act of the last Session of Parliament, for "the relief of the suitors of the High Court of Chancery," respecting stamps and the monies arising from the sale thereof, shall be and are, and every of them is, hereby extended so as to be applicable and applied *mutatis mutandis*, to stamps to be used under this Act, and the monies arising from the sale thereof.

Sec. XXXII. Where it is made to appear to the Lord Chancellor intrusted as aforesaid, (6) that the net amount or net estimated value of the property of a lunatic (7) does not exceed the sum of £700, in respect of the corpus thereof, or the sum of £50 sterling per annum, in respect of the income thereof, he may order (if he shall think fit)

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(1) In this Act, unless there be something in the subject matter or context repugnant to the construction, the expression "the Lords Justices" shall be construed to mean the Lords Justices of the Court of Appeal in Chancery for the time being: 16 & 17 *Vic. c.* 70, *s.* 2.

(2) 16 & 17 *Vic. c.* 70, *s.* 2.

(3) See *G. O., 8th November*, 1856, *post.*

(4) 16 & 17 *Vic. c.* 70, *s.* 2.

(5) *I.e.*, of Lords Justices, s. 28.

(6) 16 & 17 *Vic. c.* 70, *s.* 2.

(7) *Ibid.*

that no fee shall be taken or paid, or percentage be levied, or paid in relation to the proceedings in the matter, or the property, as from the date of the order, or such other time as he shall direct during the continuance of the lunacy, or until further order.

Sec. XXXIII. All the foregoing provisions respecting fees and percentage shall be applicable to the proceedings in the matter of and to the property of a lunatic (1) under the protection of the Lord Chancellor, intrusted as aforesaid, (2) by virtue of proceedings take under the provisions of the Act of the session of Parliament holden in the 8th and 9th years of the reign of Her Majesty, chapter 100, section 95, (3) and also to the proceedings in the matter of and to the property of a lunatic under the protection of the Lord Chancellor intrusted as aforesaid by virtue of the transmission of the record of an inquisition from Ireland, and its entry of record in the Chancery of England,(4) and also to the proceedings in the matter of and to the property of a person residing out of England and Wales, and declared idiot, lunatic, or of unsound mind, according to the laws of the place where he is residing, where the Lord Chancellor, intrusted as aforesaid, makes an order affecting the the stock (5) or any portion of the capital stock or shares of such person as last aforesaid, or the dividends (6) thereof (7) and the aforesaid provisions shall be applied to the several classes of cases mentioned in this present section, in such manner and under such regulations as the Lord Chancellor shall, with the advice and assistance aforesaid, (8) from time to time order, but so that no percentage be levied or paid in either of the two last mentioned cases, except in respect of income arising from property being within the jurisdiction of the Lord Chancellor, intrusted as aforesaid, and being administered by him or under his authority and direction.

And whereas the percentage, which is now under the provisions of the Act passed in the session of Parliament holden in the 3d and 4th years of the reign of King William the Fourth, chapter 36, imposed upon the estates of lunatics and paid into the Bank of England in the name and priority of the Accountant-General of the Court of Chancery to an account entitled "the account of the board of visitors for the better care and treatment of lunatics" will be discontinued under this Act," be it therefore enacted as follows:—

Sec. XXXIV. Every committee, receiver, or other person (9) who

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(1) See 16 & 17 *Vic. c.* 70, *s.* 2.
(2) *Ibid.*
(3) *Ibid. s.* 53.
(4) *Ibid. s.* 52.
(5) In this Act, unless there be something in the subject matter or context repugnant to the construction, the word "stock" shall be construed to comprehend any fund, annuity, or security transferable in books kept by any company or society, or any money payable for the discharge or redemption thereof, or any share or interest therein.
(6) In this Act, unless there be something in the subject matter or context repugnant to the construction, the words "dividends" shall be construed to comprehend interest or other annual produce: 16 & 17 *Vic. c.* 70, *s.* 2.
(7) *Ibid. s.* 85—141.
(8) *I.e.*, of Lords Justices: sec. 28.
(9) In this Act, unless there be something in the subject matter or context repugnant to the construction, the word "person" shall be construed to comprehend a body corporate: 16 & 17 *Vic. c.* 70, *s.* 2.

is or shall be liable to pay any money in respect of the percentage last aforesaid, shall, notwithstanding this Act, pay the same into the Bank in the manner now used, either to the account last aforesaid, or after it has been closed as hereinafter provided, to the said "Suitors' Fee Fund Account," and be allowed the same on passing his accounts before the Masters.

Sec. XXXV. All salaries and other sums of money payable out of the monies standing to the credit of "the account of the board of visitors for the better care and treatment of lunatics," shall continue to be payable thereout until the account shall be closed as hereinafter is provided, and shall be paid thereout accordingly in the manner now used.

Sec. XXXVI. The last mentioned account shall be closed on the 3d day of December next after the passing of this Act, or on such other day as the Lord Chancellor, with the advice and assistance aforesaid, shall order; and the balance, which shall then be remaining on the same, shall be carried over to the said "Suitors' Fee Fund Account" under order of the Lord Chancellor.

Sec. XXXVII. The account of monies received and paid on the account of the board of visitors for the better care and treatment of lunatics not previously audited shall, as soon as may be after the closing of the account, be made out by the secretary to the visitors and be audited and signed by the Master in Ordinary of the High Court of Chancery, or other officer to whom the matter of the account shall then stand referred, and shall be afterwards filed with the Registrar in Lunacy and no fee shall be charged or taken upon for or in respect of the auditing or filing thereof.

With reference to the percentage and the stamps by which such percentage is collected, it is declared by 27th General Order 7th Nov. 1853—

27. The stamps to be used under the Lunacy Regulation Act, 1853, (1) shall be the same as those for the time being in use, under an Act passed in the session of Parliament held in the 15th and 16th years of the reign of Her present Majesty, intituled, "An Act for the Relief of the 'Suitors of the High Court of Chancery,'" such stamps are to be affixed by the parties requiring the same on the vellum, parchment, or paper on which the proceeding in respect whereof such stamps shall be required is written or engrossed, or which may otherwise be used in reference to such proceeding.

It is also provided in this behalf by General Orders, 1st Aug. 1856—

2. Every officer who shall receive any document to which a stamp shall be affixed pursuant to the said orders of the 7th day of November, 1853, shall immediately, upon the receipt of such document, conceal or deface the stamp thereon, by writing upon such stamp his name, or the initial letters of his name, in such a manner as

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(1) 16 & 17 *Vic. c.* 70, *s.* 5. This Act shall take effect from the 20th day of October, 1853, and may be cited as the Lunacy Regulation Act, 1853.

to show clearly and distinctly that such stamp has been made use of, and so that the same may be not again used; and no such document shall be filed or delivered out until the stamp thereon shall have been cancelled or defaced in manner aforesaid.

3. In all cases where stamps impressed upon adhesive paper are used, the stamps affixed to the document shall be of an amount corresponding as nearly as is practicable with the amount of the stamp which such document requires, in order that no greater number of adhesive stamps may be affixed to any document than is actually necessary.

And by General Orders, 7th Nov. 1853—

29. That the Masters may, in such cases as they may think fit, certify that the whole or any part of the percentage payable under the Lunacy Regulation Act, 1853, is to be paid from time to time out of cash arising from dividends of the lunatic that may be standing to the credit of the matter of any lunacy, either generally or to any particular account; and in such cases the certificate is to be left at the office of the Accountant-General, and the Accountant-General is, by virtue of such certificate, when so left from time to time, out of such cash to carry over to the credit of the Suitors' Fee Fund account, the amount to be so certified, and any orders made, and to be made in any such matters respectively, are to be subject to this order, and to be acted upon by the Accountant-General accordingly.

30. In all other cases the said percentage is to be paid by means of stamps, and the chief clerk to the Masters is from time to time to give notice in writing to the committee or other person of the amount of percentage to be paid by him according to the certificate of the Masters under section 27 of the said Act, and of the time within which such amount is to be paid, which time is to be fixed by the masters and mentioned in their certificate; and the said committee or other person is within such time to pay the amount stated in the notice out of the income of the lunatic, by purchasing stamps to such amount, and file such notice with the stamps affixed at the office of the Masters.

31. Where it appears to the Masters, with a view to the establishment of a uniform period of the payment of percentage in the several matters in lunacy, or for other purposes to be expedient, they are to be at liberty to make in any case a certificate comprising the income of a period greater or less than one year, and stating the amount of percentage payable for such period, calculated according to the scale provided in the said Act.

32. The Masters are once at least in every six months, and oftener if they shall think fit, to certify the names of all persons, if any, who shall then be in default in paying the amount certified to be payable by them in respect of the said percentage, and filing the notices duly stamped, as hereinbefore provided, with the amounts payable by such parties respectively.

33. The foregoing orders respecting percentage shall extend and be applied to the property of lunatics under the protection of the Lord Chancellor and Lords Justices intrusted as aforesaid, by virtue of proceedings taken under the Act of the session of Parlia-

ment holden in the 8th and 9th years of the reign of Her Majesty, chapter 100, section 95, and also to the property of lunatics under the protection of the Lord Chancellor and Lords Justices, intrusted as aforesaid by virtue of the transmission of the records of an inquisition from Ireland and its entry of record in the Chancery of England, except in respect of income arising from property of such persons not within the jurisdiction of the Lord Chancellor and Lords Justices intrusted as aforesaid, nor administered under their authority, and the several foregoing orders as to fees, shall extend and apply to all the proceedings in the matter of such lunatics as aforesaid, (1) and in the matter of any person residing out of England and Wales, and declared idiot, lunatic, or of unsound mind, according to the laws of the place where they are residing, where the Lord Chancellor and Lords Justices intrusted as aforesaid make an order affecting the stock or any portion of the capital, stock or shares of such person as last aforesaid, or the dividends thereof. (2)

As the presumption of the law of England is in favour of sanity, and as a consequence of the exercise by the Sovereign of the right of custody is an interference with the liberty of the individual taken into custody—

The right of custody does not arise and may not be exercised by the Sovereign over any person previous to a legal inquiry, and finding that such person is idiot, lunatic, or of unsound mind. (3)

This proposition appears to require no comment; we will therefore proceed to explain—

How a legal inquiry into the fact of the idiotcy, lunacy, or unsoundness of mind of any person may be obtained with a view to the exercise in his or her behalf of the Sovereign's right of custody.

This inquiry is obtained by petition to the Lord Chancellor; even a stranger to the person alleged to be *non compos mentis*

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(1) 16 & 17 *Vic. c.* 70, *s.* 53. (2) 16 & 17 *Vic. c.* 70. *s.* 85—141.

(3) 4 *Rep.* 127; *Townsend's case*, 8 Rep. 170. Lord Eldon, C., in *Ex parte Ward*, 6 Ves. 579; and in *Ex parte Cranmer*, 12 Ves. 449; 8 *Hen.* 6, *c.* 6. In *Lady Marr's case*, when she, an alleged lunatic, was being taken out of the jurisdiction to defeat an application for a petition of a commission of lunacy, it is reported by *Ambler* (p. 82), that Lord Chancellor King sent a messenger and stopped her at St. Albans, and ordered a commission of lunacy to be taken out: but this was probably done under the authority of the Great Seal.

may be the petitioner,(1) *à fortiori* a relation, a husband, or a wife,(2) trustees,(3) a creditor,(4) a tenant,(5) a remainder man,(6) or the Attorney-General;(7) but the petition of a stranger is viewed with particular jealousy, as it implies that the persons who ought to protect the person alleged to be *non compos mentis* neglect their duty.(8) The solicitor of the Treasury was a petitioner in the case of a lunatic prisoner.(9) Further, the wife of the person alleged to be *non compos mentis* may be a petitioner without a next friend.(10) The petition should state that the person on whose behalf the exercise of the right of custody is invoked is *non compos mentis*, and that the petitioner and he are related or connected (if that be the case) in the manner stated in the petition, and the petition should pray an inquiry into the truth of the statement concerning such person's state of mind. Any statement in the petition as to the time during which the mental aberration has lasted is unnecessary, unless it is intended to get a special direction for inquiry as to its duration. An agreement to present such petition is not void or illegal for champerty, or maintenance, or as against public policy, and is not a fraud on the jurisdiction.(11) But if a person seeks an order of inquiry into the state of mind of one whose sanity is not open to question, an action lies against him.(12) Unnecessary statements in the petition or affidavits in support will be inserted at the peril of costs, for by 16 & 17 Vic. c. 70, s. 89, it is enacted that

"The *affidavits, petitions*, and other documents brought into the offices of the Masters or Registrars shall not contain unnecessary

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(1) Sir A. Hart, C., in *Re Persse*, 1 Moll. 220; *Re Smith*, 1 Russ. 348. Lord Eldon, C., in *Re Turner* and *Re Bedell*, 2 Coo. *t.* Cott. 163.

(2) *Re Waters*, 2 M. & Cr. 38; *Re J. B.*, 1 M. & Cr. 538; *Ex parte Smith*, 1 Sw. 4; *Re Rean*, 2 Coo. *t.* Cott. 163; *Chester* v. *Rolfe*, 4 De G. M. & G. 798.

(3) *B. of Exeter* v. *Lord and Lady Ward*, 2 M. & K. 54.

(4) Lord Eldon, C., in *Re Bell*, 2 Coo. *t.* Cott. 163; *Re Pearce*, 8 Jur. 89.

(5) *Ex parte Ogle*, 15 Ves. 112.

(6) *Re Webb*, 1 Coo. *t.* Cott. 163.

(7) Sir A. Hart, C., *Re Persse*, 1 Moll. 220; 1 *Coll. on Lun.* 125.

(8) Sir A. Hart, C., *Re Persse*, 1 Moll. 220.

(9) *Re McLean*, Shelf. on Lun. 2d ed. 114.

(10) *Chester* v. *Rolfe*, 4 De G. M. & G. 800.

(11) *Persse* v. *Persse*, 7 Cl. & Fin. 316.

(12) *Turner* v. *Turner*, 1 Gow. 20.

recitals or statements of proceedings or documents previously taken or used in the matter, and the taxing-masters shall look into all such affidavits, petitions, or other documents as aforesaid, and deal in such manner as to them seems just with the costs of any affidavit, petition, or other document appearing to them to be unnecessary or improper in the whole or in part or of unnecessary length." (1)

And in an old case, (2) on an application in lunacy to take off the file an affidavit containing scandalous matter and expunging the scandal, Lord Eldon, C., remarked: "No doubt is expressed at the bar upon the jurisdiction to direct a reference to the Master to inquire into alleged scandal in an affidavit filed in the court and offered to the Master, whether read or not I am not informed. I have reason to believe that in my own decision, *Ex parte Simpson*, and *so in lunacy*, I am sanctioned by precedents of Lord Hardwicke, but without that authority I should have thought it right to make the precedent."

A General Order of May, 1827, declares that

"The petition should be signed by the petitioner, and attested by a solicitor of the Court of Chancery."

And the Act 16 & 17 Vic. c. 70, s. 40, provides that

"Where the alleged lunatic is within the jurisdiction he shall have notice of the presentation of the petition for inquiry."

The 7th General Order, 7th Nov., 1853, has laid down the form of the notice, and the mode of giving it.

The order runs thus:

"The notice to an alleged lunatic of the presentation of the petition for inquiry is to be by service on him of a copy of such petition with a notice thereon endorsed, signed by the petitioner or by his solicitor to the following effect, with such variations as circumstances may require:

"Mr. A. B.,

Take notice, that a petition of which a copy is within written was on the day of presented to the Lord Chancellor by me [or by C. D. of (3)], and that by virtue of and under the same an inquiry may be ordered to take place before one of the Masters

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(1) As to the form of such petition and affidavits, see *Elmer*, 79—85.

(2) *Ex parte Le Heup*, 18 Ves. 221.

(3) Where a demand for a jury has been filed before petition (see 16 & 17 *Vic. c.* 70, *s.* 40), from this to the end is to be omitted.

in Lunacy as to whether you are or are not of unsound mind and incapable of managing yourself and your affairs, but that you may, in case you think fit, demand that such inquiry may, if ordered, be had before a jury, in which case a notice of such your desire must be signed by you and attested by your solicitor, and filed with the Registrar in Lunacy at his office in Southampton Buildings, Chancery Lane, London, within seven days after your receipt of this present notice. Dated this day of (Signed) C. D.
[or X. Y. of
Solicitor for the petitioner C. D.]."

The 9th General Order, 7th Nov., 1853, declares that

"The notice under either of the two last preceding orders (1) is to be served on the alleged lunatic by being delivered to him personally, or where, by reason of the condition or situation of the alleged lunatic or the other circumstances of the case, the personal service cannot be effected, or it is deemed inexpedient to effect personal service, then by being delivered to some adult inmate at the dwelling-house or usual or last known place of abode of the alleged lunatic within the jurisdiction, and an affidavit of service stating particularly the time and place and mode of service; and where there has not been personal service, the grounds and reasons of such service not having been made are to be filed with the Registrar."

The object of the notice is to settle the point of jury or no jury.

The Act 16 & 17 Vic. c. 70, s. 40, further provides that

"Where the alleged lunatic is within the jurisdiction he shall have notice of the presentation of the petition for inquiry and may by a notice signed by him and attested by his solicitor, and filed with the Registrar, either before the presentation of the petition or within seven days after such notice had by him as aforesaid, or at or within such other time as the Lord Chancellor intrusted as aforesaid shall order in the particular case, demand an inquiry before a jury."

The 10th General Order of 7th Nov., 1853, suggests a form of such demand.

The order runs thus:

"The notice to be given by an alleged lunatic for demanding a jury may be to the effect following, with such variations as circumstances may require, that is to say:

"In the matter of A. B., an alleged lunatic.

"I, the above named A. B., having been on the day of served with a notice of the presentation of a petition for an inquiry (or of the filing of a report whereon an inquiry may be ordered) whether or not I am of unsound mind and incapable of managing

(1) *7 & 8 G. O., 7 Nov.*, 1853.

myself and my affairs, do hereby demand that, in the event of such an inquiry as aforesaid being ordered, the same may be had before a jury. Dated this day of (Signed) A. B.
Witness, M. N., of Solicitor for the above named A. B."

The statements in the petition are usually supported by the affidavits of medical men and others.(1) The petition should be presented to the Lord Chancellor by leaving it with a copy "carefully and accurately examined," (2) and with the affidavits, at the office of the Registrar in Lunacy, who files the original petition and affidavits, and delivers out copies to the petitioner. The affidavits may not be sworn before the petitioner;(3) and if the petitioner is a stranger, a copy of the petition, when answered by the Lord Chancellor, must be served on the nearest relations of the person alleged to be *non compos mentis*, or if the husband or wife of such person do not consent to the proceeding, he or she must be served.(4) Any person who has lodged a caveat must also of course be served; (5) a caveat is in force one year.(6) It is unnecessary to serve the Attorney-General with the petition in the case of a person alleged to be idiot and to have no next of kin. (7)

Where two or more petitions are presented in the same matter in lunacy on the same day, that petition which was first presented is entitled to preaudience.(8) If the petition is unopposed and the Lord Chancellor considers that the inquiry will be proper, he makes an order for such inquiry without hearing the petitioner, upon a perusal of the petition and affidavits. If the Lord Chancellor has doubts as to the propriety of an order in any particular case, he directs the evidence to be laid before two physicians named by himself, who visit the alleged idiot, lunatic, or

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(1) See forms of such affidavits, *Elmer*, 80—84; and 16 & 17 *Vic. c.* 70, *ss.* 58, 59, 60.
(2) *G. O., May*, 1827.
(3) *Re Hogan*, 3 Atk. 813.
(4) *Chester* v. *Rolfe*, 4 De G. M. & G. 798; *Re Rean*, 2 Coo. *t.* Cott. 163; *Re Turner*, 2 Coo. *t.* Cott. 163.
(5) For form of caveat, see *Elmer*, 87.
(6) *Shelf. on Lun. 2d ed.* 118.
(7) *Re Early*, 1 Jur. 524.
(8) *Re Brookman*, 1 M. & Gor. 199.

person of unsound mind, and then certify in writing their opinion. (1)

The Act 16 & 17 Vic. c. 70, s. 45, provides :

"Where the alleged lunatic is not within the jurisdiction, the inquiry shall be before a jury, and no further or other notice shall be necessary to be given to him than he would have been entitled to receive if this Act had not passed." (2)

Section 46 of the same Act provides :

"The Lord Chancellor (3) may from time to time by order regulate the number of jurors to be sworn, but so that every inquisition upon the oath of a jury be found by the oaths of 12 men at the least."

Section 41 of the same Act provides :

"Where the alleged lunatic (4) demands an inquiry before a jury, the Lord Chancellor, intrusted as aforesaid, (5) shall, in his order for inquiry, direct the return of a jury, unless he be satisfied by personal examination of the alleged lunatic that he is not mentally competent to form and express a wish for an inquiry before a jury; and the Lord Chancellor, intrusted as aforesaid, may, where he shall deem it necessary after the presentation of the petition for inquiry and for the purpose of personal examination, require the alleged lunatic to attend him at such convenient time and place as he may appoint."

Section 42 of the same Act provides :

"Where the alleged lunatic (6) does not demand an inquiry before a jury, or the Lord Chancellor, intrusted as aforesaid (7) is satisfied by personal examination of him that he is not mentally competent to form and express a wish in that behalf, and it appears to the Lord Chancellor, intrusted as aforesaid, upon consideration of the evidence adduced before him on the petition for inquiry, and of the circumstances of the case so far as they are before him to be unnecessary or inexpedient, that the inquiry should be before a jury, and he accordingly does not in his order for inquiry direct the return of a jury, then the Masters shall, by virtue of their general commission, and under such order for inquiry, but without a jury, personally examine the alleged lunatic, and take such evidence upon oath or otherwise, and call for such information as they may think fit, or the Lord Chancellor, intrusted as aforesaid, may direct, in order to ascertain whether or not the alleged lunatic is of unsound mind, and shall certify their finding thereon."

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(1) *Ex parte Tomlinson*, 1 V. & B. 59, and several otherwise unreported cases in *Shelf. on Lun.* 2d *ed.* 72, *note m.* See also *R.* v. *Kelly*, *Ibid.* 515.
(2) *Shelf. on Lun.* 2d *ed.* 119.
(3) 16 & 17 *Vic. c.* 70, *s.* 2.
(4) *Ibid.* (5) *Ibid.* (6) *Ibid.* (7) *Ibid.*

If the petition is opposed, or if the petitioner is a stranger, or if the husband or wife do not concur, or if a caveat has been lodged, the registrar sets down the petition for hearing in Court. (1)

Besides, this mode of proceeding by petition, the Commissioners in Lunacy may take proceedings, for by the Act 16 & 17 Vic. c. 70, s. 54, it is enacted:

"Where the Commissioners in Lunacy for the time being shall, after the commencement of this Act, by virtue of any authority for the time being enabling them in that behalf, report to the Lord Chancellor, intrusted as aforesaid, (2) that they are of opinion, that the property of any person alleged to be a lunatic, (3) or detained or taken charge of as a lunatic, but not so found by inquisition, is not duly protected, or that the income thereof is not duly applied for his benefit or to the same effect, the report shall be filed with the registrar, and shall be deemed and taken to be tantamount to an ordinary petition for inquiry, supported by evidence, and the alleged lunatic shall have notice of the report from such person as the Lord Chancellor, intrusted as aforesaid, shall from time to time direct, and the case shall proceed and be conducted as nearly as may be in all respects as is hereinbefore directed upon the presentation of a petition for inquiry."

The notice to an alleged lunatic of a report of the Commissioners in Lunacy under section 54 of the 16 & 17 Vic. c. 70, is to be to the effect following, with such variations as circumstances may require:

"Mr. A. B.,

"Take notice that the commissioners in lunacy did on the day of make a report to the Lord Chancellor, stating that you are detained or taken charge of as a person of unsound mind (or that you are alleged to be a person of unsound mind), and that they are of opinion that your property is not duly protected (or that the income of your property is not duly applied for your benefit). And take notice that such report having been duly filed, an inquiry may thereon be ordered by the Lord Chancellor to take place before one of the Masters in Lunacy as to whether or not you are of unsound mind, and incapable of managing yourself and your affairs; but that in case you think fit to demand that such an inquiry, if ordered to be held, may take place before a jury, a notice thereof must be signed by you, and attested by your solicitor, and filed with the Registrar in

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(1) Lord Eldon, C., in *Re Turner*, 2 Coop. C. C. 162; *Re Rean*, 2 Coop. C. C. 163; *Re Bushnall*, 2 Coop. C. C. 163.

(2) 16 & 17 *Vic. c.* 70, *s.* 2.

(3) *Ibid.*

Lunacy, at his office in Southampton Buildings, Chancery Lane, London, within seven days after your receipt of this present notice.

" Dated this day of

" (Signed) X.Y."(1)

A notice under the last order is to be served. The service of such service is to be evidenced in the same manner as a notice and affidavit of service under the 7th General Order 7 Nov., 1853. (2)

An order for an inquiry on the presentation of a petition ought not to be made, unless the Lord Chancellor has at least a strong and high belief, that his judgment, should it be called in question, (3) will be affirmed. It will not be made without evidence of the truth of the allegations of insanity in the petition, and that evidence generally includes affidavits of medical men, (4) who should have personally visited and examined the person in the petition alleged to be insane, (5) and who should state not only their medical opinion as to his state of mind, but the very deeds or words on which they rely as evincing his insanity; (6) further, the Lord Chancellor will not make the order for an inquiry unless convinced of its propriety in the particular case, although the person alleged to be *non compos mentis* is proved to be so; (7) if convinced of that, the Lord Chancellor will not refuse the order because the petitioner is actuated by improper motives.(8) The person must at least be unable to manage his own affairs. (9) The existence of a foreign commission of lunacy,(10) affecting the person alleged to be *non compos mentis*, or his infancy, (11) or his alienage (12), may or may not be an objection to the making of the order; but occasional unsoundness of mind, arising from accidental and temporary causes, such as excess in drink, is no

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(1) *8th G. O., 7th Nov.*, 1853.

(2) *9th G. O., 7th Nov.*, 1853; see *antè, p.* 243.

(3) Lord Eldon, C., in *Sherwood* v. *Sanderson*, 19 Ves. 286. See also Sir A. Hart, C., in *Ex parte Persse*, 1 Moll. 219.

(4) Lord Eldon, C., in *Sherwood* v. *Sanderson*, 19 Ves. 286.

(5) Lord Eldon, C., in *McAdam* v. *Walker*, 1 Dow. 179.

(6) Sir A. Hart, C., in *Ex parte Persse*, 1 Moll. 219.

(7) *Ex parte Tomlison*, 1 V. & B. 59. Lord Cottenham, C., in *Re Dyce Sombre*, 1 Mac. & Gor. 132.

(8) *Ex parte Ogle*, 15 Ves. 113.

(9) *Re Langley*, Shelf. 2d ed. 109.

(10) *Ex parte Houston*, 1 Russ. 312.

(11) *Ex parte Halse*, cited 2 Vez. 403; and *Re Flint*, Shelf. on Lun. 2d ed. 110. But see *F. N. B.* 581, *ed.* 1652; *vol.* 2, p. 232, *ed.* 1794.

(12) Lord Lyndhurst, C., in *Re Bariatinski*, 1 Phill. 376.

ground for an inquiry. (1) The well-being and happiness of the person alleged to be *non compos mentis*, as well as the security of his property, are taken into consideration by the Lord Chancellor on the petition, and when these points are left in obscurity he will direct further inquiries before making the order prayed. (2)

With respect to the proceedings upon an inquiry concerning idiotcy, lunacy, or unsoundness of mind:

If such inquiry (3) is ordered, the order is drawn up and engrossed on paper, impressed with a £2 stamp, and delivered by the Registrar to the solicitor of the person having the carriage of the inquiry, who should then leave the same, with office copies of the affidavits, at the office of the Masters in Lunacy. (4) If several petitions are presented praying the inquiry, and a question arise who is to have the carriage of it, that question is determined by the consideration "who is most likely to bring out the truth?" (5) *cæteris paribus*, the nearest relations of the person alleged to be *non compos mentis*, are the proper persons to have the carriage, as being most likely to insure the object of the inquiry. (6) In one case the Secretary of the Lunatics' Friend Society was preferred to the next of kin. (7) Access to the person whose state of mind is the subject of the inquiry, for the purpose of enabling him and his friends to oppose the inquiry, will be granted. (8)

The Masters in Lunacy conduct the inquiry. By 16 & 17 Vic. c. 70, it is enacted, sec. 38:

"Any commission in the nature of a writ *de lunatico inquirendo* directed to one person or to two persons, and the inquisition returned

(1) Lord Cottenham, C., in *Re J. B.*, 1 M. & Cr. 544.

(2) *Re Holbyn*, 29 L. T. 305.

(3) In lieu of such inquiry there formerly issued a writ returnable into the Court of Chancery, and directed to the sheriff or escheator of the county in which an idiot resided, and after the disuse of such a writ, a commission in the nature of the writ, but larger and more general, directed to certain Commissioners in Lunacy, afterwards styled Masters in Lunacy: 2 *F. N. B. 9th ed.* 232. Lord Hardwicke, C., in *Ex parte Southcot*, Amb. 111; 8 & 9 *Vic. c.* 100.

(4) *Elmer*, 4.

(5) *Re Whittaker*, 4 M. & Cr. 442; *Re Webb*, 2 Phill. 12; s. c. 2 Coop. C. C. 145; *Re Nesbitt*, 2 Phill. 246; *Re Green*, 2 Coo. *t.* Cott. 163.

(6) *Ex parte Tomlinson*, 1 V. & B. 59; *Re Nesbitt*, 2 Phill. 246; *Re Bedell*. 2 Coo. *t.* Cott. 163; *Re Green*, 2 Coo. *t.* Cott. 163.

(7) *Re Anstie*, 1 Mac. & Gor. 200.

(8) *Re Fletcher*, Shelf. on Lun. 2d ed. 126; *Re Bariatinski*, 1 Phill. 379.

thereon shall be as valid and effectual to all intents and purposes as if directed to and returned by more than two persons; and every commission shall (subject to the provision hereinafter contained)(1) be directed to the Masters, or one of them, and may be varied in form from *that now in use*(2) in such manner as to the Lord Chancellor(3) may seem necessary or expedient."(4)

And by section 39, that

"In lieu of the commission now issued specially in each case of alleged lunacy, a general commission to the like effect, with such variations as may be necessary or expedient, may from time to time be issued in duplicate, under the great seal, directed to the Masters by name, jointly and severally, who shall by virtue thereof proceed in each case of alleged lunacy concerning which the Lord Chancellor intrusted, as aforesaid,(5) shall order them to inquire in like manner, and with all the like powers and authorities (subject to the provisions hereinafter contained) as if a commission had issued specially in such case, and every inquisition found and returned thereon, shall be as valid and effectual, to all intents and purposes, as if the same had been found and returned on a separate commission."

An inquiry may be entrusted to others than the Masters in Lunacy, for by section 50 of the same Act it is enacted:

"Nothing in this Act contained shall be taken to preclude the Lord Chancellor from issuing a commission specially in any case of alleged lunacy, or from issuing a commission directed to any fit person or persons, in addition to the Masters or one of them, if he shall upon any occasion deem it proper to do so; and the foregoing provisions(6) shall be deemed to extend to every commission so issued specially or so directed as aforesaid as far as they may be applicable."

Practically the inquiry is always before a Master. The power to issue a special commission is not likely to be exercised except under some extraordinary circumstances.

The Act 16 & 17 Vic. c. 70, further declares, section 51:

"Where in any Act of Parliament, Order, or Rule of Court, or instrument whatsoever, reference is made to a commission in the nature of a writ *de lunatico inquirendo*, or the inquisition thereon, the general commission hereby authorized to be issued, and such inquisition or certificate operating as an inquisition as is hereby(7) authorized to be made and returned, shall be deemed to be intended by or comprehended in the reference."

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(1) 16 & 17 *Vic. c.* 70, *s.* 50.
(2) See the present form, *Elmer*, 88.
(3) 16 & 17 *Vic. c.* 70, *s.* 2.
(4) The commission being under letters patent issues from the common law side of the Court of Chancery.
(5) 16 & 17 *Vic. c.* 70, *s.* 2.
(6) 16 & 17 *Vic. c.* 70, *ss.* 38—48.
(7) 16 & 17 *Vic. c.* 70, *ss.* 42—44.

After the order and office copies of affidavits have been so left at the Master's office, the solicitor of the person having the carriage of the inquiry should inform the Masters of the most convenient place at which the inquiry may be held (usually the residence of the person alleged to be *non compos mentis*, or some neighbouring court or inn; but a court is preferable to an inn when the inquiry is by jury). The Master then by virtue of his commission names the day and place for the inquiry, and signs and seals a precept which, if the inquiry is not to be by jury, he addresses to such solicitor; (1) if the inquiry is to be by jury, the Master addresses the precept to the sheriff of the county wherein the inquiry is to be held, (2) and the solicitor leaves it with the under sheriff of that county, who summons the jury (3)

The Act 16 & 17 Vic. c. 70, further provides, s. 42:

"Where the alleged lunatic (4) does not demand an inquiry before a jury, or the Lord Chancellor intrusted as aforesaid is satisfied by personal examination of him that he is not mentally competent to form and express a wish in that behalf, and it appears to the Lord Chancellor intrusted as aforesaid upon consideration of the evidence adduced before on the petition for inquiry and of the circumstances of the case so far as they are before him to be unnecessary or inexpedient that the inquiry should be before a jury, and he accordingly does not in his order for inquiry direct the return of a jury, then the Masters(5) shall by virtue of their general commission and under such order for inquiry, but without a jury, personally examine the alleged lunatic, and take such evidence, upon oath or otherwise, and call for such information as they may think fit, or the Lord Chancellor intrusted as aforesaid (6) may direct, in order to ascertain whether or not the alleged lunatic is of unsound mind, and shall certify their finding thereon." (7)

And Section 43:

"Where the Lord Chancellor intrusted as aforesaid, under such circumstances as hereinbefore mentioned, does not in his order for inquiry direct the return of a jury, but the Masters acting under the commission upon consideration of the evidence before them certify to him that in their opinion an inquiry before a jury is expedient, they shall without further order, issue their precept to the sheriff, and shall proceed in like manner in all respects, and their proceedings shall be as valid and effectual to all intents and purposes, as if the Lord Chancellor

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(1) As to form of such precept, see *Elmer*, 89.
(2) As to form of such precept, see *Elmer*, 88.
(3) *Elmer*, 6; *Re Jephson*, 8 A. & E. 859.
(4) 16 & 17 *Vic. c.* 70, *s.* 2. (5) *Ibid.* (6) *Ibid.*
(7) See 23 *Hen.* 6, *c.* 16.

intrusted as aforesaid had directed the return of a jury in the first instance."

And Section 44:

"Where the Masters certify that the alleged lunatic is of unsound mind, and incapable of managing himself or his affairs, and has been so from a time past or, on the contrary, certify that the alleged lunatic is of sound mind, and capable of managing himself and his affairs, the certificate shall be, and be deemed to be, an inquisition, and be of the same force and effect, to all intents and purposes, and be returned, filed and proceeded on in the same manner, in all respects, as an inquisition taken upon the oath of a jury."

If the inquiry is to be by jury, summons should be obtained from the Masters for the attendance of witnesses at the inquiry; (1) the witnesses have usually no claim for their costs but against the solicitor who summons them (2). The power of issuing such summons belongs, it seems by implication, as an incident of office to the Masters in Lunacy. (3) It was exercised at the time of the passing of the Act, 5 & 6 Vic. c. 84, by commissioners named in commissions in the nature of writs *de lunatico inquirendo*, (4) and by 16 & 17 Vic. c. 70, s. 7, it is enacted that

"The Masters in Lunacy shall have, perform, and execute all the powers, duties, and authorities, which were at the time of the passing of the Act of the session of Parliament holden in the 5th & 6th years of the reign of Her Majesty, chapter 84, had, performed and executed by commissioners named in commissions in the nature of writs *de lunatico inquirendo*."

Even before the passing of the Act 16 & 17 Vic. c. 70, notice of the inquiry to the person alleged to be *non compos mentis*, or to his solicitors, was held to be necessary, (5) and sometimes it was expressly ordered; (6) his production at the inquiry, by those who have him in custody, has also been ordered by the

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(1) *Elmer*, 7.
(2) *Elliott* v. *Ince*, 4 W. R. 510.
(3) Lord Eldon, C., in *Ex parte Lund*, 6 Ves. 781.
(4) *Ibid.*
(5) *Shelf. on Lun. 2d ed.* 119; *Elmer*, 10. And see Lord Eldon, C., in *Ex parte Cranmer*, 12 Ves. 485.
(6) *Ex parte Hall*, 7 Ves. 261; *Re Jervis*, Shelf. on Lun. 2d ed. 127; *Re Clement*, ibid. 127; *Re Braithwaite*, ibid. 132; *Re Sir G. O. P. Turner*, ibid. 132; *Re Knight*, ibid. 133. And see *R.* v. *Daly*, 1 Vez. 269; and *Ex parte Southcot*, 2 Vez. 405.

Lord Chancellor. (1) Formerly the commission was directed to be executed at or near the residence of the person alleged to be *non compos mentis*; (2) but this rule was not adhered to in a case where the property was small, and the expense of taking down witnesses would be saved by executing the commission elsewhere. (3) It is said that the convenience of the witnesses was once consulted by Lord Brougham, C.; (4) but such proceeding is opposed to the doctrine of Lord Eldon, C. (5) If the person alleged to be *non compos mentis* has no residence in England, the inquiry will probably be directed to be held in the county of Middlesex; (6) of course, his residence cannot be changed in law by his forcible and illegal removal. (7) When the object of the inquiry is rather to ascertain the time at which the insanity commenced, it is material that the commission should be executed among persons who knew the state of the individual prior to an accident to which, by the witnesses on one side, the insanity is imputed. (8) At the appointed time and place of inquiry (the inquiry it seems must be taken openly and not privily), (9) if the inquiry is before a jury, the under sheriff calls over the panel of the jury; (10) the general commission, and the order for the inquiry, are then read by him or the solicitor of the person having the carriage of the inquiry, and the jury (11) are sworn; the Master or Commissioner next explains to the jury the nature and object of the inquiry, and the law affecting it. The case of the person having the carriage of the inquiry is first opened, and his witnesses (12) are examined, and may be cross-

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(1) *Halse's case*, 2 Vez. 403; *Re Holmes*, Shelf. 2d ed. 127.

(2) *Ex parte Hall*, 7 Ves. 264; *Ex parte Baker*, 19 Ves. 341; *Ex parte Smith*, 1 Swanst. 6; *Re Waters*, 2 M. & Cr. 38; *Re Stevens*, 2 Coop. C. C. 150 n.

(3) *Re Waters*, 2 M. & Cr. 38; *Re Mills*, 2 M. & Cr. 39 n.

(4) *Re Green*, Shelf. 2d ed. 123.

(5) *Re Baker*, 19 Ves. 340. See also *Re Jepson*, 2 Jur. 200.

(6) *Re Webb*, 2 Coop. C. C. 150; *Re Lyon*, 2 Coop. C. C. 150 n. And see *Re Mill*, 2 M. & Cr. 39 n. But see *Ex parte Southcot*, 2 Vez. 405.

(7) *Ex parte Smith*, 1 Swanst. 6.

(8) Lord Eldon, C., in *Ex parte Smith*, 1 Swanst. 6.

(9) 34 *Edw.* 3, *c.* 13; 23 *Hen.* 6, *c.* 16; 1 *Hen.* 8, *c.* 8.

(10) See 8 *Hen.* 6, *c.* 16.

(11) 6 *Geo.* 4, *c.* 50, s. 52, 53.

(12) 1 *Hen.* 8, *c.* 8.

examined, and then the lunatic himself is generally seen by the Master and by the jury; the case for the inquiry having been summed up by the party supporting it, his opponent (if any) then states his case, and his witnesses are also examined, and may be cross-examined, and the other side may reply; finally the Master sums up the whole case and charges the jury. The jury are taken from the special jury list, unless the estate of the person alleged to be *non compos mentis* be small, then from the common jury list; each special juryman receives one guinea a day, each common juryman ten shillings and sixpence a day; (1) and no allowance is made for dinners to the jury. (2) If a juryman does not appear, it seems that he may be fined. (3) It is the privilege of the person alleged to be *non compos mentis* to be present at the inquiry; (4) and the master generally asks him before evidence is given what his wishes are on the subject. (5) In one case the Lord Chancellor gave express permission to a person alleged to be *non compos mentis* to attend the inquiries by his solicitor or counsel; (6) and, to enable him effectually to dispute the case for the inquiry, access to him by his relations may be obtained. (7) The Master, or Commissioner, and jury, are also entitled to inspect the person alleged to be *non compos mentis;* and, if they require it, he ought to be produced before them, without the prior order of the Lord Chancellor; and where the persons, in whose custody he was, refused to produce him, the Lord Chancellor blamed them and visited them with costs. (8) Although pending the inquiry, the Lord Chancellor (sitting in lunacy) will protect the person and property of the person alleged to be *non compos mentis;* (9) he will not fetter such a disposition of his property by him as may be necessary for his fair opposition to the inquiry. (10)

(1) *Elmer*, 8, 9; 36 *Edw.* 3, *c.* 13; 8 *Hen.* 6, *c.* 16; 6 *Geo.* 4, *c.* 50, *s.* 52.
(2) *G. O., May*, 1827.
(3) 6 *Geo.* 4, *c.* 50, *s.* 53.
(4) Lord Eldon, C., in *Ex parte Cranmer*, 12 Ves. 485.
(5) *Elmer*, 10.
(6) *Re Knight*, Shelf. on Lun. 2d ed. 133.
(7) *Re Fletcher*, Shelf. on Lun. 2d ed. 125; *Re Princess Bariatinski*, 1 Phill. 378.
(8) *Ex parte Southcot*, 2 Vez. 405.
(9) *Re King*, Shelf. on Lun. 2d ed. 159; *Re Galloway*, Ibid.
(10) *Re Holmes*, 4 Russ. 187; and *Re Baker*, Shelf. on Lun. 2d ed. 159.

The attendance at the inquiry of interested persons other than the person alleged to be *non compos mentis* is in the discretion of the Lord Chancellor. (1) On the petition of parties claiming under a deed executed by the person alleged to be *non compos mentis* for leave to attend the inquiry and cross-examine the witnesses at their own expense, Lord Cottenham, C., granted leave, observing that "the verdict would not be conclusive, but, if found against these parties, it would be evidence: that it was for the interest of all parties that the truth should be ascertained, and therefore, although it occasioned some additional expense, unless the estate was a very poor one, it was desirable that they should have leave to attend." (2) In another case leave was given to a claimant under a deed executed 10 years back by the person alleged to be *non compos mentis*, although the unsoundness of mind was alleged to have existed 35 years, upon the claimant undertaking to abide by any order as to the costs which his attendance might cause. (3) In a somewhat similar case, Lord Lyndhurst, C., refused leave unless the claimant would consent to be bound by the result of the inquiry, because the object of the attendance was not the benefit of the person alleged to be *non compos mentis*. (4) Leave was refused to the mother of an alleged lunatic, she having no pecuniary interest in the inquiry; (5) to his wife opposing the inquiry it was granted. (6)

The Act 16 & 17 Vic. c. 70, provides:

Sec. XLVII. The inquiry, whether with or without a jury, shall as far as relates to the state of mind of the alleged lunatic, (7) be confined to the question, whether or not the alleged lunatic is of unsound mind and incapable of managing himself or his affairs at the time of the inquiry, (8) except where the Lord Chancellor, intrusted as aforesaid, (9) under special circumstances, shall direct that there be also an inquiry from what time the alleged lunatic has been of unsound mind, and

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(1) Lord Cottenham, C., in *Re Nesbitt*, 2 Phill. 247; *Re Clements*, 2 Coo. t. Cott. 166.

(2) *Re Nesbitt*, 2 Phill. 247.

(3) *Re Richards*, 1 De G. M. & G. 720. See also *Re Parkinson*, 5 Jur. 547.

(4) *Re Watts*, 1 Phill. 514.

(5) *Re Nesbitt*, 2 Phill. 547.

(6) *Re Clement*, Shelf. on Lun. 2d ed. 126.

(7) 16 & 17 *Vic. c.* 70, *s.* 2.

(8) See old practice, *Ex parte Smith*, 1 Swanst. 6; *Re Wooller and Re Warren*, Shelf. on Lun. 2d ed. 124.

(9) 16 & 17 *Vic. c.* 70, *s.* 2.

incapable of managing himself or his affairs, or shall direct that there be also an inquiry, whether or not the alleged lunatic was of unsound mind and incapable of managing himself and his affairs at a previous time specified, and thenceforth down to the time of the inquiry. (1)

Since the operation of this Act there can be no object in any person attending to oppose an inquiry on his own account unless the inquiry is specially ordered to be carried back: in ordinary cases deeds, &c., will be unaffected by the inquisition.

Lord Eldon, C., said, "the reason of the inquiry from what period the lunacy commenced is this, that when it appeared that the lunacy was of some duration, and that the lunatic had performed acts, the principle on which the Crown extended its protection required that an examination should be instituted into the circumstances of competence or incompetence under which those acts were performed." (2)

The inquiry is, in theory, a proceeding to which the person alleged to be *non compos mentis* is not a party, and his rights after the finding of the jury are the same, whether he shall have before the jury contested the allegation of insanity or not. (3)

The Act 16 & 17 Vic. c. 70, provides:

Sec. XLVIII. That the person executing the inquiry with a jury, shall, while so employed, have all the like powers, authorities, and discretion as a judge of a Court of Record.

As to the terms of the finding upon the inquiry, it was held, when special commissions were usual, that the verdict must be in the words of the special commission, or in equipollent words, (4) by analogy it seems that the verdict must now be in the words or to the effect of the order of inquiry. The verdict must not be contradictory; (5) and if a verdict states the premises on which its conclusion is based, and such premises do not necessarily lead to the conclusion, that verdict is bad. (6) When in a verdict there existed a seeming uncertainty, the verdict

(1) As to the form of the inquisition where there is a jury, see *Elmer*, 92.
(2) Lord Eldon, C., in *Ex parte Smith*, 1 Swanst. 6.
(3) Sir J. L. Knight Bruce, L.J., in *Re Cumming*, 1 De G. M. & G. 556, 557.
(4) *Ex parte Cranmer*, 12 Ves. 449; *Ex parte Barnsley*, 3 Atk. 168. Lord Eldon, C., in *Sherwood* v. *Sanderson*, 19 Ves. 286; *Dennis* v. *Dennis*, 2 Saund. 352; *Re Bennett*, 1 Jur. 469; *Ex parte Halse*, 2 Vez. 405; *Re Cox*, Shelf. on Lun. 2d ed. 139.
(5) *Re Bruges*, 1 M. & Cr. 278; *Prodgers* v. *Frazier*, 1 Vern. 12.
(6) *Re Holmes*, 4 Russ. 186.

was taken in that sense, which was most advantageous for the Sovereign. (1) A verdict, "that T. P. at the time of taking this inquisition, is a lunatic enjoying lucid intervals, and during lucid intervals he is competent to the government of himself and the administration of his own affairs," was held to be uncertain, and therefore insufficient; (2) and a verdict, "that A. B. is capable of managing himself, but not of managing his affairs," is also insufficient; (3) but an error in the verdict of the christian name of the person found to be *non compos mentis* is not fatal to the verdict, (4) and an inquisition omitting to state whether the person found thereby lunatic and of unsound mind from an antecedent day, had or had not lucid intervals, is not void on that account. (5) If an inquisition is filed, it cannot be treated as void; but it may be quashed for insufficiency. (6) If a lunatic is in the enjoyment of a lucid interval at the inquiry, it seems that the inquiry will be adjourned. (7)

The verdict of the jury is immediately inserted in writing in two forms of inquisition (which forms are obtainable at the master's office), one of which forms is on paper, the other on parchment; the jurors agreeing (8) to the verdict, then sign the paper form, and attach their seals (9) to the parchment form. The Master having signed both forms, then annexes the parchment form to the order for inquiry, and endorses on the order the following return: "By virtue of Her Majesty's general commission and of this order I have made the inquiry thereby directed, as appears by the inquisition hereunto annexed;" the parchment form and order are next filed by the master's clerk in the Petty Bag Office. (10) The paper form should it seems be retained by some person on behalf of the

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(1) *Prodyers* v. *Frazier*, 3 Mod. 44.
(2) *Ex parte Atkinson*, Jac. 333.
(3) *Re Bennett*, 1 Jur. 469.
(4) *Re Crawford*, 1 M. & Cr. 240.
(5) *Ex parte Ferne*, 5 Ves. 450.
(6) *Ex parte Freak*, Selw C. C. 47.
(7) *Taylor, Med. Jur.* 836.
(8) Twelve jurors at the least must agree: see 16 & 17 *Vic. c.* 70, *s.* 46; *antè*, *p.* 244.
(9) 1 *Hen.* 8, *c* 9.
(10) *Elmer*, 11, 92. Lord Lyndhurst, C.B., in *Jones* v. *Byewater*, 2 Cro. & Jerv. 373. See also 1 *Hen.* 8, *c.* 9; 18 *Hen.* 6, *c.* 7; and *Moile* v. *Earl of Warwick*, 1 Lev. 65.

jury. (1) It is reported that when in an inquisition returned the date had been by accident omitted, and a motion was made that the date might be inserted, or that the inquisition might be returned to the Commissioners for that purpose, the Lord Chancellor observed that he had no jurisdiction to make such an order, and that the jurisdiction of the Commissioners had expired, but permitted the filing of the duplicate return signed by the jury. (2)

When the inquiry is without a jury, the Master himself examines the person alleged to be *non compos mentis*, and takes evidence upon oath or otherwise and calls for such information as he may think fit in order to ascertain the truth of the allegation.(3)

When there is any misbehaviour in the execution of the inquiry, the Lord Chancellor may quash the proceedings; (4) and when the proceedings are quashed, he may direct a new inquiry, (5) it seems without a new petition. (6) There are instances of the proceedings having been quashed when the verdict was not carried back as far as the evidence warranted. (7)

The Act 16 & 17 Vic. c. 70, provides:

Sec. LII. Where it is desired that an inquisition taken on a commission issued under the great seal of the United Kingdom or under the great seal of Ireland respectively, should be acted upon in Ireland or in England respectively, the proper officer may, under order of the Lord Chancellor of Great Britain, or the Lord Chancellor of Ireland, transmit a transcript of the record of the inquisition or of the writ to the Chancery of Ireland or of England, as the case may be, which transcript shall thereupon be entered and be of record there respectively, and shall, when so entered of record and if and so long only as the Lord Chancellor of Ireland, intrusted as aforesaid, and the Lord Chancellor of Great Britain, intrusted as aforesaid, as the case may be, shall see fit, be acted upon by them respectively, and be of the same validity and effect to all intents and purposes as if the inquisition had

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(1) 1 *Hen.* 8, *c.* 9.

(2) *Re Langham*, 1 Jur. 375.

(3) 16 & 17 *Vic. c.* 70, *s.* 42; *antè*, *p.* 244, 245. As to the form of inquisition where there is no jury, see *Elmer*, 92.

(4) Lord Hardwicke, C., in *Ex parte Roberts*, 3 Atk. 6; and see *Ex parte Hall*, 7 Ves. 261; and *Halse's case*, 2 Vez. 405.

(5) *Halse's case*, 2 Vez. 405; *Ex parte Cranmer*, 12 Ves. 454; *Ex parte Atkinson*, Jac. 333; *Re Holmes*, 4 Russ. 182.

(6) *Re Bennett*, 1 Jur. 469.

(7) *Shelf. on Lun. 2d ed.* 124. But see now 16 & 17 *Vic. c.* 70, *s.* 47; *antè*, *p.* 254.

been taken on a commission issued under the great seal of Ireland or of the United Kingdom respectively. (1)

With reference to delaying the execution of a commission of lunacy, it is reported that "a person's keeping a commission of lunacy by him for several years without ever putting it in execution is of very dangerous consequence, as it may be made an improper use of in many respects, particularly to terrify and distress the person against whom it issues;" and therefore, for these reasons, and it being likewise a contempt of the Court, a commission was discharged with costs and the petition also.(2)

On the petition of a solicitor, who had obtained a commission of lunacy which had since been executed, but lost by highway robbery, it was ordered that the clerk of the custodies should make out a duplicate of the commission bearing the same test and directed to the same Commissioners, and that the acting commissioners under the former commission might annex to such duplicate when sealed the inquisition, and return the same forthwith. (3)

There can be no verdict after the death of the person alleged to be *non compos mentis*: this was laid down by Lord Coke, who says, in *Beverley's case*,(4) "If an idiot die before office found, after his death no office can be found, for the words of the writ are, '*et ipsum viis et modis quibus super statu suo melius poteritis informari circumspecte examinaretis*,' &c., which can't be done when he is dead." Lord Hardwicke, C., assented to the law, but denied the accuracy of the reason given by Lord Coke, saying, in *Ex parte Southcot*,(5) "As to what Lord Coke says in *Beverley's case*, the reason given there is not the right or true reason, for there would be no fruit of a commission of lunacy or idiotcy against a person dead."

A finding of idiotcy avoids all acts done by the idiot.(6)

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(1) See *Re D. of Chandos*, 1 Sch. & Lef. 301; 11 *Geo.* 4 & 1 *Wm.* 4, c. 65, *s.* 41.
(2) *Anon.*, 2 Atk. 52; see also *Re Matthew*, Shelf. on Lun. 2d ed. 136.
(3) *Re Raine*, 19 Ves. 589.
(4) 4 *Rep.* 127.
(5) 2 *Vez.* 407.
(6) *Tourson's case*, 8 Rep. 170.

Solicitors employed in obtaining and prosecuting an inquiry into the state of a person's mind are, if such person is found idiot, lunatic, or of unsound mind, entitled to a lien on his estate in lunacy in respect of their costs,(1) and they are creditors of the estate.(2) Lord Justice Sir G. Turner is reported to have said, "I take it that the employment of a solicitor by the person issuing the commission and the acceptance by the former of such employment is on the faith of his proper costs being paid out of the lunatic's estate. The solicitor accepting the employment accepts it subject to that condition, and looks to the estate for payment of his costs. He might bring an action against the lunatic for payment of such costs, but in that case the Lord Chancellor would deal with the case on petition in the lunacy."(3) A solicitor undertaking on an inquisition to pay the fees of the Commissioner and jury was held responsible in the Queen's Bench. (4)

When a person found lunatic had died *before* the Lord Chancellor obtained possession of his estate, a petitioner praying an order in lunacy as to the liability of such estate to the costs of the inquisition, was told by Lord Lyndhurst, C., to bring an action. (5)

The Act 16 & 17 Vic. c. 70, s. 116, also provides for the payment of the costs of applying for, obtaining, and executing the inquiry, and of opposing the same.

Reasonable costs incurred under the sanction of the Lord Chancellor, or properly incurred without such sanction, in unsuccessfully opposing on behalf of a lunatic an inquiry into his state of mind, were, prior to the passing of the Act 16 & 17 Vic. c. 70, repaid by the Lord Chancellor out of the lunatic's property,(6) and such reimbursement was also obtained out of funds standing

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(1) *Ex parte Price*, 2 Vez. 407.
(2) *Chester* v. *Rolfe*, 4 De G. M. & G. 800.
(3) Sir G. J. Turner, L.J., in *Chester* v. *Rolfe*, 4 De G. M. & G. 801; Sir W. P. Wood, V.C., in *Stedman* v. *Hart*, 1 Kay, 612; *Re Ball*, 2 Moll. 145.
(4) *Re Jephson*, 8 A. & E. 959.
(5) *Re Pinks*, 12 Law J. N. S. Ch. 57.
(6) *Re Earl of Portsmouth*, *Re Norris*, *Re Frank*, *Re Taylor*, Shelf. on Lun. 2d ed. 133, 134.

to the credit of a lunatic in a suit in the Court of Chancery.(1) Lord Cottenham, C., held that he had no power under the Act 11 Geo. 4 & 1 Wm. 4, c. 65, s. 28, to pay out of the *real* estate of a *deceased* lunatic the costs of an inquisition, (2) but such costs constitute a debt of a deceased idiot, lunatic, or person of unsound mind, which is secured by the Act 3 & 4 Wm. 4, c. 104. (3) Such costs also create a debt against the estate of the person found idiot, lunatic, or of unsound mind, administered in a suit in the Court of Chancery.(4) The costs of a vexatious opposition properly fall on the opponents. (5) An application to tax the costs of obtaining an inquisition in lunacy should be to the Lord Chancellor. (6)

An inquisition finding a person to be lunatic or of unsound mind renders him incapable of marriage until he is duly declared sane,(7) and an inquisition finding a person to be idiot, lunatic, or of unsound mind renders him incapable of alienation by deed or gift to take effect in his lifetime,(8) but during a lucid interval a lunatic or person of unsound mind, found so by inquisition, may, before he is declared sane, make a will. (9) Pending the result of litigation about a will (admitted to probate), on the ground of the testator's insanity, the Lord Chancellor permitted the transfer of funds in lunacy belonging to the testator to nominees of a commissioner in lunacy upon the trusts of the will. (10)

An inquisition is *primâ facie* evidence, but not conclusive evidence of facts thereby found; (11) it throws the burthen of proof on those who contend the contrary. (12)

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(1) *Tayler* v. *Tayler*, 3 Mac. & Gor. 426.
(2) *Re Tubb*, 1 Jur. 653. But see 16 & 17 *Vic. c.* 70, *s.* 116.
(3) *Williams* v. *Wentworth*, 5 Beav. 325.
(4) *Field* v. *Tarner*, 3 W. R. 469.
(5) *Re Smith*, 1 Russ. 348.
(6) *Jones* v. *Byewater*, 2 Cro. & Jerv. 373.
(7) 15 *Geo.* 2, *c.* 30.
(8) *Rep.* 127 *a*; 17 *Edw.* 2, *st.* 10.
(9) Sir John Nicholl, in *Browning* v. *Reane*, 2 Phillim. 90; *Cooke* v. *Cholmondeley*, 15 Sim. 611; 2 M. & Gor. 18.
(10) *Re Garden*, 13 L. J. N. S. Ch. 439.
(11) *Bannatyne* v. *Bannatyne*, 16 Jur. 864; *Re Nesbitt*, 2 Phill. 547; *Re Watts*, 1 Curt. 594; *Jacobs* v. *Richards*, 18 Beav. 308 n.; and see *antè*, 9, 10.
(12) Lord Langdale, M.R., in *Snook* v. *Watts*, 11 Beav. 107.

It is enacted by the Act 2 & 3 Edw. 6, c. 8, s. 6 (which Act was meant only to remedy a very harsh prerogative), (1) that

"*If any person be or shall be untruly founden lunatic or idiot, every person and persons grieved or to be grieved by any 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.*"

At the common law if the King by false office was possessed of the custody or interest in any land by reason of ward *ideocy* or alienation without licence or the like, in such cases although the King was not entitled to a freehold but to a chattel real, and by false office only, yet the party grieved could not have a traverse, and thereupon to have *amov' manum*, but was put to his petition by the common law.(2)

Generally speaking, where there is not any other party aggrieved thereby, the person found idiot, lunatic, or of unsound mind by an inquisition is the proper person to traverse it. (3) Leave to traverse it will not be given to an entire stranger without interest,(4) but the alienee of the individual found lunatic or of unsound mind,(5) or a person having an interest under a contract with such individual, may obtain leave to traverse it. (6)

A petitioner was permitted to traverse under the following circumstances: A man had been, under a commission in 1802, found lunatic ever since 1792; the petitioner, as having an interest in respect of a contract with him since 1792 impeached the execution of the commission because it was executed in London and not at Bath, where the lunatic resided; and because

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(1) Lord Thurlow, C., in *Ex parte Fust*, 1 Cox, 420; and see Lord Cottenham, C., in *Re Bridge*, 1 Cr. & Ph. 345.

(2) 4 *Rep.* 54. But see Sir John Leach, V.C., *in Ex parte Lord Gwydir*, 4 Mad. 322.

(3) Lord St. Leonards, C., 1 *De G. M. & G.* 550.

(4) *Ex parte Ward*, 6 Ves. 579.

(5) Lord Hardwicke, C., in *Re Roberts*, 3 Atk. 312.

(6) *Ex parte Hall*, 7 Ves. 263; *Ex parte Morley*, 9 Ves. 478.

notwithstanding the Lord Chancellor had ordered that the lunatic should have due notice of the execution of the commission, only two days' notice was given, and then to a person who acted as his solicitor, but whom it was sworn he distrusted: the excuse alleged for deviating from the order was an apprehension that the alleged lunatic would not attend.(1) Lord Eldon, C., observed in this case, "This person is found a lunatic, -not only at the date of the commission but from 1792; a person who, at many periods since and up to April last, has been, with the knowledge of all persons who had either an interest in or feeling about the management of his affairs, doing all the acts the most sane is intrusted to do. With regard to his occupations, amusements, mode of life, and every circumstance belonging to the question of sanity, he has for ten years been permitted to act at his own discretion without any providence, and it is now avowed 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. 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 proper persons insane upon particular points, who, if these points are not touched upon, not only act discreetly in their own affairs but even as trustees for others; I do not doubt the fairness of their motives, but it is of the last consequence that the officer intrusted with this jurisdiction should be very careful before he establishes the lunacy of a person ten years ago, who has for those ten years been permitted to act as if sane, and to deal with a great variety of persons, all of whom are entangled in the consequences. I cannot permit any other person to judge of the propriety or impropriety of my order. . . . I cannot delegate this authority to any one. I ordered due notice to be given under the circumstance that this person had been trusted everywhere as a person whose conduct did not call imperiously for restraint. It had not escaped me that he might not attend. I thought he would attend, but if not, that circumstance upon such a proceed-

(1) *Ex parte Hall*, 7 Ves. 261.

ing for his benefit would have induced me to let it go on. But supposing my direction indiscreet in the exercise of so important a discretion, in the case of a person treated as sane, and now represented to have been insane all this time, it is not right to permit any departure from my direction not authorized by me."

By the Act 16 & 17 Vic. c. 70, it is enacted:

Sec. CXLVIII. Any person desiring to traverse may, within the three months next after the day of the return of the inquisition, present a petition for that purpose to the Lord Chancellor, who is required to hear and determine the petition, and shall, in his order upon it for a traverse, limit a time not exceeding six months from the date of the order within which the person desiring to traverse and all other proper parties are to proceed to trial of the traverse,(1) and who may by the same or any other order direct that the person desiring to traverse, not being the person the object of the inquisition, shall, within the three weeks next after the date of the order, give sufficient security to, and to the satisfaction of, the Masters for all proper parties proceeding to trial within the time to be limited as aforesaid.

Sec. CXLIX. Every person having right to traverse who shall not within the said three months present his petition for that purpose, or who shall refuse or neglect to give such security as aforesaid, or who shall not proceed to trial within the time to be limited as aforesaid, and his heirs, executors, and administrators, and all persons claiming by, through, or under him, shall be absolutely barred of his and their right of traverse, unless the Lord Chancellor shall, under the special circumstances of any particular case, think fit upon petition for that purpose, to allow the traverse to be had or tried after the said three months, in all which special cases the Lord Chancellor may make such orders as to him shall seem just.

An order for a traverse upon a petition presented by the person found *non compos mentis*, and within three months of the day of the return of the inquisition, (2) is of right. (3) It is not so upon the petition of another person.(4) On refusing a traverse by a stranger without any interest, Lord Eldon, C., observed: "As to the costs, though I do not think the true interest of

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(1) See *Re Sir G. O. P. Turner*, Shelf. on Lun. 2d ed. 146.

(2) 16 & 17 *Vic. c.* 70, *s.* 148.

(3) Lord Rosslyn, C., in *Ex parte Wragg*, 5 Ves. 450; and *Ex parte Ferne*, 5 Ves. 832. See also Lord Eldon, C., in *Ex parte Ward*, 6 Ves. 579, 580; and in *Sherwood* v. *Sanderson*, 19 Ves. 287; *Re Neville*, 1 Cr. & Dix. Abr. N. C. 54; *Jones* v. *Byewater*, 2 Cro. & Jerv. 373; *Re Bridge*, Cr. & Ph. 338; *Re Cumming*, 1 De G. M. & G. 553, and cases therein cited.

(4) *Re Bridge*, Cr. & Ph. 338; *Re Fust*, 1 Cox, 418. But see *Ex parte Hall*, 7 Ves. 263; and Lord Eldon, C., in *Sherwood* v. *Sanderson*, 19 Ves. 287.

lunatics is consulted by persons who act upon their own views of the sanity or insanity formed upon occasional conversations, and come too rashly to this Court without sufficient inquiry, yet it is the duty of the Court not to censure too hastily any application upon a subject so very important as this. In this particular case I do not think that censure would be too hasty, and therefore the petitioner must pay the costs, the petition being ill-founded and most rashly presented; but if the parties on the other side will act so far upon the general principle, inclining the Court not to discourage applications of this nature, they will sacrifice to humanity by not calling for the costs. If, however, they do call for them, I am of opinion, upon the whole, I cannot very well refuse them."(1)

On an application for a traverse by a person whose position as a party grieved by the inquisition was more than doubtful,(2) Lord Thurlow, C., said, "Most certainly if this Court has a discretion, which I believe it has, in respect of permitting these inquisitions to be traversed, great care should be taken in the exercise of that discretion that the Court does nothing which can stand in the way of the great ends to be answered by the protection it affords to a person in the unhappy situation of a lunatic."(3)

In the case of a petitioner other than the person found *non compos mentis*, leave to traverse is sometimes granted upon terms. (4)

Although the order on the petition of the person found *non compos mentis* for a traverse is "of right," leave to traverse is generally sought of the Lord Chancellor by petition; and Lord St. Leonards, C., laid down, as a reason for this course: "The traverse cannot take place until the party has been found lunatic on a commission issued by the great seal, which is followed by the grant of the custody of the person and estate. This being so, no one would, generally speaking, attempt to traverse the inquisition without the leave of the great seal, because otherwise he would have no security for the reimburse-

(1) *Ex parte Ward*, 6 Ves. 580.
(2) *Browning* v. *Reane*, 2 Phillim. 90.
(3) *In re Fust*, 1 Cox, 420.
(4) *Shelf. on Lun. 2d ed.* 152.

ment of his costs of thus defending the interest of the lunatic."(1)

When the person found idiot, lunatic, or of unsound mind by the inquisition is the petitioner, the Lord Chancellor must be satisfied that the petitioner is capable of volition, and is actually desirous of traversing;(2) to satisfy himself on this point, the Lord Chancellor personally examines the petitioner, and with a view to such examination the petitioner ought to attend the hearing of the petition.(3) Where an affidavit by the medical attendant of the petitioner showed that the latter could not attend without peril to her health, the further hearing of the petition was adjourned; the petitioner attended at the adjourned hearing.(4) In the last case Lord St. Leonards, C., observed: "There is no doubt that my first duty is to be satisfied that the application is *bonâ fide*, that the alleged lunatic herself is competent to judge, and that she really does desire to have a traverse against the finding. If I had any doubt upon that point, or if I felt, upon the examination of the lunatic, that it was uncertain what her intentions were, and that she herself did not know her own mind, or was not capable of coming to a clear conclusion, I do not say that in such a case I might not feel myself at liberty to hear evidence of her state of mind, to see by what parties she was surrounded, and who were applying for the traverse on her behalf, and what were their objects and views." And Lord Cranworth, L.J., said: "I do not, however, mean to say that there might not be cases in which, even without a personal examination, some inquiry might be taken and made on the subject; as, for instance, suppose a person is in a state not of mental but of bodily illness, that makes it impossible he should be seen by the Chancellor." Where the alleged lunatic was in prison, the Lord Chancellor issued a writ of *habeas corpus* for his production.(5)

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(1) Lord St. Leonards, C., in *Re Cumming*, 1 De G. M. & G. 548. See also Lord Hardwicke, C., in *Ex parte Roberts*, 3 Atk. 7.

(2) *Re Cumming*, 1 De G. M. & G. 553; *Re Bridge*, Cr. & Ph. 347. Lord Eldon, C., in *Re Milsom*, cited 1 De G. M. & G. 553. Lord Cottenham, C., in *Elliott* v. *Ince*, 3 Jur. N. S. 601.

(3) *Re Neville*, 1 Craw. & Dix Abr. N. C. 54; *Re Cumming*, 1 De G. M. & G. 545—554; *Re Bridge*, Cr. & Ph, 344.

(4) *Re Cumming*, 1 De G. M. & G. 545. And see *Smithie's case*, *Ex parte Roberts*, 3 Atk. 7.

(5) *Re Sir G. O. Turner*, Shelf. on Lun. 2d ed. 150.

The petition[1] for a traverse should be presented to the Registrar; it is answered in the usual manner, and set down for hearing.[2]

The order for a traverse must be filed in the Petty Bag Office, in which office the draft traverse is prepared, and to which office, when the draft has been settled and signed by the counsel of the traverser, it is returned; there it is engrossed and filed, and then the Attorney-General, on behalf of the Sovereign, files in the same office a replication thereto.[3] The record[4] of the traverse and replication is next taken by the clerks of the Petty Bag Office to the office of the clerk of the Crown in the Queen's Bench, and from thence it is transmitted to the clerk of assize for the county in which the trial of the traverse is directed to take place. The trial takes place at the next assizes for the county in which the inquisition was obtained, unless the Lord Chancellor directs otherwise: the Lord Chancellor may direct the trial in the county of the residence of the person found *non compos mentis*. The traverser is in the position of a defendant opposing a title found for the Sovereign.[5] Special jurors are usually summoned upon the trial, and the verdict is returned to the Petty Bag Office.[6]

It should be borne in mind that the Act 16 & 17 Vic. c. 70, enacts:

> Sec. CL. If the Lord Chancellor intrusted as aforesaid[7] be dissatisfied with the verdict returned upon a traverse, he may 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; but no person shall be admitted to traverse oftener than once.

The Court of Queen's Bench has also, upon payment of costs, granted a new trial at bar of a traverse when by reason of illness the alleged lunatic was unable to attend the first trial.[8]

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(1) As to the form of the petition, see *Elmer*, 147.
(2) *Elmer*, 52.
(3) *Ibid.* and 149; *R.* v. *Roberts*, 2 Stra. 1208; *Ex parte Ferne*, 5 Ves. 452.
(4) See form, *Elmer*, 150.
(5) *R.* v. *Mason*, 2 Salk. 447; *R.* v. *Roberts*, 2 Str. 1208.
(6) *Elmer*, 53.
(7) 16 & 17 *Vic. c.* 70, *s.* 2.
(8) *R.* v. *Roberts*, 2 Stra. 1208; *Ex parte Baker*, 1 Cox, 418.

The Act 16 & 17 Vic. c. 70, also contains the following provision:

Sec. CLI. The Lord Chancellor intrusted as aforesaid (1) and the Masters may from to time after the return of an inquisition, and notwithstanding a petition or order depending relative to a traverse thereof, make such orders, and do such acts relative to the custody and commitment of the person, and the commitment, management, and application of the estate and effects of the person (the object of the inquisition) as he or they shall think necessary or proper (inclusive of the imposition and levying of fees and percentage as in this Act provided), and all things done by any person appointed committee of the person or estate, or by any other person, shall be as valid and effectual; and all committees, and other persons respectively, and their respective heirs, executors, and administrators, are hereby indemnified in respect of all such things as aforesaid, from and against all actions, suits, and proceedings, damages, costs, charges, and expenses, to be brought, commenced, had or recovered by the person (the object of the inquisition), his heirs, executors, or administrators, or any other person, whomsoever, as fully and effectually, as if the inquisition had not been traversable; but not further or otherwise. (2)

On a petition to traverse of a person found to be of unsound mind (whose whole property consisted of £1300, in Court in Lunacy, and of a pension or allowance of £160 per annum), praying an advance out of the £1300 for the purposes of the traverse: Lord Cottenham, C., refused the prayer, observing: "It is by no means to be assumed that I am to advance money for a purpose which I am quite sure will tend to the injury of the individual. If he has any probability of succeeding, he will find no difficulty in obtaining the means of traversing. I do not refuse the allowance." (3)

There is said to be also an entry in the lunacy office of the following order:—27th June, 1826: *Ex parte Sir G. P. Turner.* Order for the committees of the estate to pay solicitor of lunatic £500 on account of the expenses of the traverse, for committees to be at liberty to oppose the said traverse, and for the lunatic to appear on the trial. (4)

In making an order on an opposed petition for a traverse presented by the person (an old lady) found to be *non compos*

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(1) 16 & 17 *Vic. c.* 70, *s.* 2.

(2) See *Shelf. on Lun. 2d ed.* 161, 162. Lord Hardwicke, C., in *Ex parte Roberts*, 3 Atk. 6, 7; *Re Heli*, 3 Atk. 635.

(3) *Re Bridge*, 1 Cr. & Ph. 338—350.

(4) *Cr. & Ph.* 349 *n.*

mentis, Lord St. Leonards, C., observed: "This lady's property is of small amount, and without care and caution it will be swallowed up in litigation, and the person whom both sides are professing to protect will, at the age of 76, be stripped of her whole means of subsistence, and this by the operation of law brought in to protect her. Upon the present occasion eight counsel have appeared: three on the part of Mrs. Cumming, and five on the other side. I now make an order that no more costs shall be allowed than for two counsel on each side; and I will make an order, that in whatever further steps are taken on either side, the expenditure shall be restricted to the lowest possible point, so as to preserve to this lady, if it is in the power of the Great Seal to do so, some remnant of her fortune for the remainder of her days." (1)

The costs of confirming an inquisition on the trial of a traverse constitute a debt on the estate of the person found *non compos mentis* by the inquisition. (2) So do the costs of a solicitor employed by such person in an unsuccessful traverse of the inquisition, unless any thing fraudulent or unfair, frivolous or litigious, appears to have taken place on the part of the solicitor. (3)

Where it was considered expedient that, pending a traverse, a part of the system of personal care of the alleged lunatic should not be disturbed, it was specially ordered, that such system should not be interfered with by the committee of the person, and should be continued until further order. (4)

If the verdict on the trial of the traverse finds that the person found by the inquisition *non compos mentis* was sane at the date of the inquisition, a petition for *supersedeas* may be presented. (5)

After (6) a verdict at a trial of a traverse, finding that the defendant is now of sound mind, but leaving it in doubt whether at the time of the inquisition he was or was not *compos mentis*, the

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(1) *Re Cumming*, 1 De G. M. & G. 556—564.
(2) *Wentworth* v. *Wentworth*, 5 Beav. 325.
(3) *Wentworth* v. *Tubb*, 2 Y. & C. C. 537.
(4) *Re Cumming*, 1 De G. M. & G. 564.
(5) *Ex parte Ferne*, 5 Ves. 833.
(6) *Ex parte Loveday*, 1 De G. M. & G. 285. But see 16 & 17 *Vic. c.* 70, *s.* 151, 152.

Lord Chancellor held that he had no jurisdiction to order any payment out of the property of the defendant.

By 16 & 17 Vic. c. 70, it is enacted:

Sec. CLII. Where any person has been found of unsound mind by inquisition, but the question of unsoundness of mind is disputed, and liberty to traverse has been applied for, and whether granted or not, and it appears to the Lord Chancellor intrusted as aforesaid, (1) to be for the lunatic's (2) benefit, and also to be expedient that the inquisition should be superseded on terms and conditions, and subject to an arrangement respecting the lunatic's estate, he may upon the consent of the lunatic and of the person entitled, or claiming to traverse, and of such other persons, if any, whose consent he may deem necessary, order the inquisition to be superseded on such terms and conditions, to be fulfilled by the lunatic or such other person and subject to such arrangement respecting the lunatics estate, as he may under the circumstances of the case think proper, and may by the same or any other order direct the lunatic, and any other persons being consenting parties to the arrangement, to execute, make and do before or after the issuing of the writ of supersedeas, and he and they shall accordingly execute, make and do all such conveyances, transfers, and things as may to the Lord Chancellor intrusted as aforesaid seem necessary or proper, for or for securing the fulfilment of such terms and conditions, and the completion of such arrangement as aforesaid, and generally may make such orders as to him may seem proper, for effectuating this present provision, and all conveyances, transfers, and things executed, made and done under any such order of the Lord Chancellor intrusted as aforesaid, either before or after the issuing of the writ of supersedeas, shall be as valid and binding to all intents, and upon all persons whomsoever, as if the lunatic had not been found or had not been of unsound mind; but not further or otherwise.

The Sovereign cannot traverse the inquisition, but he may have one writ of *melius inquirendum*, but no more; if in such inquiry he quash the inquisition, the party grieved by the latter finding may traverse it. (3)

The percentage payable out of the estate of a person in whose case an inquisition has been successfully traversed is regulated by the Act 16 & 17 Vic. c. 70, s. 28.(4)

If any person aggrieved by an inquisition join the person found thereby *non compos mentis* in traversing it, he is bound by the

(1) *16 & 17 Vic. c. 70, s. 2.*
(2) *Ibid.*
(3) *Rep.* 8, 168. See also *Knight* v. *Duplessis*, 2 Vez. 555.
(4) *Antè*, p. 235.

result of the traverse ; (1) and if one undertakes in Court to be bound by the result of a traverse, and afterwards refuses to be bound, he may of course be attached for contempt of the Court. (2)

The passing of a decree against a defendant, avoiding a sale by him to a person found by inquisition *non compos mentis*, was stayed to enable the defendant to traverse the inquisition. (3)

Where A. is found lunatic from a certain day, *with lucid intervals*, and B. seeks specific performance of a contract entered into by A. during a *particular lucid interval*, B. should not traverse the inquisition, but file a bill for specific performance. (4)

It is said that a person found idiot by inquisition may come personally to the Lord Chancellor and pray to be examined by him if he be idiot, or his friends may sue a writ out of the Court of Chancery for such examination ; and that if the idiotcy be disproved in such examination, then the inquisition is void, without any other traverse, (5) and that the same holds as to a person found lunatic, though the consequences are different. (6)

And now as to

The proceedings under an inquisition finding any person to be idiot, lunatic, or of unsound mind.

The 11th General Order, of 7th Nov., 1853, declares :

"The Masters (7) are in each matter, immediately (8) after inquisition finding the party to be a lunatic, to inquire and report on the following matters :—

1. The lunatic's situation. 2. The nature of his lunacy. 3. Who is the most fit person to be appointed the committee of his person and estate. 4. Of what his fortune consists. 5. The amount of his

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(1) Lord Hardwicke, C., in *Re Roberts*, 3 Atk. 312.

(2) *Ex parte Roberts*, cited by Lord Apsley, C., in *Ex parte Grimstone*, 4 Bro. C. C. 237 n.

(3) *Attorney-General* v. *Parkhurst*, 1 Cas. in Cha. 112.

(4) *Hall* v. *Warren*, 9 Ves. 605.

(5) *Staundf. de Prerog. Reg.* 36 ; 9 *Rep.* 31 *a* ; *Wingate's Maxims*, 123 ; 3 *Bl. Com.* 332 ; *F. N. B.* 532 ; *Re Darwin Ley*, 25.

(6) Lord Hardwicke, C., in *Re Heli*, 3 Atk. 635.

(7) In these orders, unless there be something in the subject matter or context repugnant to such a construction, the expression "the Masters" is to be taken to mean the Masters jointly and severally : 3 *G. O.*, *7th Nov.*, 1853.

(8) See 10 *G. O.*, *27th Oct.*, 1843 ; and *Re Westbrook*, 1 Coo. *t.* Cott. 224.

income. 6. In what manner, and at what expense, and by whom, and where he has been maintained; what is fit to be allowed for his past maintenance; whether anything and what is due and to whom in respect thereof, and to whom and out of what fund the same ought to be paid. 7. What is fit to be allowed for his future maintenance; from what time the allowance ought to commence; and out of what fund the same ought to be paid."

The Master who acted in the proceedings before an inquisition continues to act in the inquiry which follows.

This was the old practice, and it is now enforced by the 34th General Order, of 7th Nov., 1853, which declares:

"That where any matter or thing is referred to or is directed or permitted to be done by or before the Masters, it is to be considered to be referred to them jointly and severally, and may be done by or before them, or either of them; but so, nevertheless, that all matters in the same lunacy may, so far as may be convenient, be conducted and carried on before the same Master."

The Master may avail himself of the enactment of 16 & 17 Vic. c. 70:

Sec. LXI. The Masters (1) shall be at liberty to cause to be issued from time to time such advertisements as may to them seem expedient with reference to the subject matter of a proposal or inquiry.

And by way of further assistance to the Master in such inquiry, states of facts and proposals (2) and evidence (3) in support of such states of facts may be laid before him.

The Act 16 & 17 Vic. c. 70 has laid down the following rules in respect to the evidence in proceedings after inquisition:—

Sec. LV. The Masters (4) may direct that the evidence in the matter of a lunatic (5) or on any particular proceeding in the matter be taken orally, or partly orally, and partly by affidavit, and it shall be so taken accordingly.

Sec. LVI. The Masters (6) may in the matter of a lunatic, (7) or alleged lunatic, administer an oath to any witness, whether his deposition or affidavit is to be used before themselves or not, and recognizances may be taken and acknowledged before them.

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(1) 3 *G. O., 7th Nov.*, 1853.

(2) For forms of such states of facts and proposals and evidence, see *Elmer*, 94—101.

(3) A deposition of a member of the family of a lunatic in support of a state of facts on a reference in lunacy as to the heir of the lunatic, is admissible as evidence after the death of the deponent and lunatic in an action of ejectment by one claiming to be heir of the lunatic, such deposition not having been made *post litem motam*, but in an administrative, not in a controversial proceeding: *Gee v. Ward*, 5 W. R. 579.

(4) 16 & 17 *Vic. c.* 70, *s.* 2. (5) *Ibid.* (6) *Ibid.* (7) *Ibid.*

Sec. LVII. The provisions of the Act of the last session of Parliament, chapter 86, sections 22, 23, and 24, (1) respecting affidavits made in causes or matters depending in the High Court of Chancery, shall be, and the same are hereby extended, so as to be applicable *mutatis mutandis* to affidavits made in matters in lunacy.

Sec. LVIII. Every affidavit to be used in a matter in lunacy, shall be taken and expressed in the first person of the deponent, and shall be divided into paragraphs, numbered consecutively, and respectively confined, as nearly as may be, to distinct portions of the subject matter.

Sec. LIX. Where an affidavit is required for verifying all or some of the statements contained in a petition, state of facts, proposal, or other document, the affidavit may be annexed or underwritten thereto, and may be in the form (2) set forth in the third

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(1) 15 & 16 Vic. c. 86, sec. 22.—All pleas, answers, disclaimers, examinations, affidavits, declarations, affirmations, and attestations of honour in causes or matters depending in the High Court of Chancery, and also acknowledgments required for the purpose of enrolling any deed in the said Court, shall and may be sworn and taken in Scotland or Ireland or the Channel Islands, or in any colony, island, plantation, or place under the dominion of Her Majesty in foreign parts, before any judge, Court, notary public, or person lawfully authorized to administer oaths in such county, colony, island, plantation, or place respectively, or before any of Her Majesty's consuls or vice-consuls, in any foreign parts out of Her Majesty's dominions; and the judges and other officers of the said Court of Chancery shall take judicial notice of the seal or signature, as the case may be, of any such Court, judge, notary public, person, consul, or vice-consul attached, appended, or subscribed to any such pleas, answers, disclaimers, examinations, affidavits, affirmations, attestations of honour, declarations, acknowledgments, or other documents to be used in the said court.

Sec. 23.—All persons swearing, declaring, affirming, or attesting before any person authorized by this Act to administer oaths, and take declarations, affirmations, or attestations of honour, shall be liable to all such penalties, punishments, and consequences, for any wilful and corrupt false swearing, declaring, affirming, or attesting contained therein, as if the matter sworn, declared, affirmed, or attested, had been sworn, declared, affirmed, or attested before any Court or persons now by law authorized to administer oaths, and declarations, affirmations, or attestations upon honour.

Sec. 24.—If any person shall forge the signature or the official seal of any such judge, notary public, or other person lawfully authorized to administer oaths under this Act, or shall tender in evidence any plea, answer, disclaimer, examination, affidavit, or other judicial or official document, with a false or counterfeit signature or seal of any such judge, Court, notary public, or other person authorized as aforesaid, attached or appended thereto, knowing the same signature or seal to be false or counterfeit, every such person shall be guilty of felony, and shall be liable to the same punishment as any offender under an Act passed in the 8th and 9th years of the reign of Her present Majesty, intituled An Act to facilitate the admission in Evidence of certain Official an other Documents.

(2) *Short Form of Affidavit:*—

"In the matter of A. B., a person of unsound mind.

"I, C. D., the petitioner named in the above written [*or* annexed, *as the case may be*] petition [*or* the person bringing in the above written (*or* annexed) state of facts, *&c.*] make oath and say that so much of the above written

schedule hereunder written, (1) with such variations as the circumstances may require; and where the aforesaid form is in the opinion of the Taxing Master applicable no further or greater costs of any affidavit shall be allowed on taxation than would be allowed for an affidavit in the aforesaid form.

Sec. LX. Every person giving evidence by affidavit, shall be liable to oral cross-examination, by or before the Masters (2) in the same manner as if the evidence given by him in his affidavit had been given by him orally before the Masters; and after cross-examination, may be re-examined orally, by or on behalf of the person filing the affidavit; and every person giving evidence by affidavit, shall be bound to attend before the Masters, to be so cross-examined and re-examined, upon receiving due and proper notice and payment or tender of his reasonable expenses, in like manner as if he had been, duly served with a writ of *subpœna ad testificandum* before an examiner of the High Court of Chancery; and the expenses attending on such cross-examination and re-examination shall be paid in the first instance by the parties respectively in like manner as if the witness cross-examined were the witness of the party cross-examining, and shall on taxation be ultimately borne and paid by the estate, or parties respectively, or one of them, as the Lord Chancellor intrusted as aforesaid, (3) shall direct.

If the heir and next of kin of the person found to be *non compos mentis* are not represented before the Master, he will probably not conclude the last-mentioned inquiry until they are represented. (4)

Their presence is required, not that they may have an opportunity of protecting their own interests, but because, by reason of their kinship, they may be able, and by reason of their expectant interest, they may be willing, to give valuable information respecting the subject of the inquiry. (5) Indeed, the heir and next of kin of a lunatic or person of unsound mind are considered to have no interest in his property. (6) The assignee of the interest of the next of kin of a lunatic may, however,

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petition, *&c.* [*as before*] as relates to my own acts and deeds is true, and so much thereof as relates to the acts and deeds of any and every other person I believe to be true. Sworn, *&c.*"

(1) "The schedules hereunder written shall be deemed to be parts of this Act:" 16 *&* 17 *Vic. c.* 70, *s.* 3.

(2) 16 *&* 17 *Vic. c.* 70, *s.* 2.

(3) *Ibid.*

(4) See *Re Persse*, 1 Moll. 440.

(5) Lord Eldon, C., in *Ex parte Clarke*, Jac. 595; *Ex parte Whitbread*, 2 Mer. 101; *Ex parte Phillips*, 19 Ves. 123; *Re Amoy, Re Cranmer, Re Howell, Re Meux*, 2 Coo. *t.* Cott. 105—107. Lord Cottenham, C., in *Re Brown*, 1 Mac. & Gor. 208; *Re Pearson*, Coo. C. C. 315.

(6) 1 *C. P. Cooper*, 317.

obtain an order in the nature of a stop order against any disposition of the funds in court in the lunacy for the benefit of such next of kin. (1)

The language of Lord Eldon on this point is very explicit. He is reported to have thus expressed himself in a case in lunacy :—"Those to whom the Crown has confided the exercise of this jurisdiction have thought, and in my judgment they have rightly thought, that it is greatly to the advantage of lunatics, generally speaking, that all the next of kin and the heir at law should be present when the proposals for committees of the estate and of the person are discussed. In their absence many cases would be decided in total ignorance of, or only with a partial and imperfect acquaintance with, those circumstances, a thorough knowledge of which is necessary to enable the Lord Chancellor to determine whether the plans he is required to sanction will be beneficial or detrimental to the unfortunate persons on whose account they are framed. An order which might discourage the next of kin and heir at law from attending when proposals for committees of the person and estate are carried in should be carefully avoided." (2)

And Lord Lyndhurst, C., is reported to have said: "In general an order is not requisite that any of the next of kin may be at liberty to carry in proposals for committees of the person and estate, and that they shall have notice of any proposal for committees of the person and estate which the party prosecuting the commission shall carry in; where, from any peculiar circumstances, such an order is requisite, the case probably will very rarely occur in which the Lord Chancellor will decline to make it. The policy here has long been in favour of making such an order. If the persons connected with the lunatic by blood and interested in his estate shall not come forward (and they not unfrequently will not care to come forward when obstacles are thrown in their way) the consequences will be extremely mischievous. It is in general only by means of the information which such persons possess that the Lord Chancellor can ascertain whether any proposal upon which he is called on to exercise a judgment ought to be adopted as most

(1) *Re Moore*, 1 M. & Gor. 103; *Re Pigott*, 3 M. & Gor. 268.
(2) *Re Meux*, 2 Coo. *t.* Cott. 106, 107 n.

conducive to the ease and welfare of the lunatic, and the security of his property." (1)

The presence of the heir at law and next of kin in all proceedings subsequent to an inquisition finding a person to be *non compos mentis* has been considered so important, that it has been expressly provided for by the Act 16 & 17 Vic. c. 70.

That Act declares:

Sec. LXXV. Subject to the provisions hereinafter contained, the Masters (2) shall as soon as may be after the return of the inquisition, and may afterwards from time to time as they may think it expedient, inquire and certify who are the next of kin,(3) and due notice of attending on the proceedings in the matter shall be given to the persons for the time being found to be next of kin.

This inquiry not being for the trial of their title by the persons claiming to be next of kin, the certificate is not conclusive as to such title.(4) A direction to inquire "who is the next heir" was formerly inserted in the commission of lunacy. When such practice prevailed, Lord Redesdale, C., observed, on a question after the death of a lunatic as to the possession of his land: "Without the inquisition the Court would have nothing to direct its discretion in delivering possession of the estate." He however did not order possession to the person found to be heir, because it seems his title was, though *primâ facie* good, disputed.(5)

The Act 16 & 17 Vic. c. 70 further declares:

Sec. LXXVI. Where the Lord Chancellor, intrusted as aforesaid,(6) by virtue of the power hereinbefore(7) given, exempts the property of a lunatic(8) from payment of fees and percentage, the Masters(9) shall not, during the continuance of the exemption, inquire respecting his next of kin(10) without special order.

Sec. LXXVII. The Lord Chancellor, intrusted as aforesaid,(11) may in any case by order defer an inquiry respecting next of kin,(12) or

(1) Lord Lyndhurst, C., in *Re Howell*, 2 Coo. *t.* Cott. 107 n.
(2) 16 & 17 *Vic. c.* 70, *s.* 2.
(3) In this Act, unless there be something in the subject matter or context repugnant to the construction, the expression "next of kin" shall be construed to refer to the next of kin of a lunatic, and to comprehend his heir or heirs at law, and also the person or persons who would be entitled to his estate or to shares thereof under the statutes for the distribution of the effects of intestates in case he were dead intestate: 16 & 17 *Vic. c.* 70, *s.* 2.
(4) Lord Eldon, C., in *Ex parte Clarke*, Jac. 592, 593; and *Re Pearson*, Coo. C. C. 316.
(5) *Re Fitzgerald*, 2 Sch. & Lef. 439, 440.
(6) 16 & 17 *Vic. c.* 70, *s.* 2.
(7) 16 & 17 *Vic. c.* 70, *s.* 32.
(8) 16 & 17 *Vic. c.* 70, *s.* 2.
(9) *Ibid.*
(10) *Ibid.*
(11) *Ibid.*
(12) *Ibid.*

direct that the inquiry shall be carried on to such limited extent only, and under such restrictions and provisions and in such manner as he may, under the circumstances of the case, think expedient, and may, where he deems it just and expedient, order, that persons alleging themselves to be next of kin be left to make out their claim at their own expense, and may, in any case, if from the smallness of the property of the lunatic[1] (although it be not such as to entitle it to exemption from payment of fees and percentage) he think it safe and just, by order wholly dispense with the inquiry.

Sec. LXXVIII. Where the Masters[2] are of opinion that by reason of the smallness of the property of a lunatic,[3] or for any other reason, an inquiry or a subsequent inquiry (as the case may be) respecting next of kin,[4] should be dispensed with, or deferred, or be carried on to a limited extent only, they shall report accordingly.

Sec. LXXIX. Where the Masters,[5] in conducting an inquiry respecting next of kin[6] without any special direction of the Lord Chancellor, intrusted as aforesaid,[7] concerning the mode of conducting the same, are of opinion that the circumstances of the case render it expedient and safe that strict proof of pedigree should not be gone into, they may dispense with the same to such extent and in such manner as may to them seem expedient, and may require and receive such evidence as may appear to them sufficient and satisfactory respecting the family and the next of kin, and shall certify the mode in which they have conducted the inquiry.

Sec. LXXX. The Lord Chancellor, intrusted as aforesaid,[8] may, by order, dispense with and disallow the attendance on the proceedings in the matter of all or some of the next of kin,[9] either wholly, or except at their own expense, or except upon special leave first obtained, as he shall, under the circumstances, think expedient, and such notice only of attending on the proceedings shall be given as shall be conformable with the order of the Lord Chancellor, intrusted as aforesaid.

Sec. LXXXI. Subject to the provisions hereinbefore contained, the Masters[10] shall once in the matter of each lunatic,[11] and may afterwards from time to time as they think it expedient, determine whether any one or more, and if any, how many and which of the next of kin[12] is or are to attend on the proceedings or on any particular proceeding before them in the matter (but exclusively as at present of the heir-at-law with respect to notice of or attendance on the account of the committee of the estate), and the person or persons alone (if any) to whom the Masters have given liberty to attend, shall be entitled to notice of, or shall be allowed to attend at the cost of the estate on any proceeding, or on such particular proceeding as aforesaid, as the case may be, before the Masters, except upon their special leave first obtained, and the same person or persons alone (if any) to whom the Masters have given liberty to attend on the proceedings before them in the matter generally, shall be entitled to notice of, or shall be allowed to attend, at the cost of the estate, on any proceeding before the Lord Chancellor, intrusted as aforesaid,[13] except upon his special leave first

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(1) 16 & 17 *Vic. c.* 70, *s.* 2. (2) *Ibid.* (3) *Ibid.*
(4) *Ibid.* (5) *Ibid.* (6) *Ibid.*
(7) *Ibid.* (8) *Ibid.* (9) *Ibid.*
(10) *Ibid.* (11) *Ibid.* (12) *Ibid.*
(13) *Ibid.*

obtained, and for that purpose the Masters shall, from time to time as occasion may require, certify who is or are the person or persons (if any) to whom they have given liberty to attend on the proceedings before them in the matter generally.

The Masters generally arrange that there shall be, besides the committee, only one attendance for the next of kin, and, when there is real estate, one attendance for the heir.(1)

The Act 16 & 17 Vic. c. 70 also provides:

Sec. LXXXII. Where an infant, being one of the next of kin (2) and being at liberty to attend on the proceedings, has no guardian, the Masters (3) may, from time to time by certificate, appoint a fit person to be his guardian for the purposes of the lunacy, who shall thereupon for the purposes of the lunacy only, and not further or otherwise, have all the same powers, authorities, and discretion as if he had been duly constituted guardian by the Court of Chancery, and the Masters may, from time to time, by certificate, revoke any such appointment and appoint another fit person to be the guardian *toties quoties*.(4)

When the person found *non compos mentis* has no next of kin, the Attorney-General on behalf of the Crown must have notice of the proceedings (5) after the inquisition.

The 22d General Order, of 7th Nov., 1853, also declares:

"The Masters (6) are to be at liberty to permit any person whose attendance may appear to them to be proper, and for the security or advantage of the lunatic or his estate, other than the committee and next of kin (7) of the lunatic to attend on the proceedings or on any particular proceeding before them in the matter, and all the provisions contained in section 81 of the said (8) Act as to the attendance of next of kin are to extend and apply *mutatis mutandis* to the attendance of such person as aforesaid as well before the Masters as before the Lord Chancellor or Lords Justices."

And the Act 16 & 17 Vic. c. 70 further provides:

Sec. LXXXIII. The Masters (9) may, where it seems expedient, consolidate or carry on together similar proceedings before them in the matters of several persons being members of the same family, and may in that case, and also where it does not seem expedient that the proceedings should be consolidated or carried on together, use in the matter of one member of a family, evidence filed or taken in the matter

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(1) *Elmer*, 16.
(2) 16 & 17 *Vic. c.* 70, *s.* 2.
(3) *Ibid.*
(4) See *Re Brown*, 1 Mac. & Gor. 201.
(5) *Re Early*, 2 Coo. *t.* Cott. 108.
(6) *G. O., 7th Nov.*, 1853.
(7) *Ibid.*
(8) 16 & 17 *Vic. c.* 70.
(9) 16 & 17 *Vic. c.* 70, *s.* 2.

of another member or other members of the same family when and so far as it may be applicable.(1)

Where a person found by inquisition to be of unsound mind expressed in court and by his counsel his wish that at an inquiry in the office of the Masters in Lunacy respecting his future support and residence, one who had been bail for his good behaviour, who then had him in custody, and who had opposed the issuing of the commission, should have liberty to attend; Lord Cottenham, C., observed: "If he (the bail) chooses to attend the reference he may, and should he make any suggestion to the Master which shall be for the benefit of the lunatic, it will be very proper that he should be paid his expenses; if he does not, he will have to bear his own costs of his attendance."(2)

Much consideration is of course given to

The Appointment of the Committee of the Person.

The Lord Chancellor will not permit the person of a party found in England idiot, lunatic, or of unsound mind and resident here, to be under any control not subject to his jurisdiction,(3) and the Lord Chancellor of Ireland has declined to appoint as committee of the person an individual out of his jurisdiction.(4)

The most fit person to be appointed the committee of the person in any case is he or she whose appointment will be most conducive to the happiness and welfare of the charge. There is no rule in the appointment which prefers the party who had the carriage of the original inquiry,(5) and of course no one will be appointed whose object is gain,(6) or who has bargained to misapply the allowance,(7) and an officer of the Lord Chancellor will not be appointed, nor one whose duty it is to check the committee.(8) The next of kin has no right to the committeeship of the person of his relative,(9) but one of the next of kin is generally preferred to a stranger;(10) the heir-at-law or

(1) See *Re Scott*, Shelf. on Lun. 2d ed. 169.
(2) *Re Bridge*, Cr. & Ph. 343.
(3) *Re Tottenham*, 2 M. & Cr. 39.
(4) *Re B.*, 1 Ir. Eq. R. 181.
(5) *Re Webb*, 2 Phill. 12.
(6) *Cope's case*, 2 Ch. Ca. 239.
(7) *Ex parte Fletcher*, 6 Ves. 427.
(8) Lord Eldon, in *Ex parte Fletcher*, 6 Ves. 427; and *Ex parte Pincke*, 2 Meriv. 452; *Re Hussey*, 1 Moll. 226; *Re Bangor*, 2 Moll. 518.
(9) *Cope's case*, 2 Ch. Ca. 239; *Re Jones*, Shelf. on Lun. 2d ed. 178.
(10) *Ex parte Ludlow*, 2 P. Wms. 638.

person next entitled to the realty of the person *non compos mentis* is not now excluded.(1) If there are no strong reasons in the particular case for his or her exclusion, the husband or wife of one *non compos mentis* is appointed the committee of her or his person; (2) but the joint committeeship of the wife and another person is, it seems, preferable to the sole committeeship of the wife, particularly if she has exhibited want of discretion in the medical treatment of her husband,(3) or her presence is a cause of irritation to him.(4) In one case the wife was appointed, though she had been previously in prison for contempt in the proceedings.(5) If, however, a *feme covert* is appointed, the allowance for the maintenance of the person *non compos mentis* will not be paid to her living apart from him on her separate receipt, without an undertaking from some other person for the due application of such allowance.(6) The appointment of a female as committee of the person of an insane unmarried woman is also thought desirable.(7) The wishes of the person *non compos mentis* will have weight in the appointment; (8) even his unfounded prejudices against particular individuals, will not be disregarded. (9) The wishes of his family will also have weight.(10) It is desirable that the residence of the committee of the person should not be far from the residence of the individual intrusted to his care,(11) whom he must promise to visit. (12) A *feme covert* may be appointed a sole committee of the person,(13) but it is more usual to appoint her husband to be joint committee with her.(14) The appointment of joint committees of the person

(1) 1 *Bl. Com.* 306; *Dormer's case*, 2 P. Wms. 263. Lord King, C., in *Ex parte Ludlow*, 2 P. Wms. 636; *Ex parte Cockayne*, 7 Ves. 591.
(2) *Edwards* v. *Abrey*, 2 Coo. *t.* Cott. 185.
(3) Lord Cottenham, C., in *Re Dyce Sombre*, 8 Jur. 817; *Ex parte Le Heup*, 18 Ves. 221.
(4) *Re Dyce Sombre*, 8 Jur. 817.
(5) *Lord Wenman's case*, 1 P. Wms. 701.
(6) *Re Edwards*, 2 Mac. & Gor. 134.
(7) *Ex parte Ludlow*, 2 P. Wms. 638.
(8) *Re Leacocke*, Lloyd & G. 498.
(9) *Ex parte Fletcher*, 6 Ves. 427; *Re Dyce Sombre*, 8 Jur. 817.
(10) *Re Bangor*, 2 Moll. 518.
(11) *Re Errington*, Jac. 404.
(12) *Elmer*, 13.
(13) Lord Parker, in *Ex parte Kingsmill*, 3 P. Wms. 111 n.
(14) *Elmer*, 14.

was formerly held to be inconvenient, but that notion is not now entertained. (1) A provisional committee of the person is sometimes appointed, (2) and a joint committee was, in one case, appointed, without a reference, in the room of a deceased committee. (3) In the exercise of this office in the case of a lunatic or person of unsound mind affection must be tempered with firmness, that line of conduct being, though ungrateful perhaps to the feelings, essential to the recovery of the insane person. (4)

The disqualification of the committee of the person can alone justify a direction to the Master to review his choice of such committee. (5)

Upon the application of a natural daughter of a gentleman alleged to be *non compos mentis* (she had always resided with her father and was his sole residuary legatee) for liberty to attend a pending inquiry into his sanity and to propose herself as committee of his person in the event of his being found *non compos mentis*, Lord Cottenham, C., ordered that no proceeding should be taken for the appointment of such committee without further order. (6) Where a testator had left property to trustees for the use of his lunatic son, with directions to retain the custody of him against his brothers, and the trustees had, with the leave of Lord Cottenham, C., contested, but unsuccessfully, the committeeship of his person with the brothers, Lord Truro, C., ordered payment out of the testator's general estate of the costs of the brothers. (7) As we have already seen, another item in the inquiry under the 11th General Order of 7th November, 1853, is

The Appointment of the Committee of the Estate.

The primary object of the Lord Chancellor in this appointment is to see that the estate is well taken care of. (8)

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(1) *Ex parte Ludlow*, 2 P. Wms. 638, and note to that case.
(2) *Re Lord Bangor*, 2 Moll. 518; *Re Frank*, *Re Chapman*, *Re Brand*, Shelf. on Lun. 2d ed. 160, 161.
(3) *Ex parte Pickard*, 3 V. & B. 127.
(4) Lord Eldon, C., in *Le Heup*, 18 Ves. 226.
(5) *Re Lord Bangor*, 2 Moll. 518.
(6) *Re Webb*, 2 Phill. 13.
(7) *Re Booth*, 15 L. T. 429.
(8) Lord Cottenham, C., in *Re Webb*, 2 Phill. 533.

There must be estate within the local limits of the jurisdiction, otherwise it seems no committee of the estate will be appointed ; (1) the heir (2) or a person having an interest in the estate or a relation of the person *non compos mentis* is generally preferred to a stranger in such committeeship ; (3) where the committeeship of the estate of a person, *non compos mentis*, sixty years old, and tenant for life of much realty was contested between his London banker (as the nominee of his natural daughter who had always resided with him and was his sole residuary legatee) and the mother and guardian of the infant remainderman in tail of the realty, Lord Cottenham, C., decided in favour of the mother during the minority of her son ; (4) but a stranger may be appointed committee of an estate in the place of the heir, if the former is likely to manage it to the best advantage.(5) An officer of the Court will not be appointed, (6) nor will a person who has already committed a gross breach of trust in respect of the estate ; if such his breach of trust should come to light after his appointment he will of course be discharged. (7) A person accountable to the estate is also of course ineligible for the office, but such has been appointed when he was the only person who would undertake the office.(8) It has been justly observed by Lord Cranworth, C., that two persons may be properly appointed committees of an estate without it necessarily following that one of them can be properly intrusted.(9) And where there are two joint committees of the person and estate the fact that one only of them resides near the estate is not a ground *per se* to discharge them from office.(10) In one case, on a reference as to the appointment of committees of an estate, a Master was directed to take into consideration the objection to proposed committees on account

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(1) *Re B.*, 1 Ir. Eq. 181; *Re Tottenham*, 2 M. & Cr. 39.
(2) 1 *Bl. Com.* 304 ; *Re Lord Bangor*, 2 Moll. 518 ; *Re Watkins*, 1 Coo. *t.* Cott. 225.
(3) *Ex parte Le Heup*, 18 Ves. 227 ; *Re Watkins*, 1 Coo. *t.* Cott. 225.
(4) *Re Webb*, 2 Phill. 333.
(5) *Neal's case*, 2 P. Wms. 544.
(6) *Ex parte Fletcher*, 6 Ves. 427.
(7) Lord Hardwicke, C., in *Ex parte Phelps*, 3 Mod. 357.
(8) *Re Millington*, 2 Eq. R. 158.
(9) *Re Noble*, 2 De G. M. & G. 281.
(10) *Re Brown*, 1 M. & Gor. 205.

of their respective distances from the estate of the lunatic and their being recommended by his mother who had other children by his father born before marriage, and the objection to another proposed committee on account of his connection with the solicitor of the lunatic's heir and his situation as receiver to numerous estates under the management of the Court of Chancery.(1) In another case where the estate was of great value and comprised coal mines in Warwickshire, and house property in London and Middlesex yielding £3000 a year, and the heir and next of kin of the lunatic made no objection, Lord Brougham, C., appointed one committee for the Warwickshire mines and another for the other property.(2)

The committee of an estate is (speaking generally) not entitled to any remuneration,(3) but where the committee of an estate (27 houses scattered in London and yielding £1300 rental) required some aid in the management of it, Lord Chancellor Cottenham directed an allowance to him for expenses out of pocket, not exceeding 5 per cent. on his receipts; (4) where a committee of an estate had accepted office without any stipulation for the appointment of a receiver or for remuneration to himself, Lord Chancellor Cottenham refused to appoint a salaried receiver; understanding however that the committee refused to remain in office without an allowance, the Lord Chancellor directed an inquiry whether it would be beneficial to the estate that any and what allowance should be made, coupling the direction with an intimation that, if the Master found a certain stated allowance proper, and the committee refused that allowance, another person would be substituted as committee; (5) in another reported case a salary was allowed to a stranger appointed the committee of a large estate, and after he had been appointed without salary: (6) where the estate consisted of public funds and half-

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(1) *Re Miles*, Shelf. on Lun. 2d ed. 169.
(2) *Re Robins*, 2 R. & M. 449.
(3) Lord Hardwicke, C., in *Annesley's case*, 1 Ambl. 78. Lord Cottenham, C., in *Re Westbrooke*, 2 Phill. 631; and see *Re Powell*, 9 Law J. Ch. 1840, 139.
(4) *Re Westbrooke*, 2 Phill. 631; and see *Re Errington*, 2 Russ. 567.
(5) *Re Walker*, 2 Phill. 630.
(6) *Ex parte Fermor*, Jac. 404; see also *Ex parte Warren*, 10 Ves. 622.

pay, an allowance was refused to the committee, (1) but when a direct salary was refused to the committee of an estate comprising much realty dispersed in England and Ireland, an increased allowance of maintenance to him as committee of the person was given as indirect payment.(2) An *ad interim* committee of an estate may be appointed,(3) but it is seldom done.(4) Where two committees are jointly appointed the death of either determines the committeeship,(5) but on an appointment of joint committees of the estate or person the Masters in Lunacy have a discretion given to them by 16 & 17 Vic. c. 70, which enacts :

Sec. LXVI. Where the Masters (6) find and report, that several persons are the most fit persons to be appointed the committees of the estate or of the person, and they are of opinion, that it is expedient that one or more of the same several persons should continue (7) to be the committee or committees, after the death or discharge of the others or other of them, and such persons are willing so to continue, the Masters may report accordingly, and where the report is confirmed, the approved committees of the estate may perfect their securities in such form as to extend to the acts and defaults of one or more of them in accordance with the report, and thereupon, the grant of the custody of the estate, or the person (as the case may be), shall be made conformably with the order of custody, and the continuing or surviving committee or committees to whom separately the grant extends, shall and may continue until further order to act after the death or discharge of the others or other of them, with all the like powers, authorities, and discretions, and subject to all the like liabilities as the original committees."

In a case anterior to the Act 16 & 17 Vic. c. 70, the income of a lunatic (£100, barely sufficient to maintain him) was upon petition (consented to by his next of kin), and upon affidavit of the solvency of the survivor of two committees of his estate ordered to be paid to such survivor ; (8) in another case, on the death of one of two joint committees, a successor to him was appointed without a reference. (9) As no person may be willing to accept

(1) *Re Powell*, 9 Law J. Ch. 1840, 139.
(2) *Re Annesley*, 1 Ambl. 77.
(3) *Re Brand*, Shelf. on Lun. 2d ed. 162.
(4) *Elmer*, 30.
(5) Lord Eldon, C., in *Ex parte Clarke*, Jac. 595.
(6) 16 & 17 *Vic. c.* 70, *s.* 2.
(7) See *Re Lyne*, Cas. *t.* Talb. 143.
(8) *Re Noble*, 2 De G. M. & G. 281.
(9) *Ex parte Pickard*, 3 V. & B. 127. See also *Ex parte Le Heup*, 18 Ves. 221.

the committeeship of an estate, it seems but right to add here a few words respecting the

Appointment of a Receiver of the Estate.

A receiver may be appointed when no person will accept the committeeship of the estate, (1) where the committee is infirm, or where the management of the estate is very onerous, (2) or where the committee resides far from the estate. (3) In one case where it was thought expedient to appoint a receiver, and the person appointed as committee of the estate declined to act as committee if another person was appointed receiver, an inquiry was directed as to the propriety of employing the committee in the latter capacity; (4) the solicitor of the petitioner for the original inquiry will not be appointed the receiver. (5)

Upon a receiver becoming insane, it was ordered on the motion of his surety that he the surety might pass the receiver's account, and that upon the production of the receipt for the payment of such balance as might be found due from the receiver on that account, the recognizance of the receiver and his sureties should be vacated; (6) the costs of the motion and of vacating the recognizances were given to the surety; (7) and the costs of and incidental to a motion by a receiver for his discharge on the ground of loss of sight and illness were allowed to him. (8)

On the subject of receivership in lunacy the 37th General Order of 7th Nov., 1853, provides:

"Where it is ordered that a person named be appointed receiver of the estate, (9) or the Masters are directed to appoint a receiver thereof, they are to allow him a reasonable (10) salary for his care and pains in the management of the estates, he first giving security to be allowed

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(1) *Ex parte Radcliffe*, 1 J. & W. 639; Coop. C. C. 253; *Ex parte Billinghurst*, 1 Ambl. 104; *Re Smith*, Shelf. on Lun. 230; *Re Frank*, 2 Russ. 450.

(2) *Re Birch*, Shelf. on Lun. 2d ed. 187; *Re Doolan*, 2 Con. & L. 232.

(3) *Re Seaman*, Shelf. on Lun. 2d ed. 187.

(4) *Re Sir J. Langham*, 1 Jur. 281.

(5) *Ex parte Pincke*, 2 Meriv. 452.

(6) *Webb* v. *Cashell*, 11 Ir. Eq. R. 558.

(7) Previous case.

(8) *Richardson* v. *Ward*, 6 Madd. 266.

(9) *3d G. O., 7th Nov.*, 1853.

(10) *Day* v. *Croft*, 2 Beav. 488.

of by the Masters, and taken before a Commissioner to administer oaths in Chancery in the country, if there shall be occasion duly and annually to account for what he shall receive and to pay the same as he shall be directed; and the tenants of the lunatic's estates are to attorn and pay their rents in arrear and growing rents to the receiver, who is to be at liberty to let and set the estates from time to time with the approbation of the Masters, as there shall be occasion."

The receiver may not, it seems, if there is a committee of the estate, apply without his concurrence to the Lord Chancellor for his sanction to any dealings with the estate. (1) And the estate ought not to bear the consequences of the ignorance and precipitation of a salaried receiver. (2)

As to that division of the inquiry under the 11th General Order, 7th Nov., 1853, which seeks to ascertain

In what manner, and at what expense, and by whom, and where, he, the person found by inquisition idiot, lunatic, or of unsound mind, has been maintained, and what is fit to be allowed for his past maintenance, whether anything, and what is due, and to whom, in respect thereof, and to whom and out of what fund the same ought to be paid.

It should be borne in mind that the legal obligation to maintain an idiot, lunatic, or person of unsound mind, does not extend beyond those persons who would be legally bound to maintain him if he was of sound mind. (3) On the petition of the committee of the person and estate of a lunatic, Lord Truro, C., directed an inquiry, whether there was any sum due to the brother of a lunatic (who, it was alleged, had at one time maintained him, though not compellable to do so) and to the union (which it was alleged had afterwards maintained him), and whether it would be fit and proper that such sum should be raised by sale of a reversionary interest belonging to the lunatic; (4) but in a suit in the Court of Chancery, Lord Cottenham, C., refused to repay money *actually paid* by a *husband* for the main-

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(1) *Re Earl of Kilkenny*, 7 Ir. Eq. R. 594; *Re Doolan*, 2 Con. & L. 232.
(2) *Re Montgomery*, 1 Moll. 419.
(3) See *R.* v. *Smith*, 2 C. & P. 451, note; *R.* v. *Pelham*, 8 Q. B. 959.
(4) *Re Burbidge*, 3 M. & Gor. 3.

tenance of his lunatic wife by a sale of part of the capital of her separate property, because as he put it, by paying, the husband had shown his ability to maintain his wife as regarded the past, however inconvenient and embarrassing such payment might have been by reason of the smallness of his income. However, the Lord Chancellor directed payment to the husband of the future surplus income of the wife's property beyond her maintenance allowance, (1) until he should be recouped the monies so paid by him. (2) In the last cited case the Lord Chancellor observed: "In applications of this sort it was true that the Court would consider not only what was for the benefit of the lunatic, but also in some degree what was for the benefit of the members of the lunatic's family." (3)

As to the last but not least important subject of inquiry, under the 11th G. O., Nov. 7th, 1853, *i. e.*,

What is fit to be allowed for the future maintenance of the person found to be idiot, lunatic, or of unsound mind; from what time the allowance ought to commence; and out of what fund the same ought to be paid?

It has been said that the *first* care of the Lord Chancellor is the maintenance (4) nevertheless, the allowance for maintenance is fixed with some regard to the debts of the idiot, lunatic, or person of unsound mind, although the formal inquiry as to such debts does not in general take place until after such allowance is fixed. (5) The measure of the allowance may be collected from the following dicta: Lord Macclesfield, C., refusing an application by the next of kin of a lunatic to lessen the allowance for maintenance, observed: "It is his (the lunatic's) benefit and comfort I am to take care of where no creditor complains, and not to heap up wealth for the benefit of his adminis-

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(1) *Edwards* v. *Abrey*, 2 Phill. 38; s. c. 2 Coo. *t.* Cott. 189. See also *Peters* v. *Grote*, 7 Sim. 238; *Nettleship* v. *Nettleship*, 10 Sim. 236.

(2) *Edwards* v. *Abrey*, 2 Coo. *t.* Cott. 189. But see 1 *Phill.* 39; and see *Att.-Gen.* v. *Parnther*, 3 Bro. C. C. 440.

(3) *Edwards* v. *Abrey*, 2 Coo. *t.* Cott. 189.

(4) Lord Hardwicke, C., in *Ex parte Annandale*, Ambl. 81.

(5) *Elmer*, 16, 17.

trators or next of kin." (1) In a similar strain spoke Lord Thurlow, C.: "Next of kin and expectants are not to be considered, but the lunatic is to have every comfort which his circumstances will admit of." (2) And Lord Eldon, C., observed: "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." (3) Where a person found by inquisition to be of unsound mind had an annual income of £1700, and was in a private madhouse, and the Master had reported £300 to be a proper allowance for his maintenance, Lord Eldon, C., said: "I think this allowance too little, and that this gentleman is capable from his situation of being rendered more comfortable, I do not think it a judicious act to lay up £1400 a year for the persons who may be the next of kin of the lunatic at his death, when his situation admits of greater comfort by a more liberal application of his property. It is harsh to confine him in such a place, his disorder not being such as to require coercion, nor of a nature that gives much hope of his recovery, which might make the treatment given in such a place expedient. (4) I do not see why this gentleman should not be in a house of his own, nnder the care of some relation." (5) Lord Thurlow, C., observed in another case, that he considered an allowance of £350 a miserable allowance for a lunatic entitled to £2000 per annum, unless he was in chains, or in such a state as to be incapable of any degree of comfort. (6)

If the person *non compos mentis* have two funds, out of either of which the allowance may be paid, his interests should govern the choice between the funds; (7) if his interests do not demand the exoneration of one fund by the other, the allowance should be paid out of both funds rateably. (8) Where a lunatic had but the sum of £800, and a Master reported that it would be

(1) Lord Macclesfield, C., in *Dormer's case*, 2 P. Wms. 265.
(2) Lord Thurlow, C., in *Ex parte Chumley*, 1 Ves. 297.
(3) Lord Eldon, C., in *Ex parte Whitbread*, 2 Meriv. 102.
(4) But see *Re Drummond*, 1 M. & Cr. 628.
(5) Lord Eldon, C., in *Ex parte Baker*, 6 Ves. 8.
(6) Lord Thurlow, C., in *Ex parte Chumley*, 1 Ves. 297. See also *Re Starkie*, Shelf. on Lun. 2d ed. 204.
(7) *Re Ashley*, 1 R. & M. 371.
(8) *Marquis of Annandale* v. *Marchioness of Annandale*, 2 Ves. 381.

for the benefit of the lunatic to lay out that sum in a government annuity for his life, to be applied to his maintenance, Lord Eldon, C., confirmed the report. (1) And on the petition of the committees, next of kin, and heir of a lunatic (a spinster aged 50, who had been on the incurable list at St. Luke's Hospital, and who had only £750 Consols), Lord Cottenham, C. permitted the purchase from a public institution of an annuity of £30 for her life with £399 2s., part of the Consols. (2) The whole income of an idiot, lunatic, or person of unsound mind, is frequently applied to his maintenance.

When a testator had devised lands to A. for life with remainder to B. in fee, and had charged the land with a sum not exeeeding £400 per annum in favour of C., a lunatic, and after the death of A. and B. the Lord Chancellor had allowed £280 per annum only for the maintenance of C., the owner of the land was on the death of C. held entitled to the benefit arising from the difference between the £400 per annum and the actual allowance. (3)

As to the application of the separate estate of a *feme covert* towards her maintenance, Lord Eldon, C., is reported to have said, in the case of a married lady resident in Scotland and possessed of separate estate, lunatic, but *not found so by inquisition* : "Suppose she was in this country, and a commission taken out, the consideration would arise, what is to be done with her separate estate as to making it contribute towards her maintenance or not. If a commission was taken out, I must look at the substantial benefit of the object of it, 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, I should not scruple to direct the committee to apply a part of her separate income ;" (4) but he added, "*that* I could only do by arrangement." (5)

(1) *Ex parte Stonard*, 18 Ves. 285.

(2) *Re Fisher*, 2 H. & Tw. 450. See also *Elmer*, 19 ; and as to the practice of the Court of Chancery, *Re Dodsworth's Trust*, 10 Hare, 16 ; *Davies* v. *Davies*, 2 De G. M. & G. 51.

(3) *Re Ponsonby*, 2 Con. & L. 30.

(4) *Brodie* v. *Barry*, 2 Ves. & B. 36.

(5) *Semble* only by arrangement in the case before him. See, however, 2 Coo. *t.* Cott. 189 n. See also *Nettleshipp* v. *Nettleshipp*, 10 Sim. 237 ; *Abrey* v. *Edwards*, 2 Coo. *t.* Cott. 189 ; s. c. 2 Phill. 37.

The separate income of a *feme covert* has been ordered to be paid to her husband for her maintenance where he was sole committee of her person and estate ; (1) also, where he was joint committee of her person. (2)

An order in lunacy for payment of maintenance out of a particular fund does not of course create a debt if there is no fund to meet the payment. (3)

And on an application for increasing the maintenance allowance of a lunatic, it has been held unnecessary to serve the assignees in bankruptcy of his next of kin. (4)

The Lord Chancellor may, under the Act 16 & 17 Vic. c. 70, where it appears to him just and reasonable, order that any estate or interest of an idiot, lunatic, or person of unsound mind, found so by inquisition, in land or stock, either in possession, remainder, contingency, or expectancy, be sold or charged by way of mortgage or otherwise disposed of as may to him the Lord Chancellor seem most expedient for the purpose of raising money to be applied, and he may accordingly order that the money when raised be applied for the payment of any debt or expenditure incurred or made after the inquisition, or authorized to be incurred or made for the maintenance of the idiot, lunatic, or person of unsound mind, or for the payment of or provision for the expenses of his future maintenance. (5)

The Act 16 & 17 Vic. c. 70, also provides :

Sec. CXX. Where it is made to appear to the Lord Chancellor intrusted as aforesaid (6) that the net amount or net estimated value of the property of a lunatic (7) does not exceed the sum of £500 sterling, and it appears to him, having regard to the situation and condition in life of the lunatic and his family, and the other circumstances of the case, to be expedient that the amount or value of his property should be made available for his maintenance in a direct and inexpensive manner, and that the same can be safely and properly done, he may, instead of proceeding to order a *grant of the custody* of the estate, order or allow that the amount of the property, if in money or stock,

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(1) *Re Evans*, Shelf. on Lun. 2d ed. 204.
(2) *Re Cay*, Shelf. on Lun. 2d ed. 205.
(3) *Jones* v. *Bruce*, 11 Sim. 221.
(4) *Ex parte Chambers*, 4 Law J. Ch. N. S. 175.
(5) 16 & 17 *Vic. c.* 70, *s.* 116.
(6) 16 & 17 *Vic. c.* 70, *s.* 2.
(7) *Ibid.*

or if of any other description the produce thereof when realized, be paid or transferred to such relative of the lunatic, or such other person, as he may think proper to intrust with the application thereof, to be by him applied in or towards the maintenance of the lunatic, either at his discretion or in such manner and subject to such control as the Lord Chancellor intrusted as aforesaid may direct; and for the purpose of giving effect to any such order, the Lord Chancellor intrusted as aforesaid may order any small real estate or other property of the lunatic to be sold and a valid conveyance or transfer thereof to be executed or made by such person as he shall direct.

When the Master has prepared his draft

Report on the Inquiries, under the 11*th G. O.*, 7 *Nov.*, 1853,

and a draft copy is given, the solicitor for the party having the carriage of the inquiry (having bespoken a copy of such draft) is informed; the solicitor then obtains and serves on the parties entitled to attend the inquiry a summons underwritten—"The Master has prepared the draft of his report." This informs them that the time is arrived when they may, by obtaining at the Master's office a copy of the draft, or any part of it, learn its contents. The solicitor next obtains and serves on them a summons "to settle the draft report."

It must be borne in mind that in the Act 16 & 17 Vic. c. 70, there is this enactment:

Sec. XC. The Masters (1) shall be at liberty to report specially to the Lord Chancellor intrusted as aforesaid (2) any decision at which they may arrive, or any other matter relating to any inquiry or proposal pending before or under consideration by them in order to obtain a decision or direction by or from him for their guidance in the further prosecution of the inquiry or consideration of the proposal.

And that by the 24th General Order, 7th Nov., 1853, it is declared:

"The Masters (3) are to be at liberty on request or otherwise to make a separate report, or to state any circumstances specially with respect to the subject matter of a report, as they see fit, and are to be at liberty to make a special report or special certificate on any matter as they see fit."

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(1) 16 & 17 *Vic. c.* 70, *s.* 2.
(2) *Ibid.*
(3) 3*d G. O.*, 7*th Nov.*, 1853.

Further, the Act 16 & 17 Vic. c. 70, has this provision:

Sec. XCI. The Masters' (1) reports shall be divided into paragraphs numbered consecutively, and respectively confined as nearly as may be to distinct portions of the subject matter and with such appropriate headings prefixed to all or any of the paragraphs as may be convenient.

And it is declared by the 25th General Order, 7th Nov., 1853:

"In reports, certificates, orders, and other documents issued from or brought into the offices of the Masters(2) and Registrar respectively, numbers are to be denoted by figures and not by words, except in affidavits, and the conclusions of reports and certificates, and the ordering parts of orders."

The mode of objecting to the draft report is declared by the Act 16 & 17 Vic. c. 70

Sec. XCIII. Any person objecting to a draft report of the Masters,(3) and desiring to prosecute the objection, shall bring in before the Masters a statement of objections in writing, and thereupon the Masters shall be at liberty to review the draft objected to, and after review, or the refusal of the Masters to review, the person objecting may bring in before the Masters a notice in writing stating that he insists on the objections or any one or more of them, and all the objections not so insisted on shall be considered as abandoned.

The draft report should, when settled, if all parties entitled to attend the inquiry are present, be immediately transcribed, and the Master may then or afterwards sign the same; if they are not then present, a summons "to sign" should be obtained and served on them by the solicitor for the party having the carriage of the inquiry, and then on the return to that summons the report is transcribed, and by the Master signed. (4)

The report, when settled, transcribed, and signed, should be left by the Master's clerk with the Registrar in Lunacy pursuant to the Act 16 & 17 Vic. c. 70, which enacts:

Sec. XCII. The reports of the Masters, whether confirmed by fiat or not under the provisions hereinafter contained, and their certificates and all other reports and certificates made in matters in lunacy (except the reports of the visitors hereinafter provided for), shall be left by the Masters, Taxing Masters, and other officers making the same

(1) 16 & 17 *Vic. c.* 70, *s.* 2.
(2) 3*d G. O., 7th Nov.*, 1853.
(3) 16 & 17 *Vic. c.* 70, *s.* 2.
(4) *Elmer*, 20; 16 & 17 *Vic. c.* 70, *s.* 96.

respectively, with the Registrar in Lunacy, by whom the same shall be filed; and it shall not be necessary that they or any of them should be filed elsewhere; and the Accountant-General of the Court of Chancery and all other persons and the Governor and Company of the Bank of England (1) shall, as occasion may require, act upon or in relation to any report and the fiat thereon (if any), or any certificate so filed, in like manner as if the report or certificate had been filed also in the Report Office of the Court of Chancery, according to the practice formerly used.

So much as to the Inquiries. We will now look to the Practice.

As to the confirmation of the Report on the Inquiries under the 11th General Order of the 7th Nov., 1853:

The mode of submitting the report for confirmation by the Lord Chancellor is laid down by the Act 16 & 17 Vic. c. 70, which provides:

Sec. XCV. Where no statement of objections is brought in, or all the objections contained in a statement brought in are abandoned, the report shall be submitted to the Lord Chancellor intrusted as aforesaid (2) for confirmation without petition, and without the attendance of parties except where, from the special nature or circumstances of the case, the Masters (3) are of opinion that the report ought to be brought before the Lord Chancellor intrusted as aforesaid by petition, and by endorsement on the report under their hands shall so direct accordingly.

Sec. XCVI. Where a report is to be submitted for confirmation without petition it shall contain the directions consequential on the confirmation thereof, and the fiat of the Lord Chancellor intrusted as aforesaid on the report shall give it the operation of an order of the Lord Chancellor intrusted as aforesaid made upon petition, subject to such other directions and provisions (if any) as the Lord Chancellor intrusted as aforesaid may think fit.

Sec. XCVII. The reports of the Masters shall be brought before the Lord Chancellor for confirmation by petition in each of the cases following:

1. "Where the Lord Chancellor intrusted as aforesaid,(4) on referring a matter to the Masters (5) to inquire and report, so directs;

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(1) In this Act, unless there be something in the subject matter or context repugnant to the construction, the provisions relating to the "Bank of England" shall be construed to extend and be applicable to the East India Company, the South Sea Company, and every other company or society established or to be established: 16 & 17 *Vic.*

(2) 16 & 17 *Vic. c.* 70, *s.* 93.

(3) 16 & 17 *Vic. c.* 70, *s.* 2.

(4) *Ibid.*

(5) *Ibid.*

"2. Where a statement of objections is brought in, and all the objections are not abandoned;

"3. Where the Masters, having regard to the special nature or circumstances of the case, as hereinbefore provided, so direct;

"4. Where no order is made on the report being submitted for confirmation without petition;

"5. And in such other cases as are herein mentioned, and as the Lord Chancellor, with the advice and assistance aforesaid, shall from time to time by general order direct."

It is not of course for the Lord Chancellor to confirm a report though no objections are brought in. (1) Further, if a Master does not state in a report the evidence upon which his report is based, it will be referred back to him so to do. (2) If the Lord Chancellor disapproves of the Master's choice of committees, he may either direct him to review his report (3) or he may himself appoint other persons to be committees. (4)

By the Act 16 & 17 Vic. c. 70, it is provided:

Sec. XCIV. No person shall, except upon special leave of the Lord Chancellor intrusted as aforesaid, (5) first obtained, present a petition against the confirmation of a report, but in every case on the hearing of the petition for confirmation of the report any objection insisted on as aforesaid may be brought forward in opposition to the confirmation of the report, without any exceptions or cross petition. (6)

On the subject of the petition and order on the petition for confirmation of this report, as well as of other petitions and orders on petitions in lunacy, it may be well here to remark that the Act 16 & 17 Vic. c. 70, has enacted:

Sec. XCVIII. Every petition shall be filed before an order thereon shall be passed, and the order shall not recite any part of the statements contained in the petition, and only such part (if any) of the prayer as may be necessary; and an order shall not state any part of a report except the Master's conclusion or opinion, or so much thereof as may be necessary; and the Lord Chancellor, with the advice and assistance aforesaid, may and shall from time to time make such General

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(1) *Re Walker*, 1 Coo. *t.* Cott. 226.
(2) *Re Iredale*, 1 H. & Tw. 255; and see Sir E. Sugden, C., in *Re Purdon*, 1 Dr. & W. 500.
(3) *Ex parte Fermor*, Jac. 205.
(4) *Le Heup*, 18 Ves. 221.
(5) 16 & 17 *Vic. c.* 70, *sec.* 2.
(6) As to the old practice, see *Re Saunders*, 3 M. & Gor. 220.

Orders (1) as to him shall seem meet for embodying (as far as may be) such provisions and directions as are now commonly or frequently inserted in orders, and are not provided for by this Act, and for dispensing (as far as may be) with the formal parts of orders now drawn up.

Sec. XCIX. Every order of the Lord Chancellor intrusted as aforesaid (2) in a matter in lunacy shall be communicated by the Registrar (3) to the Masters, (4) whether any matter is thereby referred to them or not.

Sec. C. Every order made in a matter in lunacy by the Lord Chancellor, intrusted as aforesaid,(5) when drawn up by the Registrar in Lunacy and signed by the Lord Chancellor intrusted as aforesaid, shall be entered by the Registrar in Lunacy in a proper book to be provided by him for that purpose, and he shall furnish office copies of any order or of any report confirmed by fiat or of any part thereof respectively, signed by him and sealed or stamped with the seal of his office, to every party in the matter, or other person entitled thereto, who shall require the same, and every office copy of the whole of an order or report confirmed as aforesaid, purporting to be so signed and sealed or stamped with such seal, shall at all times and on behalf of all persons, and whether for the purposes of this Act or otherwise, be admitted as evidence of the order or report confirmed as aforesaid of which it purports to be a copy without any further proof thereof.

Sec. CI. Where an order or report confirmed by fiat relates to the payment, transfer, carrying over, or depositing of any cash, stocks, funds, annuities, securities, or other effects, to or into the name of or in the custody of the Accountant-General of the Court of Chancery to the credit of the matter of a lunatic, (6) or to the payment, transfer, or carrying over, or other disposal by the said Accountant-General of any cash, stocks, funds, annuities, securities, or other effects standing in his name, or deposited in his custody, to the credit of the matter of a lunatic, or of any cash, stocks, funds, annuities, securities, or other effects to or in which a lunatic is entitled or beneficially interested, and which are not standing in trust in a cause or matter depending in the Court of Chancery, the said Accountant-General and all other persons, and the Governor and Company of the Bank of England, (7) shall act upon the order signed by the Lord Chancellor intrusted as aforesaid, after the same has been entered as hereinbefore provided, or upon an office copy of the report, and thence receiving the operation of an order after the same has been filed, as hereinbefore provided, in the same manner as if an order had been drawn up by the Registrar of the Court of Chancery, and passed and entered in the Court of Chan-

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(1) See *34th—56th G. O., 7th Nov.*, 1853.

(2) 16 & 17 *Vic. c.* 70, *s.* 2.

(3) In this Act, unless there be something in the subject matter or context repugnant to the construction, the expression "the Registrar" shall be construed to mean the Registrar in Lunacy for the time being: 16 & 17 *Vic. c.* 70, *s.* 2.

(4) *Ibid.*

(5) *Ibid.*

(6) *Ibid.*

(7) *Ibid.*

cery, according to the practice formerly used, and the Registrar in Lunacy in case of an order, and the Masters, in case of a report confirmed by fiat, shall certify under their hands respectively to the said Accountant-General what stocks, funds, annuities, securities, or other effects are by virtue of any such order or report confirmed as aforesaid (as the case may be) to be sold, transferred, or delivered out, in the same manner as the Registrars of the Court of Chancery were formerly accustomed to do.

To deter persons from the forgery of an order in lunacy, the Act 16 & 17 Vic. c. 70, has also enacted:

Sec. CII. If any person shall forge the signature of the Registrar in Lunacy or shall forge or counterfeit the seal of his office, or knowingly concur in using any such forged or counterfeited signature or seal, or shall tender in evidence any document with a false or counterfeit signature of such registrar, or with a false or counterfeit seal, knowing the same signature or seal to be false or counterfeit, every such person shall be guilty of felony, and shall be liable to the same punishment as any offender under an Act of session of Parliament holden in the 8th and 9th years of the reign of Her Majesty, chapter 113.

An order of the Lord Chancellor in lunacy whereby any sum of money or any costs, charges, or expenses is or are payable to any person, has the effect of a judgment in a superior court of common law, and the person to whom such sum of money, costs, charges, or expenses is or are payable is a judgment creditor;(1) and disobedience of any order of the Lord Chancellor in Lunacy is punishable by attachment.(2)

By the 35th General Order, 7th Nov., 1853, it is declared:

"All orders for the appointment of committees and for the allowance of maintenance are to be deemed to take effect only until further order."

After the order of confirmation has been duly entered, the committee of the estate (if one is appointed) should, without delay, give security (the committee of the person gives no security)(3) for answering the estate and accounting for the rents, profits, and produce thereof once in every year or oftener, if thereunto required, before the Master, inasmuch as it is declared by the 36th General Order, 7th Nov., 1853:

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(1) 1 & 2 *Vic. c.* 110, *s.* 18.

(2) Lord Apsley, C., in *Ex parte Grimstone*, Ambl. 706; *Ex parte Jones*, 13 Ves. 237. See also cases collected in *Shelf. on Lun. 2d ed. p.* 18, *note.*

(3) *Elmer*, 28; and see *Edwards* v. *Abrey*, 2 Coo. *t.* Cott. 190.

"Where it is ordered that a person named be appointed committee of the estate, the order is to be deemed to take effect only on the Masters (1) certifying that he has given such security as they have approved of for answering the estate and accounting for the rents, profits, and produce thereof once in every year or oftener if thereunto required, before the Masters, and such security is to be perfected at or within such time as the Masters may appoint, and until such security shall have been perfected the approved committee is not to interfere in any manner in the affairs and concerns of the lunatic (2) as the committee of his estate or otherwise."

And by the 21st General Order, 7th Nov., 1853:

"The Masters (3) are from time to time, in each of the cases following, without special order to inquire and report whether or not it is expedient that a committee of the person or of the estate should be appointed, and if so, who is the most fit person to be appointed, that is to say:

"1. On default of a person approved to be committee of the estate in duly perfecting his security;

"2. On default of a committee of the estate in duly perfecting a fresh security when required by the Masters;

"3. On the death or discharge of a committee or of one of several committees, where the custody does not survive."

By the 53d General Order, 7th Nov., 1853, it is also declared:

"Where it is ordered that the Accountant-General of the Court of Chancery or any other person, or any company or body, do pay or be at liberty to pay any sum or sums of money, dividend, or periodical payments, or deliver any effects to the committee of the estate, the order is not to take effect unless and until the Masters (4) shall have certified that he has perfected his security."

However, when, upon a petition to confirm a report approving of a particular person as committee of the estate, it appeared that the income of the estate consisted of rents payable weekly, the committee was allowed to receive the rents immediately on his undertaking to perfect his security within six weeks.(5)

The security must formerly have been submitted to the approval of the Attorney-General on behalf of the Sovereign, but that practice is now altered by the Act 16 & 17 Vic. c. 70, which enacts:

Sec. LXII. The Masters (6) shall, instead of Her Majesty's Attorney-General, approve on behalf of Her Majesty of the security to be from

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(1) *3d G. O., 7th Nov.*, 1853.
(2) *Ibid.*
(3) *Ibid.*
(4) *Ibid.*
(5) *Re Rutter*, 22 L. J. Ch. 170; s. c. 20 L. T. 266.
(6) 16 & 17 *Vic. c.* 70, *s.* 2.

time to time given by the committee of the estate under order of the Lord Chancellor intrusted as aforesaid, and the acts of the Masters, with respect to the security and to the grant of the custody, shall have the same force and effect to all intents and purposes as the acts of Her Majesty's Attorney-General with respect to the same matters now have.

The usual security is a joint and several bond to the Sovereign by the committee and two sureties,(1) the latter justifying in sums not very disproportionate and together amounting to the usual penalty, which is double the amount of the annual income of such part of the estate as consists of land, when the income amounts to £250, and treble its amount when the income is below £250, and double the amount in value of the remainder of the estate within the control of the committee. If the whole estate is in such position that the committee cannot, unaided by the Lord Chancellor, affect it, the usual penalty is £100. If the committeeship be joint, there may be two sets of sureties; and if the usual penalty is heavy, there may be more sureties. In the last case the sureties may execute separate bonds, in all which bonds the committee joins, for sums together equalling the entire penalty, and each of the sureties must justify in the sum for which he is bound. (2) It is the duty of the sureties to see that the committee passes his accounts, and obeys the orders of the Lord Chancellor: their ignorance of his default in this respect will not excuse them from payment of costs of proceedings to enforce obedience by him of such orders.(3)

It was held by the Court of Exchequer that *scire facias* might issue against the sureties on the breach by a committee of an estate of his bond, the bond being within the Act 33 Hen. 8, c. 39, s. 50.(4)

It is declared by the 18th General Order of 7th Nov., 1853,

"The committee of the estate is on each occasion of passing his account, and also whensoever the Masters(5) may so require, to

(1) See 16 & 17 *Vic. c.* 70, *s.* 64.

(2) *Elmer*, 28. But see, as to the necessity of nominal security, *Re Burroughs*, 2 Dru. & War. 207; *Re Hicks and Re Lee*, Shelf. on Lun. 2d ed. 193; and *Re Radcliffe*, 1 C. P. Coop. 253.

(3) *Re Lockey*, 1 Phill. 509. But see *Dawson* v. *Raynes*, 2 Russ. 466; and *Ludgater* v. *Channell*, 3 M. & G. 175.

(4) *R.* v. *Chambers*, 11 M. & W. 776. As to the jurisdiction on proceedings against committees on their security, see 1 Coo. t. Cott. 200.

(5) *3d G. O., 7th Nov.*, 1853.

satisfy the Masters that his sureties are living, and that neither of them has been declared bankrupt or insolvent, and in default thereof the Masters are to require him to enter into fresh security within such time as they shall fix."

And by the 45th General Order, 7th Nov., 1853:

"Where a committee enters into a fresh security, upon the same being duly perfected, and upon the balance then due by the committee being paid or secured to the satisfaction of the Masters, (1) the security theretofore in force is to be discharged."

And by the 46th General Order, 7th Nov., 1853:

"Where, under or in pursuance of these orders, or any special order, the security of a committee of the estate or a receiver is to be discharged, then, in the case of a bond, the Masters (2) are to deliver up the same to be vacated and cancelled; and in the case of a recognizance, the Masters are by certificate to direct the clerk of the enrolments of the Court of Chancery to attend the Master of the Rolls, with the enrolment of the recognizance to be vacated and discharged, and such clerk is by virtue of such certificate to attend accordingly. And in the case of security having been given in the whole or in part, by a sum of money or stock being brought into court, the Masters are by report to approve the payment or transfer, in such manner as the committee or receiver may request, and as may seem proper, of the sum of money or stock so brought in as aforesaid, and of all stock dividends, and accumulations of dividends, produced by or arising from the same; and on such report being confirmed, such payment or transfer is to be made accordingly by or with the privity of the Accountant-General as the case may require."

The security, when unnecessarily large, may be reduced. By the 19th General Order, 7th Nov., 1853, it is declared:

"The security of the committee of the estate may be from time to time on request reduced to an amount corresponding, in the judgment of the Masters,(3) with the condition for the time being of the estate and effects of the lunatic, and the dividends, interest, and annual produce thereof, and he is to be at liberty to enter from time to time into fresh security accordingly, to the approbation of the Masters."(4)

On the other hand, the security of the committee of the estate may be from time to time increased; but in an old case, on a petition by a committee to have his bond delivered up and to

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(1) 3*d G. O., 7th Nov.*, 1853.
(2) *Ibid.*
(3) *Ibid.*
(4) See *Ex parte Northleigh*, 2 Ves. sen. 673; and *Re Palmer*, Shelf. on Lun. 2d ed. 196.

change the security by giving a greater, Lord Hardwicke, C., said, "Though it had an appearance of benefit to the lunatic's estate, and though he would grant this, yet he gave notice that he would not encourage applications of this kind, as they might be of dangerous consequence; for, suppose the bond delivered up, and there happened to be a concealment of any part of the estate on taking the account, if the lunatic afterwards recovered he could have no remedy for that for the time past, and those accounts frequently are very superficially taken and cannot be otherwise."(1)

The 16 & 17 Vic. c. 70, also provides:

Sec. LXIV. Where it is desired, and the Masters (2) allow that the approved committee of the estate should in lieu of giving security in the manner now usual by bond or recognizance with sureties, give security in the whole or part by bringing into Court an adequate sum of money or stock, the Masters may by certificate direct or give liberty for the payment into the Bank of England, with the privity of the Accountant-General of the Court of Chancery, to the credit of the matter of the lunatic (3) of any sum of money, or the transfer into the name, and with the privity of the said Accountant-General, in trust in the matter of the lunatic of any sum of stock, and may specify the account to which the sum of money or stock is to be placed, and may direct how any money is to be invested, or how any dividends (4) are to be applied, and such payment, transfer,(5) investment, and application as the case may require, shall be made by virtue of such certificate, and the Accountant-General shall declare the trust of the sum of money or stock, when so paid or transferred accordingly, subject to the order of the Lord Chancellor, intrusted as aforesaid." (6)

And

Sec. LXV. Where it appears expedient, either with a view to the reduction of the amount of the security of the committee of the estate or for any other reason the Masters (7) may, without order, receive or deliver out any deed or security belonging to the lunatic, (8) and may

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(1) Lord Hardwicke, C., in *Ex parte Pereira*, 2 Ves. 674.
(2) 16 & 17 *Vic. c.* 70, *s.* 2.
(3) *Ibid.*
(4) *Ibid.*
(5) In this Act, unless there be something in the subject matter or context repugnant to the construction, the word "transfer" shall be construed to comprehend any assignment, payment, or other disposition: 16 & 17 *Vic. c.* 70, *s.* 2.
(6) 16 & 17 *Vic. c.* 70, *s.* 2.
(7) *Ibid.*
(8) *Ibid.*

by certificate direct or give liberty for the payment into the Bank of England, with the privity of the Accountant-General of the Court of Chancery to the credit of the matter of the lunatic of any sum of money belonging to the lunatic, or the transfer into the name and with the privity of the said Accountant-General in trust in the matter of the lunatic of any sum of stock belonging to the lunatic, and such payment or transfer as the case may require shall be made by virtue of such certificate, and the said Accountant-General shall declare the trust of the sum of money or stock, when so paid or transferred accordingly, subject to the order of the Lord Chancellor, intrusted as aforesaid. (1)

On an application to Lord Cottenham, C., previous to the passing of 16 & 17 Vic. c. 70, for leave to deposit with the Master in Lunacy, and by way of diminishing the amount of security to be given by the committee of an estate, a bond not yet payable, and a bond and note then due (part of the estate), the Lord Chancellor said "he saw no objection to their being deposited for the purpose of reducing the amount of the committee's security, but that there was great objection to the money remaining in its present state of security, and as the consequence of depositing them would probably be, that no further proceedings would be taken, the order should direct, that the bond and promissory note which were now payable should be immediately called in." (2)

If the committee of an estate is unwilling to give security by bringing money or stock into court, he should attend at the office of the Masters with office copies of the Report, and of the order or fiat confirming it, and with a memorandum of the names and addresses of the proposed sureties, of the names and addresses of the committees of the person and estate, and of the residence of the idiot, lunatic, or person of unsound mind. (3)

The committee of the person, and every person accountable to the estate or resident beyond the jurisdiction, are disqualified for the suretyship, (4) though in one case the committee of the person is reported to have been accepted as surety. (5)

The Master, when satisfied with the sureties, prepares the bond

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(1) 16 & 17 *Vic. c.* 70, *s.* 2.
(2) *Re Eagle,* 2 Phill. 201.
(3) *Elmer,* 28.
(4) *Ibid.*
(5) *Re Burton,* 18 Law T. 85.

and one or more affidavits of its execution, (1) and delivers them to the solicitor for the party having the carriage of the proceeding, who should procure the execution of the bond, and its attestation by two witnesses, one of whom must be the deponent in the affidavit; the Master signifies his approval of the bond by endorsing it: "I approve of this bond referred to in my certificate in the above matter, dated the day of ," and gives a certificate of the completion of the security; upon his giving this certificate, the previous order or fiat appointing the committees of the person and estate operates as

The grant of the custody of the person and estate.

Under the former practice, a grant of the custody followed the order (2) and was passed under the Great Seal; but this having been found to be an expensive process, the Act 16 & 17 Vic. c. 70, declared:

Sec. LXIII. In case Her Majesty shall think fit to authorize the Lord Chancellor, intrusted as aforesaid, (3) to make orders from time to time for the custody of persons already found, or who may hereafter be found idiots or lunatics, (4) as aforesaid, and of their estates, without requiring that any grant or commitment of such custody should be passed under the Great Seal, then any order to be made by the Lord Chancellor, intrusted as aforesaid, in pursuance of such authority, shall (as to the custody of the person immediately, and as to the custody of the estate upon the Master's certificate of completion of the committee's security), have the same force and validity as a grant and commitment of the custody of such idiots or lunatics, and their estates, would have had in case the same had been made under the Great Seal by virtue of any authority for that purpose given by Her Majesty to the Lord Chancellor, intrusted as aforesaid, and the provisions of this Act respecting the grant, shall be deemed to extend to any order, to be made as aforesaid.

By the same Act it is also provided:

Sec. CXXI. Where it appears to the Lord Chancellor, intrusted as aforesaid, (5) upon a report of the Masters, (6) that there is reason to

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(1) See forms, *Elmer*, 106—108.
(2) 8 *Hen.* 6, *c.* 16; 18 *Hen.* 6, *c.* 6; *Frazier* v. *Prodgers*, Skin. 178; 1 *Hen.* 8, *c.* 10. But see 16 & 17 *Vic. c.* 70, *s.* 152.
(3) 16 & 17 *Vic. c.* 70, *s.* 2.
(4) *Ibid.*
(5) 16 & 17 *Vic. c.* 70, *s.* 2.
(6) *Ibid.*

believe that the unsoundness of mind of any lunatic(1) so found by inquisition, is in its nature temporary, and will probably be soon removed, and that it is expedient that temporary provision should be made for the maintenance of the lunatic, or of the lunatic and the members of his immediate family who are dependent upon him for maintenance, and that any sum of money arising from or being in the nature of income or of ready money, belonging to the lunatic, and standing to his account, with a banker or agent, or being in the hands of any person for his use is readily available, and may be safely and properly applied in that behalf, the Lord Chancellor may allow thereout such amount as he may think proper for the temporary maintenance of the lunatic, or of the lunatic and the members of his immediate family who are dependent upon him for maintenance, and may instead of proceeding to order a grant of the custody of the estate, order or give liberty for the payment of any such sum of money as aforesaid, or any part thereof to such person as he may under the circumstances of the case think proper to intrust with the application thereof, and may direct the same to be paid to such person accordingly, and when received, to be applied, and the same shall accordingly be applied in or towards such temporary maintenance as aforesaid, and the receipts in writing of the person named in the order to whom payment is to be made for any monies payable to him by virtue thereof, shall effectually discharge the banker, agent, or other person paying the same from the monies therein, respectively expressed to be received, and they respectively are hereby directed to act upon, and obey every such order, and the person so receiving any monies shall pass an account thereof before the Masters when required."

Where a person found lunatic by inquisition had died before a grant of his estate, Lord Lyndhurst, C., refused to make any order as to the liability of such estate, observing that he was not in possession of it, and that the remedy of the petitioner was by action. (2)

A very few words may suffice

As to the jurisdiction in proceedings after the grant of the custody of the person and estate.

The Lord Chancellor after the grant, acts not, it is said, in the affairs of an idiot, lunatic, or person of unsound mind, as the delegate of the Sovereign under the royal sign manual, but by virtue of his general power as keeper of the royal conscience ;(3)

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(1) *Ibid.*
(2) *Re Pinks*, 12 Law J. N. S. Ch. 57.
(3) Lord Apsley, C., in *Ex parte Grimstone*, Ambl. 706. Lord Redesdale, C., in *Re Fitzgerald*, 2 Sch. & Lef. 468 ; and see 1 Coo. t. Cott. 199 n.

the Lords Justices share his jurisdiction in lunacy under the authority of the Act 16 & 17 Vic c. 70; no other judge shares it. (1)

The next point for consideration seems to be

The management of the estate of an idiot, lunatic, or person of unsound mind found so by inquisition.

The estate is managed by the committee thereof as a bailiff (2) without any legal interest therein, (3) responsible only to the Lord Chancellor, (4) whose duty it is to administer the estate *tanquam bonus paterfamilias* making every advantage fairly to increase and improve it without engaging in risks and dangerous adventures, for those are not fit enterprises; (5) and who possesses the discretion of a landlord in the management of the realty. (6)

The committee of an estate should manage it as the owner himself if prudent would manage it, (7) if by his carelessness the estate sustain loss, he will be ordered to make up the loss; (8) but he will not be held responsible for any mistaken step in the management, if taken with the sanction of the Master in Lunacy to whom the affairs of the estate are attached. (9) It is not in the power of the committee to alter the nature of any part of the estate; he may not even mortgage the realty, (10) and the

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(1) *Re Shorrocks*, 1 M. & Cr. 31; *Re Prideaux*, 2 M. & Cr. 640; *Re Skerrett*, 2 Dru. & W. 590; *Ames* v. *Parkinson*, 2 Phill. 388; *Norris* v. *Dudley*, 16 Beav. 364.

(2) *Stanton* v. *Percival*, 5 Ho. Lds. Ca. 272; *Barton* v. *Langham*, 5 C. B. 107.

(3) *Knipe* v. *Palmer*, 2 Wils. 130; *Foster* v. *Marchant*, 1 Vern. 262; *Thorn* v. *Coward*, 2 Sid. 124; 1 Ca. in Ch. 19, 153; *Darcie's case*, Popham, 141; *Cox* v. *Dawson*, Noy. 27; *Cook* v. *Darston*, 4 Brownl. & Gould. 197; *Drury* v. *Fitch*, Hutt. 16; *Blewitt's case*, Ley. 47; 6 *Vin. Abr.* "*Copyh.*" (*G*) *pl.* 15; 1 *Watk. on Copyh.* 24.

(4) Lord Redesdale, C., in *Re Fitzgerald*, 2 Sch. & Lef. 438; *Ames* v. *Parkinson*, 2 Phill. 388; 1 Bl. Com. 305.

(5) Lord Loughborough, C., in *Oxenden* v. *Lord Compton*, 2 Ves. 73; Sir E. Sugden, C., in *Leitrim* v. *Enery*, 6 Ir. Eq. R. 363.

(6) Sir A. Hart, C., in *Re Ball*, 1 Molloy, 141.

(7) Lord Loughborough, C., in *Oxenden* v. *Lord Compton*, 2 Ves. 71; and Lord Eldon, in *Ex parte Whitbread*, 2 Meriv. 103. Sir John Leach, V.C., in *Browne* v. *Groombridge*, 4 Mad. 495; *Ex parte Vaughan*, 1 T. & R. 436. Sir A. Hart, C., in *Re Ball*, 1 Moll. 141.

(8) *Ex parte Swindell*, 2 De G. M. & G. 92.

(9) *Re Brown*, 1 M. & Gor. 205.

(10) *Foster* v. *Marchant*, 1 Vern. 262.

Lord Chancellor will not wantonly or unnecessarily alter its nature; on the contrary, he will take care, for the owner's sake, that if he recover he shall find his property as nearly as possible in the same condition as he left it.(1) Lord Chancellor Thurlow sitting in Lunacy said, "The Lord Chancellor ought to be very reserved in changing one species of property into another, and to do it only upon pressing occasions."(2) On an application for the sale of the life interest of a lunatic in large family estates, Lord Brougham, C., used similar language;(3) and Lord Loughborough laid down this rule: "Alteration of the property is as far as possible to be avoided, consistently with the idea of preserving the proprietor's interest."(4)

Any interference with the management of the committee is a contempt of the Lord Chancellor, (5) and will be restrained by the Court of Chancery (6)

A decree against an idiot, lunatic, or person of unsound mind found so by inquisition in respect of a breach of trust committed by him should not go beyond a declaration of the liability of his estate, and an order that the committee of such estate should apply to the Lord Chancellor for leave to carry into effect the declaration.(7) So much is interference with the management of the committee of an estate discountenanced that a petition praying an inquiry as to the propriety of the payment of a call out of a lunatic's estate was refused because the committee of the estate did not concur in the prayer;(8) and when an inquiry as to the propriety of the renewal of a lease of a lunatic's land was directed on the application of the tenant he (the tenant) was

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(1) Lord Eldon, C., in *Ex parte Whitbread*, 2 Meriv. 102, 103; Sir E. Sugden, C., in *Lord Leitrim* v. *Enery*, 6 Ir. Eq. R. 363.

(2) Lord Thurlow, C., in *Ex parte Bromfield*, 1 Ves. 463.

(3) Lord Brougham, C., in *Re Frank*, Shelf. on Lun. 2d ed. 475.

(4) Lord Loughborough, C., in *Oxenden* v. *Lord Compton*, 2 Ves. 73. See also Lord Hardwicke, C., in *Ex parte Annandale*, Ambl. 80; and Sir E. Sugden, C., in *Leitrim* v. *Enery*, 6 Ir. Eq. R. 363—365.

(5) Lord Truro, C., in *Re Franks*, 16 L. T. 529; *Re Ball*, 2 Moll. 146.

(6) *Re Grove* and *Re Frank*, Shelf. on Lun. 2d ed. 449; *Re Creagh*, 1 Ball & B. 108; *Re Chinnery*, 1 Jo. & Lat. 90; *Re Weaver*, 2 M. & Cr. 442.

(7) *Ames* v. *Parkinson*, 7 Beav. 379; 2 Phill. 388.

(8) *Re Hitchon*, 15 Law J. Ch. 126. And see *Re Doolan*, 2 Dru. & Warr. 442; *Lloyd* v. ——, 2 Dick. 460; *Colman* v. *Croker*, 1 Ves. 160.

ordered to pay the costs of the application and inquiry.(1) Sir L. Shadwell, V.C.E., stayed proceedings in a suit after decree therein when a commission of lunacy had issued against the plaintiff, a *feme covert*, who sued by a next friend, and her husband, being a defendant, applied to stay the suit pending the result of the commission; in making the order, the Vice-Chancellor observed, "The only question is, whether I shall allow a sort of fraud (using that word in the sense in which it is used in this Court) to be practised on the jurisdiction in lunacy; *primâ facie* there is good ground for supposing that the suit, instead of being conducted by the next friend, will be conducted under the jurisdiction in lunacy, therefore nothing ought to be done in the Master's office until the Court has been informed what has been the result of the proceedings under the commission of lunacy." (2)

It seems Lord Eldon, C., would have had no hesitation in directing a sale in lunacy of the interest of any idiot, lunatic, or person of unsound mind in any land inconvenient, ill conditioned, &c., for payment of debts, if such proceeding appeared to be for the benefit of the person *non compos mentis;* for in a reported case the following language is attributed to him: "Had the application been to sell a part of the real estate for the payment of debts, the Court finding that the maintenance of the lunatic would be better provided for and his advantage promoted by disposing of a real estate inconvenient, ill conditioned, &c., that it would be for his benefit so to pay the debts and keep together the personal estate, would have no difficulty in making such an application." (3)

In another case reported by Mr. Shelford in his work on Lunacy, the committee of an estate was directed to complete a contract for the purchase of land contiguous to and convenient to be held with the estate, however, it was declared that the purchase-money (which came out of the rents and profits of the estate) should be so applied without prejudice to any question on the death of the lunatic whether the same was real or personal

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(1) *Re Doolan*, 2 Dru. & W. 442.
(2) *Hartley* v. *Gilbert*, 13 Sim. 596.
(3) Lord Eldon, in *Ex parte Phillips*, 19 Ves. 124; *Ex parte Smith*, very briefly reported in 5 Ves. 556.

estate of the lunatic, and it was referred to the Master to settle a proper declaration thereof accordingly.(1)

The Lord Chancellor may apply part of the personalty in payment of debts, and in redemption of land tax on the realty, if it is a benefit to the estate so to apply the personalty.(2)

Where personalty (part of the estate) is applied in payment of charges on realty (other part of the estate), or in payment of debts to which the personalty is not as between it and the realty primarily liable, the Lord Chancellor has generally taken care that the personalty applied retains its character either by conveying the realty in trust for the owner, his *executors, administrators*, and assigns,(3) or by making a declaration ; (4) in an Irish case where a committee of the estate of a lunatic, being his presumptive heir, had applied the surplus rents thereof in payment of a mortgage on land of which the lunatic was seised *in fee*, and such payment had been allowed in passing the accounts, which proceeded on that footing 27 years until the death of the lunatic, it was held by Sir E. Sugden, C., that the next of kin of the lunatic had no claim on such land. (5) In a subsequent case the same judge said that he would not permit the realty to be relieved at the expense of the personalty, except when the owner, if sane and provident, would do so. (6)

The proper time to decide whether the heir or next of kin of an idiot, lunatic, or person of unsound mind is to have the benefit of a payment out of his personalty, is when the payment is made ; the decision ought not to be deferred until after the death of the person *non compos mentis*, for although his recovery may render the decision unnecessary, yet it can do no harm, and the Lord Chancellor can in general best decide the question when the advance is required. (7)

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(1) *Re Drax*, Shelf. on Lun. 2d ed. 254.
(2) *Ex parte Phillips*, 19 Ves. 119.
(3) *Ex parte Degge*, 1 Beatty, 270 ; *Ex parte Earl Digby*, 1 Jac. & W. 640, and Jac. 235 ; *Ex parte Hind*, Ambl. 706 ; *Re Flitcroft*, Shelf. on Lun. 2d ed. 260.
(4) *Re Earl Lisburne*, Shelf. on Lun. 2d ed. 306 ; *Re Cotton*, Ibid. 302.
(5) *Newcombe* v. *Newcombe*, 3 Ir. Eq. R. 414 ; and see *Lord Leitrim* v. *Enery*, 6 Ir. Eq. 357.
(6) Sir E. Sugden, C., in *Lord Leitrim* v. *Enery*, 6 Ir. Eq. R. 365.
(7) *Ibid.*

The power of the Lord Chancellor to alter the estate is now more clearly defined and enlarged by 16 & 17 Vic. c. 70, which has several provisions on the subject. It is thereby enacted:

Sec. CXVI. Where it appears to the Lord Chancellor, intrusted as aforesaid,(1) to be just and reasonable, or for the lunatic's(2) benefit, he may order that any estate or interest of the lunatic in land or stock, (3) either in possession, reversion,(4) remainder, contingency, or expectancy, be sold or charged by way of mortgage (5) or otherwise disposed of, as may to him seem most expedient for the purpose of raising money to be applied, and may accordingly order that the money when raised may be applied, for or towards all or any of the purposes following:—

1. The payment of the lunatic's debts or engagements.
2. The discharge of any incumbrance on his estates.
3. The payment of any debts or expenditure incurred or made after inquisition, or authorized by the Lord Chancellor, intrusted as aforesaid, to be incurred or made for the lunatic's maintenance or otherwise for his benefit.
4. The payment of or provision for the expenses of his future maintenance.
5. The payment of the costs of applying for, obtaining, and executing the inquiry and of opposing the same.(6)
6. The payment of the costs of any proceeding under or consequent on the inquisition, or incurred under order of the Lord Chancellor intrusted as aforesaid. And
7. The payment of the costs of any such sale, mortgage, charge, or other disposition as is hereby authorized to be made.

And the committee of the estate may and shall, in the name and on behalf of the lunatic, execute, make, and do all such conveyances, (7)

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(1) 16 & 17 *Vic. c.* 70, *s.* 2.

(2) *Ibid.* And "the power and authorities given by this Act to the Lord Chancellor intrusted as aforesaid shall extend to all land and stock within any of the dominions, plantations, and colonies of her Majesty (except Scotland and Ireland):" 16 & 17 *Vic. c.* 70, *s.* 147.

(3) "In this Act, unless there be something in the subject matter or context repugnant to the construction, the word "land" shall be construed to comprehend any manor, messuage, tenement, hereditament, or real property of whatsoever tenure, and also 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; and the word "stock" shall be construed to comprehend any fund, annuity, or security transferable in books kept by any company or society, or any money payable for the discharge or redemption thereof, or any share or interest therein: 16 & 17 *Vic. c.* 70, *s.* 2.

(4) *Re Burbidge*, 3 M. & Gor. 3.

(5) *Re Earl of Portsmouth*, Shelf. on Lun. 2d ed. 467. And see *Re Brand*, 1 M. & K. 150; *Re Skerrett*, 2 Dru. & W. 335.

(6) *Re Frank*, *Re Norris*, and *Re Taylor*, Shelf. on Lun. 2d ed. 134.

(7) "In this Act, unless there be something in the subject matter or context repugnant to the construction, the word 'conveyance,' shall be construed to comprehend any release, surrender, assignment, or other assurance, including all acts, deeds, and things necessary for making and perfecting the same:" 16 & 17 *Vic. c.* 70, *s.* 2.

deeds, transfers, and things relative to any such sale, mortgage, charge, or other disposition as aforesaid, and for effectuating this present provision, as the Lord Chancellor, intrusted as aforesaid, shall order."(1)

By the same Act it is however provided

Sec. CXLVI. "Nothing in this Act contained shall extend to subject any part of a lunatic's (2) property to the debts or demands of his creditors further or otherwise than as the same is now subject thereto by due course of law."

Another provision of the Act 16 & 17 Vic. c. 70 is as follows:

Sec. CXXVII. Where a lunatic (3) is entitled to a lease for a life or lives, or for a term of years, either absolute or determinable on a death or otherwise, or to an underlease of whatsoever nature, and it appears to the Lord Chancellor, intrusted as aforesaid, (4) to be desirable and for the benefit of the lunatic or his estate, that the lease or underlease should be disposed of, the committee of the estate may, in the name and on behalf of the lunatic, under order of the Lord Chancellor, surrender, assign, or otherwise dispose of the lease or underlease to such person for such valuable or nominal or other consideration upon such terms, by such conveyances, and in such manner, and shall apply the monies (if any) arising thereby in such manner as the Lord Chancellor shall order."

Except under 16 & 17 Vic. c. 70, s. 127, the Lord Chancellor cannot, in the exercise of his jurisdiction in lunacy, make a title to a purchaser of leasehold belonging to a person found idiot, lunatic, or of unsound mind, beyond the life of such person.(4)

By the 56th General Order of 7th Nov., 1853, it is also declared:

"Where a report approving of the sale of part of the lunatic's real or leasehold estate is confirmed, the purchaser is at or within such time as the Masters (5) shall fix, to pay the purchase-money for the hereditaments sold into the bank in the name and with the privity of the Accountant-General to the credit of the matter, and to such particular account, if any, as the Masters may appoint, and upon the same being paid in, the purchaser is to be let into possession of the hereditaments sold, and the receipt of the rents and profits thereof as from such day as the Master may appoint. And the committee of the

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(1) See also 16 & 17 *Vic. c.* 70, *ss.* 119, 139; 55*th G. O., 7th Nov.*, 1853.
(2) See 16 & 17 *Vic. c.* 70, *s.* 2.
(3) *Ibid.*
(4) *Ex parte Vikes*, 8 Ves. 79; *Re Halford*, 1 Jur. 524.
(5) 3*d G. O., Nov.*, 1853.

estate is forthwith in the name and on behalf of the lunatic to execute all proper conveyances, assignments, and assurances of the hereditaments sold unto the purchaser and his heirs or his executors, administrators, and assigns, or as he or they shall direct, to be settled by the Masters, and due notice given of attending the Masters is to be given to all parties interested."(1)

By 16 & 17 Vic. c. 70, it is also enacted:

Sec. CXVII. "In case of a charge or mortgage being made under this Act upon an interest in contingency, or in reversion, remainder, or expectancy, for the expenses of *future maintenance*, the Lord Chancellor, intrusted as aforesaid,(2) may direct the same to be payable and paid either contingently, if the interest charged be a contingent one, or upon the happening of the event, if the interest be depending on an event which must happen, and either in a gross sum, or in annual or other periodical sums, and at such times, in such manner, and either with or without interest, as he shall deem expedient, and any charge already made which would have been valid if made after this Act, shall be, and is hereby declared to be valid."

The Court will not, it seems, interfere for the payment of the debts by a sale of the lands, where, after the death of the person *non compos mentis*, the lands are given over to others, (3) and the Lord Chancellor would not, under section 116 of the Act 16 & 17 Vic. c. 70, sell, charge, or dispose of the estate or interest of the debtor, in land or stock, except for the purposes in that section specified; (4) further, the section does not, it seems, apply if the idiot, lunatic, or person of unsound mind is dead after inquisition finding him to be *non compos mentis*, but previously to the appointment of a committee of his estate.(5) A committee of an estate, tenant for life of lands yielding £4000 per annum, and father of the lunatic to whom the lands were limited in tail next in remainder, petitioned that £250, the maintenance allowance of the lunatic, might be charged on his remainder. In the absence of any evidence as to how many living children the father had, Lord Cranworth, C., refused an order, apparently on the ground that the father might have ample means himself

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(1) See 16 & 17 *Vic. c.* 70, *s.* 139.
(2) 16 & 17 *Vic. c.* 70, *s.* 2.
(3) Lord Brougham, C., in *Re Brand*, 1 M. & K. 150. And see *Re Penny*, Shelf. on Lun. 2d ed. 469; *Re Skerrett*, 2 Dr. & W. 585.
(4) *Re Vavasour*, 3 M. & Gor. 277.
(5) *Re Tubb*, 1 Jur. 653; *Re Pinks*, Law J. Ch. 1843, 57.

to provide such maintenance, and that, if he had, he ought to provide it. (1)

In one case the committee of an estate was himself allowed to purchase lands part of the estate. (2)

All the costs occasioned by an inquiry as to the propriety of a sale of part of the estate to a Railway Company, purchasing under the Lands Clauses Consolidation Act, fall on the company. (3)

Although an alteration of the property of a lunatic or person of unsound mind be beneficial to him, yet, if the benefit is small, and the alteration would disappoint intentions expressed by him prior to his insanity, (4) the Lord Chancellor will not sanction such alteration; *e. g.* where a Master in Lunacy had reported that it would be for the benefit of a lunatic that certain furniture, part of his property, and by his will specifically bequeathed, should be sold, the Lord Chancellor refused to defeat the bequest by directing a sale of the furniture. (5)

Further, the Lord Chancellor will not unnecessarily change the legal estate of an idiot, lunatic, or person of unsound mind into an equitable interest, or *vice versâ*. (6)

Lord Cottenham, C., speaking of the estate of a lunatic, said "If the personalty is applied in the purchase of land, it would be right that the personalty should retain its character." (7)

This principle was adhered to in a case mentioned by Mr. Shelford in his valuable work on Lunacy, where, part of a lunatic's personalty having been applied in rebuilding on his lands (rebuilding may be tantamount to a purchase of land, (8) and was so, I assume, in this case), it was ordered that the sum of money expended should be considered and taken as a charge upon the lands. (9)

Where the Lord Chancellor has found it to contribute to the

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(1) *Re Pugh*, 3 De G. M. & G. 418.
(2) *Re Butcher*, Shelf. on Lun. 2d ed. 479.
(3) *Re Gawan Taylor*, 1 M. & Gor. 210; *Re Walker*, 7 Ra. Ca. 129. And see *Re South Wales Railway Company*, 14 Beav. 421.
(4) *Holmes* v. *Goodworth*, Law J. Ch. 1829, 128.
(5) *Ex parte Haycock*, 5 Russ. 154.
(6) *Ex parte Jermyn*, 3 Swanst. 131 n.
(7) Lord Cottenham, C., in *Re Badcock*, 4 M. & Cr. 440.
(8) *Re Badcock*, 4 M. & Cr. 440.
(9) *Re Harris*, Shelf. on Lun. 2d ed. 276.

interest of the proprietor to alter the nature of his estate, that has been thought so good a reason for it as to exclude all considerations of hardship, or an equity between the proprietor's representatives. (1) The property, duly converted, must be taken in the state and character in which it is found at the death of the proprietor. (2) Lord Eldon, C., is reported to have said, "A case has occurred of a lunatic, seised *ex parte paternâ* of estate A., and *ex parte maternâ* of estate B., the latter being subject to a mortgage; and timber being cut upon A. having been applied in discharge of the mortgage upon B., it was, on a question between the heirs, held, that it was not to be recouped (3)." It may be observed that, if the timber was part of the general rental, it was in the nature of personalty.

If the committee of an estate, entitled in remainder to realty part thereof, and preferring his own interest to that of the person *non compos mentis*, unnecessarily expends personalty, part of the estate, on the realty, he may be ordered to restore out of his own pocket to the personal estate the value of the personalty so expended. (4)

The Lord Chancellor will order the felling of timber on the land if proper to be felled: (5) in cases where timber makes part of the rental there is no doubt that it is the duty of the Lord Chancellor to continue the usual management of the estate by felling the timber, it being fruit of the realty which, if not gathered, would be lost. (6)

The Lord Chancellor frequently orders the savings out of the realty to be laid out in repairs of the realty, (7) and to discharge incumbrances on the realty. (8) The Lord Chancellor will also sanction the expenditure of part of the personalty in ordinary and

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(1) Lord Thurlow, C., in *Ex parte Bromfield*, 1 Ves. 463; *Oxenden* v. *Lord Compton*, 2 Ves. 69. See also *Inwood* v. *Twyne*, 2 Eden, 154, n. And see *Flanagan* v. *Flanagan*, cited by Sir T. Sewell, M.R., in *Fletcher* v. *Ashburner*, 1 Bro. C. C. 500.

(2) *Browne* v. *Groombridge*, 4 Mad. 501.

(3) *Ex parte Phillips*, 19 Ves. 123.

(4) *Ex parte Ludlow*, 2 Atk. 407.

(5) Lord Eldon, C., in *Ex parte Phillips*, 19 Ves. 118.

(6) Lord Loughborough, C., in *Oxenden* v. *Lord Compton*, 2 Ves. 71.

(7) Lord Hardwicke, C., in *Sergeson* v. *Sealey*, 2 Atk. 414.

(8) *Ibid.* And Lord Apsley, C., in *Ex parte Grimstone*, Ambl. 708.

necessary repairs of the realty ;(1) but Lord Cottenham, C., refused to sanction the expenditure of accumulations of a lunatic's income in *drainage* and *permanent* repairs of property of which the lunatic was tenant for life only with remainder to his brother, observing, "If the remainderman had been the son of the lunatic, there might have been some ground for it, but I cannot sanction payment out of the lunatic's property for drainage and repairs which are to benefit his brother."(2) Lord Hardwicke, C., is also reported to have said in a case of *Sergeson* v. *Sealey*, "There have been applications to this court to lay out part of the personal estate of a lunatic in repairs, or even upon *improvements* of his real estate, and the Court have allowed it if the next of kin at that time, who, if he was dead, would be entitled to his personal estate, do not show any reason against it, and such an order of the Court has been even binding upon other persons who were not consenting to the order at the time it was made, but happened to be the next of kin at the lunatic's death."(3) In a subsequent case Lord Chief Justice de Grey remarked, "Money may be laid out in *improvements* if we trust the case of *Sergeson* v. *Sealey*, 2 Atk." (4) Lord Loughborough, C., speaks out more clearly: "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 when I am laying down this so generally, I must be understood to do it with this guard, that great care must be taken that nothing *extraordinary* is to be attempted, as estates to be bought or interests to be disposed of." (5)

The committee of an estate should not, without the previous sanction of the Lord Chancellor, expend a considerable part of the personalty in repairs or improvements of the realty ;(6) if he do so, a subsequent inquiry as to the propriety of such expenditure may be directed, and then he will be ordered to pay the

(1) *Re Badcock*, 4 M. & Cr. 440 ; and Lord Apsley, C., in *Ex parte Grimstone*, Ambl. 708.

(2) *Re Clarke*, 2 Phill. 284. See now, however, 16 & 17 *Vic. c.* 70, *s.* 118.

(3) Lord Hardwicke, C., in *Sergeson* v. *Sealey*, 2 Atk. 414.

(4) *Ex parte Grimstone*, 4 Bro. C. C. 238, n.

(5) Lord Loughborough, C., in *Oxenden* v. *Lord Compton*, 2 Ves. 72.

(6) *Anon.* 10 Ves. 104 ; *Ex parte Marton*, 11 Ves. 397 ; *Attorney-General* v. *Vigor*, 11 Ves. 563 ; *Re Churchill*, 3 Jur. 719 ; *Re Buckle*, Law J. Ch. 1839, 264 ; *Re Brown*, 1 M. & Gor. 205.

costs of the inquiry.(1) In one case, where a person *non compos mentis* was tenant for life and the committee of his estate expended £4000, part of his personalty, upon his realty without the previous sanction of the Lord Chancellor, and the remaindermen consented to take a certain part of the expenditure on themselves, an inquiry was directed as to the propriety of such expenditure, regard being had to the proportion that ought to fall upon the inheritance, and what proportion the owners of the inheritance consented to take on themselves.(2) And where the committee of an estate, having obtained the sanction of the Lord Chancellor to an expenditure of £790 for rebuilding a farm-house, laid out £1052 in building a *larger* farm-house on *another* site, the excess was disallowed, though a Master in Lunacy reported that the actual expenditure had been beneficial to the estate.(3)

To remove all obstacles to an outlay beneficial to the person *non compos mentis* of his personalty in permanent improvement of his realty, it is now provided by 16 & 17 Vic. c. 70 :

Sec. CXVIII. "Where it appears to the Lord Chancellor, intrusted as aforesaid,(4) to be for the lunatic's(5) benefit, he may order the whole or any part of any monies expended or to be expended under his order for the *permanent* improvement, security, or advantage of the land of the lunatic or of any particular part thereof, shall, with interest, be a charge upon and be raisable out of the lunatic's estate and interest in the land or such particular part thereof as aforesaid, but so that no right of sale or foreclosure, during the lifetime of the lunatic, be given or acquired under or by virtue of the charge, and the interest shall be kept down during the lunatic's lifetime out of the income of his general estate, as far as the same shall be sufficient to bear it; and the committee of the estate may and shall, in the name and on behalf of the lunatic, execute and do all such conveyances and things for effectuating this present provision as the Lord Chancellor, intrusted as aforesaid, shall order, and such charge may be made either to some person advancing the money, or, if the money is paid out of the lunatic's general property, to some person as a trustee for him, as part of his personal estate."(6)

And

Sec. CXIX. "On any monies being raised by such sale, mortgage,

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(1) *Re Langham*, 1 Coop. t. Cott. 228; *Re Brown*, 1 M. & Gor. 205.
(2) *Ex parte Hilbert*, 11 Ves. 563.
(3) *Re Langham*, 2 Phill. 299.
(4) 16 & 17 *Vic. c.* 70, *s.* 2.
(5) *Ibid.*
(6) See 16 & 17 *Vic. c.* 70, *s.* 139.

charge, or other disposition of land made in pursuance of any of the foregoing(1) provisions, the person whose estate is sold, mortgaged, charged, or otherwise disposed of, and his heirs, next of kin, devisees, legatees, executors, administrators, and assigns, shall have such and the like interest in the surplus monies remaining after the purposes for which the monies have been raised shall have been answered as he or they would have had in the estate if no sale, mortgage, charge, or other disposition thereof had been made, and the surplus monies shall be of the same nature and character as the estate sold, mortgaged, charged, or otherwise disposed of, and the Lord Chancellor, intrusted as aforesaid, (2) may make such orders and direct such conveyances, deeds, and things to be executed and done (which may and shall accordingly be executed and done) as may be necessary for the effectuating this present provision, and for the due application of the surplus monies."

Where the heir of an intestate had, by reason of his own lunacy, been prevented from electing in what character he would take such monies, it was held under an Act somewhat similar to the Act 16 & 17 Vic. c. 70, that the monies devolved on the death of such heir as realty;(3) the 55th General Order of 7th Nov. 1853, has also declared that

"Where it is ordered that the committee be at liberty to raise, by mortgage of any part of the lunatic's estate, a sum of money for any purpose, the Masters (4) are to settle and approve of a proper mortgage; and the committee, upon payment to him or as may be directed of the amount to be raised, is, in the name and on the behalf of the lunatic, to execute the mortgage when so settled and approved of, and to do all such other acts as shall be necessary to effectuate the same; and the committee is, out of the rents, profits, and produce of the lunatic's estate, to pay and keep down the interest on the mortgage."

When the right to elect between sinking and keeping up a charge on his realty comes to an idiot, lunatic, or person of unsound mind found so by inquisition, the Lord Chancellor will, on his behalf, elect to do that which is most beneficial for him, without regard to the benefit of his representatives; (5) so when a right to elect between taking realty or personalty in its actual state or in the character impressed thereon in equity comes to

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(1) 16 & 17 *Vic. c.* 70, *ss.* 116, 117, 118.
(2) 16 & 17 *Vic. c.* 70, *s.* 2.
(3) 9 *Geo.* 4, *c.* 78; *Re Wharton*, 5 De G. M. & G. 33.
(4) 3 *G. O., 7th Nov.*, 1853.
(5) *Compton* v. *Oxenden*, 4 Bro. C. C. 397.

such a person;(1) however, the Lord Chancellor will only elect if the election is beneficial to such person.(2)

It is also provided by the Act 16 & 17 Vic. c. 70,

Sec. CXXII. "Where a person having *contracted* to sell, mortgage, let, divide, exchange, or otherwise dispose of any land afterwards becomes lunatic,(3) and the contract is not disputed, and is such as the Lord Chancellor intrusted as aforesaid(4) thinks ought to be performed, or a specific performance of the contract, either wholly or so far as the same remains to be performed, has been decreed or ordered by the Court of Chancery, either before or after the lunacy, the committee of the estate may, in the name and on behalf of the lunatic, under an order of the Lord Chancellor intrusted as aforesaid, on the application of the party claiming the benefit of the contract with the lunatic, or any plaintiff in the suit, receive and give an effectual discharge for the money payable to the lunatic, or so much thereof as remains unpaid, and make such conveyance of the land to such person and in such manner as the Lord Chancellor intrusted as aforesaid may order."

The committee of the estate of a person, having a limited estate in land, may execute the powers vested in such person of leasing such land, for by the Act 16 & 17 Vic. c. 70, it is enacted:

Sec. CXXXIII. "Where a lunatic has a limited estate only in land and any *power whatsoever of leasing* the same is vested in him, the committee of his estate may and shall, from time to time, in the name and on behalf of the lunatic under order of the Lord Chancellor intrusted as aforesaid, execute the power to such extent and in such manner as the order shall direct, and all fines, premiums, and sums of money (if any) received for or upon the granting of any lease under this present provision, shall be applied and disposed of in manner directed in section 135 of this Act, respecting the fines, premiums, and sums of money therein mentioned."

And the committee of an estate may also, on behalf of the *non compos mentis* owner thereof, and with the sanction of the Lord Chancellor, renew leases, the language of the same Act being

Sec. CXXXIV. "Where a lunatic is entitled or has a right to renew, and either it would be for his benefit to renew, or he might, in pur-

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(1) *Ashby* v. *Palmer*, 1 Meriv. 301.
(2) *Compton* v. *Oxenden*, 4 Bro. C. C. 397; *Ashby* v. *Palmer*, 1 Meriv. 301.
(3) 16 & 17 *Vic. c.* 70, *s.* 2.
(4) *Ibid.*

suance of any covenant or agreement, if not under disability, be compelled to renew a lease made for a life or lives or for a term of years, either absolute or determinable on a death or otherwise, the committee of his estate may, in his name, under an order of the Lord Chancellor intrusted as aforesaid, upon the application of the committee or of any person entitled to the renewal, accept a surrender of the lease and execute a new lease of the premises comprised in the surrendered lease for 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 was or were mentioned or contained in the lease surrendered at the making thereof or otherwise, as the Lord Chancellor intrusted as aforesaid shall order, but so that no renewed lease be executed by virtue of this Act in pursuance of any covenant or agreement, unless the fine (if any) or such other sum of money (if any) as ought to be paid on renewal, and such things (if any) as ought to be performed in pursuance of the covenant or agreement by the lessee or tenant, be first paid and performed, and a counterpart be duly executed by the lessee."

Before the passing of the Act 16 & 17 Vic. c. 70 it was held that, where an idiot, lunatic, or person of unsound mind was bound to renew a lease, an application to the Lord Chancellor for his sanction to such renewal should be by the committee of the lessor's estate, and the costs of application should come out of the estate.(1)

It seems that the application, if there is a suit, should be entitled in the lunacy and suit. (2)

The Act 16 & 17 Vic. c. 70, also contains these provisions:

Sec. CXXXV. "All fines, premiums, and sums of money received upon *renewal* shall after deduction of all necessary incidental charges and expenses be paid to the committee of the estate, and be applied for the lunatic's benefit, as the Lord Chancellor intrusted as aforesaid shall order; but upon the lunatic's death, all such monies as have arisen by such fines, premiums, or sums of money, or so much thereof as then remains unapplied for his benefit, shall, as between the representatives of his real and of his personal estate, be considered as real estate, unless the lunatic be tenant for life only, and then the same shall be considered as personal estate."

Sec. CXXXIX. "Every surrender, lease, agreement, deed, conveyance, mortgage, or other disposition, granted, accepted, made, or executed by virtue of this Act, shall be as valid and legal to all intents and purposes as if the person in whose name or place or on whose behalf the same was granted, accepted, made, or executed, had been of sound mind, and had granted, accepted, made, or executed the same."

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(1) 11 *Geo.* 4, *and* 1 *Wm.* 4, *c.* 65; *Ex parte Barnes*, 17 Law J. Ch. N. S. 436.

(2) *Unett* v. *Unett*, 1 Jur. 620.

The committee of the estate may also, by order of the Lord Chancellor, exercise, in the name and on behalf of the person *non compos mentis*, certain powers vested in such person; for by 16 & 17 Vic. c. 70, it is enacted:

Sec. CXXXVI. "Where a power is vested in a lunatic(1) *for his own benefit*, or the consent of a lunatic is necessary to the exercise of a power, and such power of consent is in the nature of a *beneficial interest in the lunatic*, and it appears to the Lord Chancellor intrusted as aforesaid(2) to be for the lunatic's benefit, and also to be expedient, that the power should be exercised or the consent given (as the case may be), the committee of the estate may, in the name and on behalf of the lunatic under an order of the Lord Chancellor intrusted as aforesaid made upon the application of the committee of the estate, exercise the power or give the consent (as the case may be), in such manner as the order shall direct."

And

Sec. CXXXVII. "Where a power is vested in a lunatic in the character of *trustee* or *guardian*, or the consent of a lunatic to the exercise of a power is necessary in the *like* character, or *as a check upon the undue exercise of the power*, and it appears to the Lord Chancellor intrusted as aforesaid to be fit and expedient that the power should be exercised, or the consent given (as the case may be), the committee of the estate in the name, and on behalf of the lunatic, under an order of the Lord Chancellor intrusted as aforesaid made upon the application of any person interested in the exercise of the power, may exercise the power, or give the consent, as the case may be, in such manner as the order shall direct."

And

Sec. CXXXVIII. "Where, under this Act, the committee of the estate under order of the Lord Chancellor intrusted as aforesaid, (3) exercises in the name and on behalf of the lunatic(4) a *power of appointing new trustees* vested in the lunatic, the person or persons who shall, after and in consequence of the exercise of the power, be the trustee or trustees, shall have all the same rights and powers as he or they would have had if the order had also been made by the Court of Chancery under the Trustee Act, 1850, or any Act amending the same, or if he or they had been appointed by decree of that Court in a suit duly instituted, and the Lord Chancellor intrusted as aforesaid may in any such case, where it seems to him to be for the lunatic's benefit, and also expedient, make any and every such order respecting the land or stock or choses in action subject to the trust as might have been made in the same case under the provisions of the Trustee Act, 1850, or any Act amending the same, on the appointment thereunder of a new trustee or trustees.

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(1) 16 & 17 *Vic.* c. 70, *s.* 2.
(2) *Ibid.*
(3) *Ibid.*
(4) *Ibid.*

The extent of the common law powers of the committee of an estate, is, it is said, limited by their object, *i. e.*, the protection of the owner of the estate. (1)

Besides other powers conferred on the committees of estates, and which are elsewhere referred, to the Act 16 & 17 Vic. c. 70, provides:

Sec. CXXVIII. "The committee of the estate of a lunatic may, with the approbation of the Lord Chancellor intrusted as aforesaid signified by order on the application of the committee, enter into any agreement for or on behalf of the lunatic which the guardian of an infant might have entered into, for or on behalf of the infant by virtue of the Act 1 Geo. 4, c. 10, if so much of that Act as related to agreements of guardians for or on behalf of infants or idiots under their guardianship had not been repealed by the Act 1 Will. 4, c. 65, s. 25."

With respect to the management and administration of the estate, the Act 16 & 17 Vic. 70, has further enacted:

Sec. CXXIV. "Where a lunatic(2) is seised of or entitled to an *undivided share* of land, and it appears to the Lord Chancellor intrusted as aforesaid,(3) to be for his benefit, and to be expedient that a *sale* of the land, or part thereof, or a *partition* of the land should be made, and where a lunatic is seised of or entitled to *land*, and it appears to the Lord Chancellor intrusted as aforesaid, to be for his benefit, and to be expedient, that an *exchange* thereof, or of part thereof, for other land, should be made, the committee of the estate, in the name and on behalf of the lunatic, under an order of the Lord Chancellor intrusted as aforesaid, may concur with such other person in making such sale or partition, or may make such exchange, and receive such monies payable on the sale, and give or receive such monies for equality of partition or exchange, or otherwise in relation thereto, as the order may direct; and all monies received by the committee of the estate upon any such sale, partition, or exchange as aforesaid, shall be applied and disposed of in manner directed in section 135 of this Act respecting the fines, premiums, and sums of money therein mentioned; and the land taken in exchange shall be held and assured (as nearly as may be) to the same uses, and upon the same trusts, and subject to the same powers and provisions (if any) to upon and subject to which the land given in exchange was held, and the committee of the estate may and shall, in the name and on behalf of the lunatic, execute and do all such conveyances and things for effectuating this present provision as the Lord Chancellor, intrusted as aforesaid, shall order." (4)

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(1) Lord Cranworth, C., in *Stanton* v. *Percival*, 5 H. L. Ca. 272.
(2) 16 & 17 *Vic.* c. 70, *s.* 2.
(3) *Ibid*
(4) See 16 & 17 *Vic.* c. 70, *s.* 139.

Under this section the following case has occurred :—A lunatic joint tenant in tail in possession was a defendant by her committee to a suit in which there was a decree for partition of the joint tenancy, and in which after allotment by the chief clerk of the lands in severalty, the lunatic had been declared a trustee under the Trustee Act, 1850, of certain allotments of the land : upon petition in the lunacy, and in the matter of the Trustee Act, 1850, and 16 & 17 Vic. c. 70, the Lords Justices made an order declaring that, as it appeared to be for the benefit of the lunatic that the partition should be completed, and as the committee consented to convey, and was of opinion that such partition was for the benefit of the lunatic, the partition should be completed, and the committee should convey the estate and interest of the lunatic so as to give effect to such partition. (1) The costs incurred by reason of the lunacy prior to such partition should fall on the allotment to the lunatic. (2)

Long previous to the passing of the Act 16 & 17 Vic. c. 70 it was referred to a Master, on the petition of the committee of the estate of a lunatic, 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 land lying intermixed with the lands of the lunatic, should be carried into effect, with liberty for the Master to state special circumstances ; and on the Master's finding affirmatively, liberty to carry out the exchange was given. (3)

By the Act 16 & 17 Vic. c. 70, it is further provided

Sec. CXXV. "Where a lunatic (4) is seised of or entitled to land in fee simple, and it appears to the Lord Chancellor intrusted as aforesaid (5) to be for his benefit that the same, or any part thereof, should be made available for *building purposes*, and that to that end the same should, in lieu of being demised for long terms of years, be absolutely sold, he may order the same to be sold accordingly to such persons, in such quantities, upon such terms, and in such manner as to him may seem expedient, and the monies arising thereby shall be applied and disposed of in manner directed in section 132 of this Act respecting the surplus monies therein mentioned; and the

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(1) *Re Bloomer*, 6 W. R. 178. See also 13 & 14 *Vic. c.* 60, *ss.* 3, 30; *Singleton v. Hopkins*, 4 W. R. 107.

(2) *Singleton v. Hopkins*, 4 W. R. 107; *Cox v. Cox*, 3 Kay & Jo. 554.

(3) *Re Miller*, Shelf. on Lun. 2d ed. 255. And see *Re Chabot*, Ibid. 272.

(4) 16 & 17 *Vic. c.* 70, *s.* 2. (5) *Ibid.*

committee of the estate may and shall, in the name and on behalf of the lunatic, execute and do all such conveyances and things for effectuating this present provision as the Lord Chancellor intrusted as aforesaid shall order."

Sec. CXXVI. "And where a lunatic (1) has been engaged in a *trade or business*, and it appears to the Lord Chancellor intrusted as aforesaid, (2) to be for the benefit of the lunatic or his estate that the *business premises* should be disposed of, the committee of the estate may, in the name and on behalf of the lunatic under order of the Lord Chancellor intrusted as aforesaid, make such conveyance of the messuages, buildings, or hereditaments, of or belonging to the trade or business, or used in connection therewith, according to the lunatic's estate and interest in the same, to such person, and shall apply the monies arising thereby in such manner, as the Lord Chancellor intrusted as aforesaid shall order."

Formerly no lease of the estate or any part of it was effectual beyond the life of the idiot, lunatic, or person of unsound mind; (3) but now it is provided by the Act 16 & 17 Vic. c. 70:

Sec. CXXIX. "Where a lunatic (4) is seised, or possessed of, or entitled to land in fee or in tail, or to leasehold land for an absolute interest, and it appears to the Lord Chancellor intrusted as aforesaid, (5) to be for his benefit that a *lease or under-lease* should be made thereof *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*, the committee of the estate may, in the name and on behalf of the lunatic under order of the Lord Chancellor intrusted as aforesaid, make such lease of the land or any part thereof, according to the lunatic's estate and interest therein and to the nature of the tenure thereof, for such term or terms of years and subject to such rent and covenants as the Lord Chancellor intrusted as aforesaid shall order." (6)

The heir-at-law of the idiot, lunatic, or person of unsound mind, should not of course appear on a proceeding to obtain the sanction of the Lord Chancellor to a lease determinable on the death of the person *non compos mentis*. (7)

The 129th section of the Act 16 & 17 Vic. c. 70 did not authorize the Lord Chancellor to permit a lease, by the committee of the estate of a tenant in tail, binding the issue or remaindermen. (8) That Act was therefore amended in this

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(1) 16 & 17 *Vic. c.* 70, *s.* 2.
(2) *Ibid.*
(3) *Re White*, 21 L. T. 83.
(4) 16 & 17 *Vic. c.* 70, *s.* 2.
(5) *Ibid.*
(6) See *Re Starkie*, 2 Russ. 197.
(7) *Re Dyneley*, 21 L. T. 82.
(8) *See* 3 & 4 *Wm.* 4, *c.* 74, *s.* 15, *and Re Starkie*, 3 M. & K. 247.

respect by an Act, 18 & 19 Vic. c. 13, which, after reciting such defect, enacted

Sec. I. "Where a lunatic is seised of or entitled to land *in tail*, and it appears to the Lord Chancellor, intrusted as aforesaid, to be for his benefit, the committee of the estate may, in the name and on behalf of the lunatic, under order of the Lord Chancellor intrusted as aforesaid, make any such leases of the land or any part thereof as in the said section of the said Act are mentioned, and every such lease shall be good and effectual in law against the lunatic and his heirs, and all persons claiming the lands entailed by force of any estate tail which shall be vested in such lunatic, and also against all persons, including the Queen's most excellent Majesty, her heirs, and successors, whose estates are to take effect after the determination of or in remainder, or reversion expectant upon such estate tail, according to such estate as is comprised and specified in every such lease, in like manner as the same would have been good and effectual in law if the lunatic at the time of the making of such leases had been lawfully seised of the same lands comprised in such lease of a pure estate in fee simple to his own use, and had been of sound mind, and not the subject of a commission of lunacy, and had himself granted such lease. And every person to whom from time to time the reversion expectant upon the lease shall belong after the death of the lunatic, shall and may have such and the like remedies and advantages to all intents and purposes against the lessee, his executors, administrators, and assigns, as the lunatic or his committee would or might have had against him or them. And the powers given by sections numbered CXXX. and CXXXI. of the said recited Act shall and are to operate as extensively as the power given by the said section CXXIX. of the said Act, as explained and enlarged by this Act." (1)

A lease of part of the estate of a lunatic was refused to one of two joint committees of his estate, but he was permitted to occupy the property until further order at a certain rent. (2)

Further, where a committee of an estate had entered into occupation of lands part of the estate, and in his accounts, which had been allowed, had entered his name as yearly tenant at a rental with which he charged himself, it was held that these circumstances qualified him to vote as an occupying tenant at an election for a member of Parliament. (3)

By the 54th General Order of 7th Nov. 1853, it is declared:

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(1) Where any of the expressions in the Act 18 & 19 Vic. c. 13 are used in the Act 16 & 17 Vic. c. 70, they shall receive the same interpretation in the later Act as by the earlier Act is imposed upon them: 18 & 19 *Vic. c.* 13.

(2) *Re Sir T. Smyth*, Shelf. on Lun. 2d ed. 446, but see *Re Butcher*, Ibid. 479.

(3) *Burton v. Langham*, 5 C. B. 94.

"Where a report certifying and approving of an agreement by an intended lessee to take a lease of certain hereditaments upon the terms and conditions therein specified or referred to is confirmed, and it is ordered that the agreement be adopted and carried into effect, the Masters (if they shall not have already done so) are to settle and approve of a proper lease to be granted to the intended lessee of the same hereditaments, at the rent, for the period, and under and subject to the covenants and conditions agreed on and approved of by the Masters; and the committee of the estate is in the name and on behalf of the lunatic, to execute the lease when so settled and approved of, upon the Masters signing their allowance thereof, and upon the intended lessee executing a counterpart thereof, and the Masters are to certify accordingly."

The practice as to the settling the lease in the Master's office, is as follows. A draft of the lease signed by the lessee is left at the office with a state of facts, and proposal, and evidence in support, if the Master approves of the draft, he reports his approval, and then the report is submitted for confirmation to the Lord Chancellor. If an order of confirmation is made, an office copy of the order should next be left with the lease at the office of the Master, who thereupon signs his name on each skin of the lease, signifies his allowance of the lease on its last skin, signs his name on each skin of the counterpart lease, and files with the registrar a certificate of his allowance. The lease and counterpart should then be executed by the committee of the estate in the name and on behalf of the person *non compos mentis*, and by the other parties. (1)

The costs of the necessary proceedings preliminary to the grant of the lease are payable, in the absence of contract, out of the estate; (2) *à fortiori* when the owner of the estate is bound to grant the lease. (3)

Acquiescence in an invalid lease by a lessor *non compos mentis* and by the committee of his estate, cannot of course make the lease valid. (4)

Where a committee took on himself to let a part of the estate without the sanction of a Master, and it was afterwards found that a more profitable letting could have been obtained, he was

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(1) *Elmer*, 35, 36.
(2) *Ex parte Prickett*, 3 Swanst. 130; *Grissell* v. *Robinson*, 3 Scott, 329; *Webb* v. *Rhodes*, 3 Bingh. N. R. 732.
(3) *Ex parte Barnes*, 17 L. J. Ch. 436.
(4) *Fulton* v. *Creagh*, 9 Ir. Eq. R. 289.

mulcted in the costs of a petition praying that he might be charged with the difference. (1)

With respect to the management and administration of the estate it is further provided by the Act 16 & 17 Vic. c. 70,

Sec. CXIII. "Where a lunatic (2) is entitled to a lease for a life or lives, or for a term of years, either absolute or determinable on a death or otherwise, the committee of his estate may, in his name and on his behalf, under an order of the Lord Chancellor intrusted as aforesaid, (3) by deed *surrender the lease*, and, in the name and on behalf and for the benefit of the lunatic, *accept a new lease of the premises comprised in the lease surrendered* for such number of lives, or for such terms of years, either absolute or determinable as aforesaid, as was mentioned or contained in the lease surrendered at the making thereof, or otherwise as the Lord Chancellor intrusted as aforesaid shall order.

And

Sec. CXIV. "Every sum of money and other consideration paid by a committee or other person, in the nature of, or as a fine, premium, or income upon renewal, and all reasonable charges incident thereto, may be paid out of the lunatic's (4) estate, or may, with interest, be a charge upon the leasehold premises, as the Lord Chancellor intrusted as aforesaid (5) shall order. (6)

And

Sec. CXV. "Every lease renewed shall operate and be to the same uses, and be liable to the same trusts, charges, incumbrances, dispositions, devises, and conditions, as the lease surrendered was subject to, or would have been subject to if the surrender had not been made."

Where it was for the benefit of a lunatic tenant for life of land, and of his next of kin, that a mine in the land should be worked, an agreement by the committee of the lunatic's estate, that an adjoining landowner should work it, was sanctioned. (7)

The language of Lord Loughborough, C., in *Oxenden* v. *Lord Compton* (8) tends to the inference that he would have permitted not only the working of a mine in the lands of an idiot, lunatic,

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(1) *Re Wilkins*, 6 Jur. 308.
(2) 16 & 17 *Vic. c.* 70, *s.* 2.
(3) *Ibid.*
(4) *Ibid.*
(5) *Ibid.*
(6) See *Ex parte Degge*, 4 Bro. C. C. 235, note *a*.
(7) *Ex parte Tabbert*, 6 Ves. 428.
(8) *Oxenden* v. *Lord Compton*, 2 Ves. 73.

or person of unsound mind by the committee of his estate, but his sinking it lower and erecting new machinery for getting the produce, provided such proceedings appeared beneficial to the estate, although he admitted that the sinking lower, and erecting new machinery, would be a speculation of profit and loss.

The committee of the estate may now certainly, by order of the Lord Chancellor, lease a mine or quarry, for the Act 16 & 17 Vic. c. 70, declares

Sec. CXXX. "Where a lunatic (1) is seised or possessed of or entitled to land in fee or in tail, and it appears to the Lord Chancellor intrusted as aforesaid (2) to be for his benefit, that *any mine or quarry already opened* in upon or under the land should be worked, the committee of the estate may, in the name and on behalf of the lunatic, under order of the Lord Chancellor intrusted as aforesaid, make such *lease* of the mines, quarries, minerals, stones, and substances in upon or under the land, either with or without any land convenient to be held therewith, and with or without the surface, to such person, for such term or terms of years, and subject to such rents, royalties, reservations, covenants, and agreements, and in such manner and form as the Lord Chancellor intrusted as aforesaid shall order." (3)

And

Sec. CXXXI. "Where a lunatic(4) is seised or possessed of or entitled to land in fee or in tail, and it appears to the Lord Chancellor intrusted as aforesaid,(5) either to be necessary for the maintenance of the lunatic and the members of his immediate family for whom provision is directed to be made, or to be expedient in a due course of management, that *any mine or quarry*, being in, upon, or under the land, *should be opened and worked*, the committee of the estate may, in the name and on behalf of the lunatic under order of the Lord Chancellor intrusted as aforesaid, make such *lease* of the mines, quarries, minerals, stones, and substances in, upon, or under the land, although not already opened or worked, and either with or without any land convenient to be held therewith, and with or without the surface, to such person, for such term or terms of years, and subject to such rents, royalties, reservations, covenants, and agreements, and in such manner and form as the Lord Chancellor intrusted as aforesaid shall order."(6)

And

Sec. CXXXII. "And where the Lord Chancellor intrusted as aforesaid makes any such order as in and by the last preceding section is

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(1) 16 & 17 *Vic. c.* 70, *s.* 2.
(2) *Ibid.*
(3) See *Re Percival*, Shelf. on Lun. 2d ed. 443; 18 & 19 *Vic. c.* 13, *s.* 1.
(4) 16 & 17 *Vic. c.* 70, *s.* 2.
(5) *Ibid.*
(6) 18 & 19 *Vic. c.* 13, *s.* 1.

authorized to be made, by reason of its appearing to him to be necessary for the maintenance of the lunatic and such members of his immediate family as aforesaid that the mine or quarry should be opened and worked, then the monies arising thereby shall be applied in or towards such maintenance as aforesaid in such manner as the Lord Chancellor intrusted as aforesaid shall direct, but in such case the surplus thereof and in every other case all the monies so arising shall be carried to a separate account, and may be applied for or towards all or any of the purposes for which monies are hereinbefore authorized to be raised by sale of the lunatic's estate, or in such other manner, for the lunatic's benefit, as the Lord Chancellor intrusted as aforesaid shall direct; and upon the lunatic's death the monies remaining on the credit of such separate account shall, as between the representatives of his real and of his personal estate, be considered as real estate."(1)

In many proceedings, other than proceedings under 16 & 17 Vic. c. 70, the committee of an estate has a statutory power to act in lieu of the owner of the estate. See 17 Geo. 3, c. 53; 41 Geo. 3, c. 109; 3 & 4 Geo. 4, c. 126; 7 & 8 Geo. 4, c. 24; 1 & 2 Vic. c. 23, s. 12; 42 Geo. 3, c. 116; 54 Geo. 3, c. 70; 2 & 3 Wm. 4, c. 80; 3 & 4 Wm. 4, c. 22; 6 & 7 Wm. 4, c. 71 and c. 115; 1 & 2 Vic. c. 106; 2 & 3 Vic. c. 49; 4 & 5 Vic. c. 35; 5 & 6 Vic. c. 26, and c. 27, and c. 108; 7 & 8 Vic. c. 110; 8 & 9 Vic. c. 16, and c. 56, and c. 118, and c. 126; 9 & 10 Vic. c. 101; 10 & 11 Vic. c. 11 and c. 32; 11 & 12 Vic. c. 45 and c. 119; 12 & 13 Vic. c. 23, c. 59, c. 108; 13 & 14 Vic. c. 31, c. 35; 14 & 15 Vic. c. 38; 17 & 18 Vic. c. 104; 19 & 20 Vic. c. 120.(2)

Under 11 Geo. 4 & 1 Wm. 4, c. 36, s. 5, the committee of

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(1) See *Re Percival*, Shelf. on Lun. 2d ed. 254; and *Re Wharton*, 5 De G. M. & G. 33.

(2) For the purpose of procuring the direction of a judge for leave to make or consent to an application on behalf of lunatics under 19 & 20 Vic. c. 120, and the 10th G. O., 15th Nov., 1856, a summons is to be taken out after the petition is presented in the ordinary form, intituled in the same manner as the petition, by the committee of the lunatic, that he may be at liberty on behalf of the lunatic to make the application [or consent to the application] to the Court proposed to be made by the petition presented to the Lord Chancellor (or Master of the Rolls) on the day of . Upon this application the committee should make an affidavit that he believes it to be proper and for the benefit of the lunatic that the application proposed to be made should be made (or consented to) on behalf of the said lunatic, and such other evidence, if any should be adduced, as the circumstances of the case may require, to show the propriety of the application so far as the lunatic is concerned, and the petition should be produced: 22 *G. O., 8th Aug.*, 1857.

the *non compos mentis* heir of a person out of the realm or absconding, against whom a decree has, under that Act, been made, may be served with a copy of the decree in lieu of the heir.

In deeds of settlement under 7 & 8 Vic. c. 110 provisions are inserted that a shareholder idiot, lunatic, or of unsound mind, may vote by his committee, and that the committee of such shareholder may, his name having been entered on the register of shareholders, receive as committee any dividends or payments.

It has been said that the committee of an estate may elect between the legal rights of the owner of the estate and gifts to him.(1)

As to that part of the estate which consists of money, it is the duty of the committee of the estate to act as a provident owner would do, and not to leave large sums unemployed ;(2) if he acts contrary to this rule he will be ordered to pay out of his own pocket interest on the uninvested cash.(3) He should not, however, without the sanction of the Lord Chancellor, invest on any security but Consols,(4) and it seems that leave to invest on mortgage will not be given unless the mortgage be upon lands in which the idiot, lunatic, or person of unsound mind has himself an interest, or unless it be an accommodation to his family and a very sufficient security :(5) the mortgage must be the first incumbrance.(6) In one case, liberty was given to lend upon a mortgage, the Master finding that the security was sufficient, that the monies proposed to be advanced were monies payable on bills and other securities which had become due, and that Consols were high in the market.(7) Lord Eldon, C., is reported to have said, "The general rule is not to lay out the lunatic's money on anything 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 interest."(8)

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(1) *Re Hewson*, 22 L. J. 256.
(2) Sir J. Leach, V.C., in *Browne* v. *Groombridge*, 4 Mad. 501.
(3) *Ex parte Catton*, 1 Ves. 156; *Ex parte Chumley*, Ibid.; *Ex parte Hall*, Jac. 160 ; and see 15, 16, and 17 *G. O., 7th Nov.*, 1853.
(4) *Ex parte Cathorpe*, 1 Cox, 182 ; *Norbury* v. *Norbury*, 4 Mad. 191.
(5) *Ex parte Johnson*, 1 Molloy, 128; *Ex parte Ellice*, Jac. 234.
(6) *Ex parte Johnson*, 1 Molloy, 128.
(7) *Ex parte Ellice*, Shelf. on Lun. 2d ed. 273.
(8) *Ex parte Ellice*, Jac. 234.

If such a proceeding is beneficial to an idiot, lunatic, or person of unsound mind, the investment of his money in the purchase of a Government annuity for his life will be sanctioned.(1)

All loans of money under the Act 4 & 5 Wm. 4, c. 29, for facilitating the loan of money upon landed securities in Ireland, in which any person of unsound mind is or may be interested, must be by the direction and under the authority of the Court of Chancery or Exchequer in England, obtained in any cause upon petition in a summary way; or (2) in the case of an idiot, lunatic, or person of unsound mind, found so by inquisition, the sanction of the Lord Chancellor, sitting in lunacy, is also necessary.

As to any furniture or effects (part of the estate) retained by him, the committee must not disregard the 40th General Order of 7th Nov. 1853, which declares

"Where it is ordered that the committee of the estate or the person be at liberty to retain any furniture or effects of the lunatic, he is to sign an inventory thereof and an undertaking to deliver up the same when required so to do, and such inventory and undertaking are to be deposited in the office of the Masters."

The committee of an estate may and should, before taking any extraordinary step in the management of the estate, obtain the special permission of the Lord Chancellor, *e.g.*, before commencing or defending any action or suit (3) (but it seems the absence of such special permission is no bar to his proceeding in a court of law or in the Ecclesiastical Court); (4) before abating the rent of a tenant of the estate(5) (the committee and not the tenant is the proper person to petition for the abatement); (6) before felling timber on the estate; (7) before executing an agreement

(1) *Ex parte Stonard*, 18 Ves. 285; *Re Baldwin*, *Re Barrass*, and *Re Chabot*, Shelf. on Lun. 2d ed. 272. And see *In re Dodsworth's Trust*, 10 Hare, 16; *Davies* v. *Davies*, 2 De G. M. & G. 57; and *Re Fisher*, 2 H. & Tw. 449.

(2) *Ex parte French*, 7 Sim. 511; *Ex parte Lord William Pawlett*, 1 Phill. 570.

(3) *Re Walker*, 1 Coop. t. Cott. 226; *Re Sir G. O. Turner*, *Re Reynolds*, *Re Webb*, *Re Sir T. Smyth*, *Re Baker*, *Re Frank*, *Re Smith*, *Re Earl of Portsmouth*, *Re Buckle*, *Re Lewis*, Shelf. on Lun. 2d ed. 512; *Re Notley*, 3 Jur. 719.

(4) *Parnell* v. *Parnell*, 2 Hag. C. R. 158, 170, 171.

(5) *Re Potter*, Shelf. on Lun. 2d ed. 251; *Re Fitch*, 1 R. & M. 354.

(6) *Ex parte Town*, 1 T. & R. 137; *Re Fitch*, 1 R. & M. 355, n.

(7) *Ex parte Bromfield*, 1 Ves. 461; *Re Brown*, 1 M. & Gor. 201.

enabling a stranger to work a coal mine under land, part of the estate;(1) before compromising a debt to the estate, (2) before granting a lease (3); before executing extraordinary repairs; (4) before a purchase of lands,(5) or a sale of lands,(6) or an exchange of lands; (7) or a mortgage; (8) before executing a contract for the redemption of land-tax charged on land part of the estate;(9) before taking a renewal of a lease;(10) before applying for an Act of Parliament,(11) or consenting to an Act of Parliament;(12) before expending large sums on improvements;(13) before exercising any statutory power. (14)

The committee should keep the Lord Chancellor informed of all that materially relates to the estate, and not allow it to be administered without taking care that the Lord Chancellor is fully apprised of what are the charges affecting it.(15) He should particularly pay the interest of mortgages on the lands out of the rents thereof,(16) and on behalf of the person *non compos mentis* tender all services and perform all conditions necessary to the preservation of the interest of such person in his lands.(17) The committees of the estate of a lunatic, also the remaindermen in tail of a certain mansion of which the lunatic, committing no waste and keep-

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(1) *Ex parte Tabbert*, 6 Ves. 428.
(2) *Re Bird*, Shelf. on Lun. 2d ed. 278; *Ex parte Parker*, 2 M. D. & De G. 511.
(3) *Re Percival*, Shelf. on Lun. 2d ed. 254.
(4) *Re Wilkins*, 6 Jur. 308. See also *Blunt* v. *Clitherow*, 6 Ves. 799; *Att.-Gen.* v. *Vigor*, 11 Ves. 563; *Tempest* v. *Ord.* 2 Meriv. 55.
(5) *Re Drax*, Shelf. on Lun. 2d ed. 254; *Re Child*, *Re Harris*, Shelf. on Lun. 2d ed. 276.
(6) *Re Duchess of Norfolk*, Shelf. on Lun. 2d ed. 260.
(7) *Re Miller*, Shelf. on Lun. 2d ed. 255.
(8) *Foster* v. *Marchant*, 1 Vern. 262; *Re Flitcroft*, *Re Smyth*, Shelf. on Lun. 2d ed. 260.
(9) *Re Duchess of Norfolk*, Shelf. on Lun. 2d ed. 260.
(10) *Ex parte Jermyn*, 3 Swanst. 131; *Re Earl of Portsmouth*, *Re Birch*, Shelf. on Lun. 2d ed. 452.
(11) *Re Russ*, *Re Craven*, *Re Warrimer*, Shelf. on Lun. 2d ed. 480.
(12) *Re Brown*, 1 M. & Gor. 206.
(13) Prev. case.
(14) *Re Wade*, 1 H. & Tw. 202.
(15) *Re Skingley*, 3 M. & Gor. 231.
(16) *Brathwaite* v. *Watts*, 2 Cr. & Jerv. 318. And see 16 & 17 *Vic. c.* 70, *s.* 118.
(17) *Co. Litt.* 206, *b*; *Vin. Abr. Condition*, *K. a. pl.* 10; *Re Grimston*, 2 Russ. 567.

ing it in repair, was tenant for life in possession, petitioned during the lunacy for a declaration that the mansion, accidentally burnt down during the tenancy of the lunatic, might be rebuilt at the expense of his estate, also for an inquiry what would be the expense of rebuilding the same, and out of what fund the same should be paid: the application was opposed on various grounds, but Lord Truro, C., directed a reference to the Masters in Lunacy to ascertain what repairs were necessary, and out of what fund the sum required for those repairs should come, or in what way it would be most beneficial for the lunatic to raise it.(1) If the estate includes a large landed property, the committee may employ an agent to superintend the agricultural details of the management (2) and should a tenant threaten waste the committee may on petition obtain an injunction against him.(3) The condition of the bond executed by the committee of the estate shortly states his duties; it provides that

"The bond shall be void if the committee shall yearly or oftener, if he be thereunto required, make a just and true account of the rents, issues, and profits of the real estate of the person *non compos mentis*, and also of his personal estate and the profits thereof as then are or thereafter should come to his hands, custody, or possession, or 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 made or thereafter to be made touching or concerning the person *non compos mentis* and his estate, and touching all such monies as should yearly remain due upon the foot of the account duly taken by one of the Masters in Lunacy and filed in the office for that purpose appointed, and shall be careful to see the houses, buildings, and structures of the person *non compos mentis* to be well and sufficiently repaired and so kept and maintained during the continuance of the grant, and shall carefully preserve and keep all the deeds, evidences, and writings touching the lands and estates of the person *non compos mentis* as then were or thereafter should come to his hands, custody, or possession, and shall in all things demean himself as a careful and faithful grantee or committee of the estate."(4)

It seems that when monies become payable or stock becomes transferable to an idiot, lunatic, or person of unsound mind, found

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(1) *Re Skingley*, 3 M. & Gor. 232. And see *Powys* v. *Blagrave*, Kay, 495.

(2) *Re Brown*, 1 M. & Gor. 201.

(3) *Re Frank*, Shelf. on Lun. 2d ed. 449; *Re Creagh*, 1 Ball & B. 108; *Re Chinnery*, 1 Jo. & Lat. 90.

(4) See form of bond, *Elmer*, 107, 108.

so by inquisition, an order is generally obtained for the payment of such monies or transfer of such stock into the name of the Accountant-General of the Court of Chancery in trust in the lunacy.

An inquisition finding a person to be idiot, lunatic, or of unsound mind does not affect the legal right of his creditors.(1)

The 13th General Order, 7th Nov., 1853, provides that—

"The Masters are to be at liberty, when it shall seem to them expedient, to inquire what debts, if any, not open to dispute or question, are due from the lunatic, and to whom; and whether the same, or any, and what parts or part thereof, ought to be paid, and out of what funds or property; and to entertain proposals for the adjustment and settlement thereof; and for the compromise and settlement of any disputed debt, claim, or demand upon or against the lunatic, or his estate, and to report on such matters respectively.

Creditors are not bound to come in before the Master in Lunacy;(2) if they come in their debts are proved *vivâ voce* or by affidavit; and if the existence of a particular debt is doubted, it should be made the subject of consideration at law or in equity, according to its nature;(3) extra costs occasioned by an error of the committee of an estate were allowed to a creditor proving his debt against the estate.(4) Payment out of the estate of a female lunatic has been ordered in satisfaction of obligations entered into by her, prior to her mental disorder, morally though not legally binding her.(5)

Former reports of the debts having been lost, the Master in Lunacy was directed to receive and consider any secondary evidence of the debts.(6) Money for discharging debts over £10 must be paid to the committee of the estate, not to the solicitor prosecuting the inquiry.(7) If the committee of an estate has a claim against it, and the Master to whom the lunacy has been

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(1) *Re Ball*, 2 Molloy, 145.
(2) Sir J. L. Knight Bruce, V.C., in *Rock* v. *Cooke*, 1 De G. & Sm. 680.
(3) *Ex parte McDougall*, 12 Ves. 385.
(4) *Re Buckle*, 1 R. & M. 361.
(5) *Re Hewson*, 21 L. J. Ch. 825.
(6) *Re Iredale*, 1 H. & Tw. 255.
(7) *Ibid.*

referred declines to entertain such claim, he should bring it before the Lord Chancellor by petition.(1)

A committee of an estate is bound to claim on behalf of the estate the same benefit of the Statute of Limitations against a debt from the estate to himself as might have been claimed if the creditor had been another person.(2)

On a pressing emergency committees of the estate of a lunatic were permitted to pay solicitors claiming a lien in respect of costs on the lunatic's title deeds without prejudice to the subsequent investigation and taxation of the costs.(3)

On the subject of the debts of a person duly found idiot, lunatic, or of unsound mind, *as affecting the allowance for his maintenance*, the rule is well understood that the Lord Chancellor will not, in favour of creditors, place a lunatic in a state of want.(4) Lord Eldon, C., refused a petition by the wife and committee of the person of a lunatic for payment of his debts (by specialty and simple contract) out of a fund in court, remarking, "I have no authority to pay the debts of the lunatic unless I see that it is for the accommodation of his estate. I cannot pay his debts and leave him destitute of any provision. If any one will undertake to maintain him the undertaking must be very precise, to pay for the maintenance of the lunatic, while he remains in that condition, a specific sum of money. There is 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 jail,(5) where I can maintain him, and they may sequester his living. These orders are made for the accommodation not of the creditors but of the lunatic. Show me that it is for his accommodation and I will pay the debts, but I must have it clearly made out that he has a sufficient maintenance;"(6) but, said Lord Eldon, "nothing is of more consequence than to

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(1) *Re Skingley*, 3 M. & Gor. 221.
(2) Sir A. Hart, C., in *Congreve* v. *Power*, 1 Molloy, 122.
(3) *Re Davies*, 7 Jur. 589.
(4) Lord Eldon, C., in *Ex parte Dikes*, 8 Ves. 81; *Ex parte Hastings*, 14 Ves. 182; *Ex parte Hall*, Jac. 161; *Re Railton*, 1 Jur. 574; *Re Ball*, 2 Molloy, 145; *Re Adey*, 1 Coop. *t.* Cott. 225; *Re Franks*, 16 Law T. 529.
(5) *Ex parte Hall*, Jac. 160. But see 1 & 2 *Vic. c.* 110.
(6) *Ex parte Hastings*, 14 Ves. 182.

protect the person of the lunatic by providing for the payment of his creditors as far as it can be done, it being in the power of any of them to arrest him."(1) The Lord Chancellor has indeed no authority to displace the right of such creditors unless they attribute his jurisdiction by intervening in the matter of the lunacy.(2) When a *solicitor* had acted in the prosecution of a commission of lunacy Sir A. Hart, L.C., restrained him from legal proceedings on behalf of a creditor of the lunatic, because such proceedings appeared adverse to the comfort of the lunatic and to the object of the commission.(3)

The Sovereign has to provide out of the profits of the estate not only for the competent maintenance of the lunatic or person of unsound mind, but also for the competent maintenance of his family.(4) The jurisdiction to increase the allowance for the maintenance of an idiot, lunatic, or person of unsound mind in order to provide for the competent maintenance of his family has been acknowledged certainly ever since the time of Lord Thurlow;(5) but it will not be exercised until after the appointment of a committee of his person.(6) The allowance has been increased in order to maintain a son of the person *non compos mentis*,(7) also to advance such son in the world;(8) also, on the marriage of a lunatic's daughter, to provide her with an outfit and a stated income for her separate use (9) (in this case the Lord Chancellor required a proper settlement of her fortune;)(10) also to maintain two of the next of kin of a lunatic, who would under a settlement succeed to the lunatic's property;(11) also to maintain

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(1) Lord Eldon, C., in *Ex parte Hall*, Jac. 161; but see 1 & 2 *Vic.* c. 110, *s.* 102.

(2) Sir A. Hart, C., in *Re Ball*, 2 Moll. 145.

(3) *Re Ball*, 2 Moll. 145.

(4) 17 *Edw.* 2, St. 1, *c.* 10.

(5) *Foster* v. *Marchant*, 1 Vern. 263; *Ex parte Whitbread*, 2 Meriv. 100; *Re Drummond*, 1 M. & Cr. 631; *Re Blair*, Ibid. 303; *Re Creagh*, 1 Dru. & W. 323; *Re Lanesborough*, 7 Ir. Eq. R. 606; *Ex parte Tottenham*, 11 Ir. Eq. 414; *Edwards* v. *Abrey*, 2 Coo. t. Cott. 185; *Re Alderson*, *Re Jessop*, *Re Freak*, *Re Windsor*, *Re Le Heup*, Shelf. on Lun. 2d ed. 203; *Fulton* v. *Creagh*, 9 Ir. Eq. R. 293; *Re Cotton*, 2 Meriv. 100, n.

(6) *Re B*——, 1 Ir. Eq. R. 181.

(7) *Foster* v. *Marchant*, 1 Vern. 263.

(8) *Re Watts*, Shelf. on Lun. 2d ed. 203.

(9) *Re Drummond*, 1 M. & Cr. 631.

(10) *Ibid.* 631, n.; *Re Fowler*, 6 Jur. 431.

(11) *Re Blair*, M. & Cr. 300.

an only brother of a lunatic and his family ;(1) also to maintain a lunatic's father and brothers ;(2) also to maintain an illegitimate brother of a lunatic ;(3) also to provide a pension to an old servant of a lunatic ;(4) also to add to the income of the husband of a lunatic ;(5) also to keep up a family residence of a lunatic.(6) An allowance out of the estate of a lunatic to assist in educating children entitled in remainder after the lunatic, and whose mother (the petitioner) was entitled to a jointure, which would under a covenant be chargeable on the estate, was refused.(7) The principle, upon which the jurisdiction is exercised, is, that the Lord Chancellor will not refuse to do for the benefit of the person *non compos mentis*, that which it is probable, such person if sane would himself have done.(8) The modern inclination is rather to narrow the exercise of the jurisdiction than to extend it,(9) *e. g.* :—

A person *non compos mentis* 40 years old and a bachelor, had a net income of £2760, of which £1000 was a rental settled on him for life, with remainder failing his issue to his next brother for life, with remainder to the brother's issue. He had living a father, a mother, two brothers, and a sister. The brothers were married and had increasing families, with incomes of £230 or thereabouts. The father had from age lately resigned a lucrative appointment, and was in comparatively reduced circumstances. Lord Lyndhurst, C., allowed for maintenance of the person *non compos mentis* £1270 yearly, of which £350 was for the father, £350 for the next brother, and £100 for the youngest brother. On the death of the father his £350 was apportioned among the brothers and sister, but Lord Cottenham, C., disapproved of this latter apportionment, and observed : "This case is

(1) *Re Lineham*, 2 Jo. & Lat. 29.
(2) *Re Clarke*, 2 Phill. 283.
(3) *Bradshaw* v. *Bradshaw*, 1 Jac. & W. 647. See also *Ex parte Haycock*, 5 Russ. 154.
(4) *Re Carysfort*, 1 Cr. & Ph. 76.
(5) *Re Cay*, Shelf. on Lun. 2d ed. 205.
(6) *Re Starkie*, Shelf. on Lun. 2d ed. 203.
(7) *Re Earl of Lanesborough*, 7 Ir. Eq. R. 606.
(8) *Ex parte Whitbread*, 2 Meriv. 103 ; *Re Carysfort*, 1 Cr. & Ph. 76 ; *Bradshaw* v. *Bradshaw*, 1 J. & W. 647 ; *Re Drummond*, 1 M. & Cr. 631 ; *Re Thomas*, 2 Phill. 169.
(9) Lord Cottenham, C., in *Re Blair*, 1 M. & Cr. 603 ; *Re Earl of Lanesborough*, 7 Ir. Eq. R. 606.

not to be drawn into a precedent, for I think this liberality out of the lunatic's estate to *collateral* relations, whom he is under no obligation to support, has been carried much too far. I remember Lord Eldon being very reluctant to allow it to any extent. The practice has been greatly extended since his time. I wish it to be understood that on another occasion I shall not carry it so far as it has been carried in this instance."(1)

The share of the family in the increased allowance should appear in the order,(2) and the increase of the allowance may be asked for by the party to be benefited thereby,(3) or by the committee of the estate.(4)

The Lord Chancellor will also advance small sums out of the capital of the estate to apprentice near relations of the person *non compos mentis*,(5) but the advance of £2000 out of the estate (yielding only £1600 yearly) of a *non compos mentis* husband, the father of seven children, to enable one of such children to buy a West India property, was peremptorily refused by Lord Cottenham, C.(6) Lord Lyndhurst, C., had, with hesitation, directed in the case last quoted a reference as to the advance of £2000 for setting up in business another of the children, intimating to the petitioner that he must not be very sanguine as to the result of the reference.(7) Where a lunatic's next of kin having only an allowance out of the lunatic's estate had assumed to be owner of the estate and had mortgaged it, Sir E. Sugden, L.C., refused with costs the petition of the mortgagee, praying either that the lunatic's maintenance allowance might be increased for payment of premiums on policies effected by the next of kin for the security of the mortgagee and of the interest on the mortgage debt, or that the premiums and interest might be paid out of the allowance to the mortgagor; and the Lord Chancellor observed: "Whether upon any occasion I might think

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(1) *Re Clarke*, 2 Phill. 283.
(2) *Re Carysfort*, 1 Cr. & Ph. 76; *Ex parte Whitbread*, 2 Meriv. 99 & 100, n.; *Re Freak*, and *Re Cay*, Shelf. on Lun. 2d ed. 205.
(3) *Ex parte Whitbread*, 2 Meriv. 99; *Re Drummond*, 1 M. & Cr. 631.
(4) *Re Blair*, 1 M. & Cr. 303; *Re Haycock*, 5 Russ. 154.
(5) Lord Cottenham, C., *Re Thomas*, 2 Phill. 170.
(6) *Ibid.*
(7) *Ibid.*

it right to take this allowance from him (the next of kin) if he was to abuse the confidence which the Court has in him is a different question, but I cannot give it to his creditors; it is given to him in order to enable him to live in a respectable manner."(1)

In regard to the payment by the committee of an estate of the maintenance and of any costs, the 39th General Order, 7th November, 1853, provides—

"Where it is ordered that the committee of the estate do pay any sums of money for maintenance, he is to pay the same out of income, and where it is ordered that he do pay any costs he is to pay the same, when taxed, out of any monies coming to his hands, after providing for the maintenance."

The Lord Chancellor looks with jealousy on a payment by the committee of an estate to himself in another character.(2)

The committee of an estate is the proper person to conduct a suit on behalf of the owner of such estate; for this reason in the suit of a wife by her next friend, the Court of Chancery stayed all proceedings until the result of a pending inquiry into her state of mind.(3) If the committee institute any proceedings in the Court of Chancery his name should appear as a party thereto.(4)

The committee of an estate may sue in Scotland for personalty (part of the estate) in that country,(5) he may also take proceedings to stultify any act of the idiot, lunatic ,or person of unsound mind,(6) he may therefore institute a suit to declare the nullity of a marriage of the idiot, lunatic, or person of unsound mind; (7)

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(1) *Re Lineham*, 1 Jo. & Lat. 29.

(2) *Ex parte Ludlow*, 2 Atk. 407; *Ex parte Bromfield*, 1 Ves. 462; *Leitrim* v. *Enery*, 6 Ir. Eq. R. 369; and Lord Cottenham, C., in *Re Badcock*, 4 M. & Cr. 440.

(3) *Hartley* v. *Gilbert*, 13 Sim. 596; see *antè*, p. 30.

(4) *Fuller* v. *Lane*, 1 Ch. Ca. 19; *Woolfryes* v. *Woolfryes*, 1 Dan. Ch. Pr. 86; *Bishop of London* v. *Nicholls*, Bunb. 141. As to proceedings in suit of or against committee, see *antè*, p. 43.

(5) *Re Morison*, cited 1 Kay & Jo. 283.

(6) *Ridler* v. *Ridler*, 1 Eq. Ca. Abr. 279.

(7) *Portsmouth* v. *Portsmouth*, 3 Add. 63. A lunatic or person of unsound mind found so by inquisition, cannot, even in a lucid interval, marry before *supersedeas*: 15 *Geo.* 2, *c.* 30; *Browning* v. *Rean*, 2 Phill. 90; *Re Turing*, 1 V. & B. 140.

or to set aside a deed executed by him during his mental disorder.(1) The committee of an estate may also continue a suit for the benefit of the estate,(2) and on behalf of the person *non compos mentis* he may defend a suit.(3)

Defendants in a successful suit to establish the right of a person found lunatic by inquisition, who by their answer merely submitted their rights to the judgment of the Court, were held entitled to their costs out of his estate.(4)

The committee of an estate has instituted a suit for the divorce of a lunatic from his wife, on the ground of her adultery.(5)

A committee of an estate has a lien for his costs on the estate for property recovered by him in a suit, and any solicitor employed by him in the suit, as standing in his place, has also a lien upon it.(6)

Since the Chancellorship of Lord Talbot the Lord Chancellor has, it seems, been in the habit of himself presenting to a void advowson when the presentation has been in the gift of an idiot, lunatic, or person of unsound mind found so by inquisition; usually giving it to a member of the patron's family.(7) It islaid down by Comyn in his *Digest*, tit. "*Idiot*,"(*c*) that "as to what is not in itself profitable, as a presentation, the Crown takes." When a Master in Lunacy found that an advowson was included in property of which the lunatic (a Roman Catholic prior to his lunacy) was tenant in tail in possession, that if the advowson became void it was apprehended that the presentation would devolve upon the University of Oxford, and that therefore it would be for the benefit of the lunatic to sell his right to the next presentation, Lord Truro, C., declined to confirm the report on grounds which it is unnecessary here to state; but in the course of his judgment he observed: "I cannot moreover see that the

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(1) *Colman* v. *Croker*, 1 Ves. 160; *Kirkwall* v. *Flight*, 3 W. R. 529.
(2) *Brown* v. *Clark*, 3 Wood, 378, n.; 1 *Fowl. Exch.* 422.
(3) *Antè*, p. 39, 40.
(4) *Re Turnley*, 12 Ir. Eq. R. 684.
(5) *Parnell* v. *Parnell*, 2 Hagg. C. R. 169; s. c. 2 Phillim. 160; *Fust* v. *Bowerman*, cited in 2 Hagg. C. R. 171.
(6) *Barnsley* v. *Powell*, 1 Ambl. 102, 103.
(7) 1 *Wood*, Lect. 409, Shelf. on Lun. 2d. ed. 21.

effect of the lunatic's having been of the Roman Catholic religion before he became lunatic would, as supposed, give the University a right to present, in case of a vacancy in the lunatic's life. It may be that the lunatic is merely under an incapacity, even if he is to be considered as now of the Roman Catholic faith, and that the power of presenting would be in the Crown, but I am not clear that the lunatic can now be considered as of the Roman Catholic faith."(1)

Lord Eldon, C., on behalf of the Crown, exercised the right of appointing a schoolmaster of a charity, when the right had devolved on a lunatic, found so by inquisition.(2)

If there is a stewardship of a manor, and the lord of the manor has been found by inquisition idiot, lunatic, or of unsound mind, the steward should not act without the sanction of the Lord Chancellor,(3) and if the stewardship of the manor of such a lord be vacant the Lord Chancellor will appoint a person to the vacant office, and without, it seems, requiring security from him.(4) If the stewardship is filled the Lord Chancellor will not remove the steward, and permit the committee of the estate to appoint a new steward.(5)

For the better management of the *copyhold* property of idiots, lunatics, and persons of unsound mind, found so by inquisition, the legislature has declared by the Act 16 & 17 Vic. c. 70,

Sec. CVIII. "Where a lunatic (6) is entitled to be admitted tenant of copyhold land, the committee of his estate may appear at one of the three next courts, holden for the manor (for the holding whereof the usual notice shall be given), and there offer himself to be admitted tenant in the name and on behalf of the lunatic, and in default of his appearance or of his acceptance of admittance, the lord or his steward may after three courts duly holden, and proclamations thereat regularly made at any subsequent court, appoint any fit person to be attorney for the lunatic for that purpose only, and by that attorney admit the lunatic tenant of the land, according to such estate as the lunatic shall be legally entitled to therein."

And

Sec. CIX. "The lord or his steward may upon the admittance impose

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(1) *Re Vavasour*, 3 M. & Gor. 277.
(2) *Attorney-General* v. *Dixie*, 13 Ves. 519.
(3) *Blewitt's case*, Ley, 47.
(4) *Re Smyth*, Shelf. on Lun. 2d ed. 264.
(5) *Re Jodrell*, Ibid.
(6) 16 & 17 *Vic. c.* 70, *s.* 2.

such fine as might have been legally imposed, if the lunatic (1) had been of sound mind, which fine may be demanded by the lord's bailiff or agent, by a note in writing signed by the lord or his steward, to be left with the committee of the estate, or with the tenant or occupier of the land."

And

Sec. CX. "If the fine be not paid or tendered to the lord or his steward within three months after demand, then the lord may enter upon and hold the land, and receive the rents and profits thereof (but without liberty to fell any timber standing thereon), until he be thereby fully paid the fine with his reasonable costs and charges of raising the same, and of obtaining the possession of the land, although the lunatic (2) die before the fine, and costs and charges have been raised, of which rents and profits received by the lord, his steward, bailiff, or servant, the lord shall yearly, on demand by the person entitled to the surplus thereof, after payment of the fine, and costs, and charges, or by the person then entitled to the land, render a just and true account, and shall pay the same surplus, if any, to the person entitled thereto, and as soon as the fine, and costs, and charges, have been fully paid, or if after the lord's entry, the fine, and costs, and charges, be lawfully tendered to him, then the lunatic by the committee of his estate or other the person entitled, may enter upon and hold the land according to his estate or interest therein, the lord shall deliver possession thereof accordingly, and if he refuse so to do, he shall make satisfaction to the person kept out of possession for all the damages which he shall thereby sustain, and all his costs and charges of recovering possession."

Further,

Sec. CXI. "If the committee pay the fine, and costs, and charges, then he, his executors and administrators may enter upon and hold the land and receive the rents and profits thereof to his and their own use, until he and they be thereby fully paid the amount disbursed upon that account, although the lunatic (3) die before his and their reimbursement."

In actual practice the committee of an estate rarely, if ever, pays out of his own pocket a fine due on admission to copyholds; he pays such fine out of the lunatic's personalty, under the direction of the Lord Chancellor.

By the Act 16 & 17 Vic. c. 70, it is also provided

Sec. CXII. "If the fine imposed be not warranted by the custom of the manor, or be unlawful, the lunatic (4) may controvert its legality as if this Act had not been made, and no lunatic shall forfeit any land for his neglect or refusal to appear at any court, or to be admitted thereto, or to pay the fine imposed upon his admittance."

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(1) 16 & 17 *Vic. c. 70, s. 2.*
(2) *Ibid.*
(3) *Ibid.*
(4) *Ibid.*

To obviate difficulties which formerly existed in the *dissolution of a partnership, when one of the partners was found by inquisition to be lunatic, or of unsound mind,* and which sometimes necessitated a private Act of Parliament, (1) the Act 16 & 17 Vic. c. 70, declares

Sec. CXXIII. "Where a person, *being a member of a co-partnership firm becomes lunatic,*(2) the Lord Chancellor, intrusted as aforesaid,(3) may by order made on the application of the partner or partners of the lunatic, or of such other person or persons as the Lord Chancellor intrusted as aforesaid shall think entitled to require the same, dissolve the partnership; and thereupon, or upon a dissolution of the partnership by decree of the Court of Chancery, (4) or otherwise, by due course of law, the committee of the estate, in the name and on behalf of the lunatic, may join and concur with such other person or persons in disposing of the partnership property, as well real as personal, to such persons upon such terms, and in such manner, and may and shall execute and do such conveyances and thing for effectuating this present provision, and apply the monies, payable to the lunatic in respect of his share and interest in the co-partnership, in such manner as the Lord Chancellor intrusted as aforesaid shall order."

If the wife of a lunatic or person of unsound mind is *cestui que trust* of a fund, and the trustee pays it to her husband or to the committee of his estate or to the Accountant General to the husband's credit, that is a reduction into possession of the fund by the husband. (5) A suit having been commenced by the wife of a lunatic found so by inquisition, praying a settlement on herself and her children of a certain trust fund, an inquiry was obtained in lunacy on the application of the committee of his estate, and upon the appearance of the wife, as to the propriety of such settlement; upon this inquiry the committee and the wife concurred in a settlement of half the fund, a draft of such settlement

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(1) *Re Craven*, Shelf. on Lun. 2d ed. 480.
(2) 16 & 17 *Vic. c.* 70, *s.* 2.
(3) *Ibid.*
(4) *Antè*, p. 34. Where a motion for an interim injunction, in a suit to restrain a partner from interfering in the partnership business, was unsuccessful, because there was no evidence that the partner (although six months back insane) was at the date of the motion insane, and incompetent to transact his partnership duties, a cross motion for an interim injunction, in a cross suit to restrain interference with such partner in such duties, was successful, the Court distinctly declining any inquiry. *Anon. case*, 2 Kay & Jo. 441.
(5) *Re Jenkins*, 5 Russ. 187.

was signed by the wife, and a Master in Lunacy reported in its favour and for the dismissal of the suit; the committee then obtained in the suit a reference to approve of a proper settlement, the wife carried in under that reference a proposal to settle half the fund, and a draft report was prepared, but not settled, approving of such proposal: meanwhile the trustee filed another bill for directions as to the wife's claim, and she, answering that bill separately from her husband, stated the proceedings both in lunacy and in the other suit, and claimed a settlement of half the fund: the lunatic next died, and then his widow by her answer to a bill of revivor by his executors claimed the whole fund; Sir James Parker, V.C., held that the proceedings did not amount to a reduction into possession of any part of the fund by the husband. (1)

With regard to the transfer of any fund, annuity, or security transferable in books and kept by any company or society, of any money payable for the discharge or redemption thereof, or any share or interest therein, which belongs to an idiot, lunatic, or person of unsound mind found so by inquisition, the Act 16 & 17 Vic. c. 70, provides:

Sec. CXL. "Where any stock (2) is standing in the name of, or is vested in a lunatic (3) beneficially entitled thereto, or is standing in the name of, or vested in a committee of the estate of a lunatic, in trust for the lunatic, or as part of his property, and the committee dies intestate, or himself becomes lunatic, or is out of the jurisdiction of, or not amenable to the process of the Court of Chancery, or it is uncertain whether the committee be living or dead, or he neglects or refuses to transfer the stock, and to receive and pay over the dividends thereof to a new committee or as he directs, for the space of 14 days next after a request in writing for that purpose made by a new committee, then the Lord Chancellor intrusted as aforesaid (4) may order some fit person to transfer (5) the stock to or into the name of a new committee, or into the name of the Accountant-General of the Court of Chancery, or otherwise, and also to receive and pay over the dividends (6) thereof, or such sum or sums of money, and in such manner as the Lord Chancellor intrusted as aforesaid may order."

Sec. CXLII. "Where an order is made under this Act for the transfer (7) of stock, (8) the person to be named in the order for making

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(1) *Baldwin* v. *Baldwin*, 5 De G. & Sm. 325.
(2) 16 & 17 *Vic. c.* 70, *s.* 2.
(3) *Ibid.* (4) *Ibid.* (5) *Ibid.* (6) *Ibid.*
(7) 16 & 17 *Vic. c.* 70, *s.* 2. (8) *Ibid.*

the transfer shall be some proper officer of the Company or Society in whose books the transfer is to be made, and where the transfer is to be made in books kept by the Governor and Company of the Bank of England, the officer to be named shall be the secretary, or deputy secretary, or Accountant-General, or deputy Accountant-General for the time being of the said Governor and Company."

And

Sec. CXLIII. "All transfers (1) and payments made in pursuance of this Act shall be valid and binding to all intents, and upon all persons whomsoever."

It may be proper here also to remark that the Act 16 & 17 Vic. c. 70, provides:

Sec. CXLIV. "This Act shall be a full indemnity and discharge to the Governor and Company of the Bank of England, their officers and servants, and all other persons respectively for all acts and things done, or permitted to be done pursuant thereto, which acts and things respectively shall not be questioned or impeached in any court of law, or equity, to their detriment."

Upon petition for transferring funds out of the name of one found *non compos mentis* by inquisition, the committee of his estate should be served. (2) A stop order has also been obtained on funds standing in a lunacy in the name of the Accountant-General of the Court of Chancery on the petition of an assignee of the expectant interest of the next of kin of the person *non compos mentis* (3); but such an order seems inconsistent with the doctrine that the next of kin of a person *non compos mentis* has not in lunacy any interest in his property. (4)

In his dealings with the estate of an idiot, lunatic, or person of unsound mind, the Accountant-General of the Court of Chancery is subjected to certain directions; for the purpose of saving the repetition in orders in lunacy of these directions, it is by the 49th General Order, 7th November, 1853, declared:

"Where, under or in pursuance of the said Act,(5) or these Orders,(6) or any special order, fiat, or certificate, any money is paid into the Bank, with the privity of the Accountant-General, or any money or

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(1) 16 & 17 *Vic. c.* 70, *s.* 2. (2) *Re Saumarez*, 27 Law T. 212.
(3) *Re Kent*, 1 H. & Tw. 214, and cases therein cited; see also *Re Pigott* 3 M. & Gor. 268.
(4) See *antè*, p. 273. (5) 16 & 17 *Vic. c.* 76.
(6) *I. e., General Orders, 7th Nov.*, 1853.

dividends, or accumulations of dividends, is or are invested in his name, and with his privity, in the purchase of bank annuities, or any stocks, funds, or annuities are transferred into his name and with his privity, in the books of the Governor and Company of the Bank of England, or of any other public company, or any stocks, funds, or annuities standing in his name, are carried over in trust, in a matter, or to any account therein, he is to declare the trust thereof respectively, accordingly, subject to further order.

And the 50th General Order of the 7th Nov., 1853, runs thus:

"For the purposes of any payment or investment to be made under these orders, or any special order, by the Accountant-General, he is to be at liberty to draw on the Bank of England, according to the form prescribed by the Act of Parliament passed in the 12th year of his late Majesty King George the First, and intituled, 'An Act for better securing the monies and effects of the suitors of the Court of Chancery, and to prevent the counterfeiting of East India Bonds, and indorsements thereon, as likewise indorsements on South Sea Bonds,' and the general rules and orders of the said Court in that case made and provided."

The 51st General Order of the same date requires that,

"Where any sum of stock standing in the books of the Governor and Company of the Bank of England, or any other public company, in the name of the Accountant-General in trust in a matter generally or on a particular account, is to be sold with his privity, one of the cashiers of the Bank is to have notice to attend the sale, and is to receive the money to arise thereby, and upon receipt thereof, is forthwith to pay the same into the Bank, with the privity of the Accountant-General to the credit of the matter generally, or on the particular account (as the case may be)."

And the language of the 52d General Order of the same date is as follows:

"Where it is ordered that a sum of stock, standing in the books of the Governor and Company of the Bank of England, or other public Company, be transferred into the name and with the privity of the Accountant-General of the Court of Chancery in trust in the matter, either generally, or on a particular account, and no person is named in the order for making the transfer, the secretary or deputy secretary, Accountant-General, or deputy Accountant-General, for the time being of the said Governor and Company, or other proper officer of such other Company, is to make the transfer, and he or one of the cashiers for the time being of the said Governor and Company, or other such proper officer as aforesaid, is to receive any sum of money standing in the books of the said Governor and Company, or such other Company as aforesaid, accrued due at the date of the order by way of dividend or periodical payment in respect of the stock to be transferred, and also any future sum so to accrue due previously to the transfer, and is to pay the same into the Bank with the privity of

the Accountant-General of the Court of Chancery, to the credit of the matter, either generally or on such particular account as aforesaid, as the case may require."

The 20th General Order of 7th Nov., 1853, had already laid it down,

"Where the Masters by certificate direct or give liberty for the payment into the Bank of money, or the transfer into the name of the Accountant-General of stock respectively belonging to the lunatic, to the credit of, or in trust in the matter, they are to be at liberty to direct that the same be placed to such particular account, or that it shall not be paid or transferred out without notice to such person as occasion may require and they may direct."

Money Orders in lunacy are likewise the subject of a General Order of 10th Feb., 1834, which runs thus:

"It is ordered and directed, that every order relating to or in anywise concerning, or referring to the payment, transfer, or carrying over of any cash, stocks, funds, annuities, securities, or other effects to or into the name of the Accountant-General of the Court of Chancery, to the credit of the name of any person or persons being idiot, lunatic, or of unsound mind, or to the payment, transfer, carrying over, or other disposal by the Accountant-General of any cash, stocks, funds, annuities, securities, or other effects which may be standing in his name to the credit of the matter of any person or persons being idiot, lunatic, or of unsound mind, shall henceforth as heretofore be drawn up by the secretary of lunatics, and a duplicate of every such order, be made by the said secretary, and such order and duplicate in the ordering part thereof shall state the exact sums of money, and amount of securities directed to be paid, transferred, carried over, or otherwise disposed of to or by the said Accountant-General, in words at length, where the same can then be ascertained; and in all cases where the same cannot then be ascertained, the amount thereof shall be verified by affidavit, or be certified by the Master, as the case may be, and shall also state the christian and surnames of every person, by or to whom the same shall be directed to be paid, transferred, carried over, or otherwise invested, in words at length without abbreviation, except in the case of bodies corporate, companies, or societies in such order, and not merely as petitioners or the like, except in cases of payments, transfers, or carryings over, directed to be made to or by representatives, when no probate or letters of administration shall have been taken out at the time of making such order, and the christian and surnames, or titles of honour of all such persons, and the titles of all such bodies corporate, companies, and societies, shall be written at length and without abbreviation in such order, and that upon every such order the Registrar of the Court of Chancery shall draw up an order to be acted upon by the Accountant-General which shall not hereafter contain any of the recitals in the original order; but in all other respects be conformable thereto, and that the order of the said Registrar when so drawn

up shall be entered as heretofore with the proper officer of the Court of Chancery."

The Act 16 & 17 Vic. c. 70, also provides:

Sec. CI. "Where an order or a report confirmed by fiat, relates to the payment, transfer, carrying over or depositing of any cash, stocks, funds, annuities, securities, or other effects to or into the name of, or in the custody of the Accountant-General of the Court of Chancery to the credit of the matter of a lunatic,(1) or to the payment, transfer, or carrying over, or other disposal by the said Accountant-General of any cash, stocks, funds, annuities, securities, or other effects standing in his name, or deposited in his custody to the credit of the matter of a lunatic, or of any cash, stocks, funds, annuities, securities, or other effects to or in which a lunatic is entitled or beneficially interested, and which are not standing in trust in a cause or matter depending in the Court of Chancery, the said Accountant-General, and all other persons, and the Governor and Company of the Bank of England, shall act upon the order signed by the Lord Chancellor, intrusted as aforesaid, (2) after the same has been entered as hereinbefore provided, or upon an office copy of the report, confirmed by fiat, and thence receiving the operation of an order after the same has been filed as hereinbefore provided, in the same manner as if an order had been drawn up by the registrar of the Court of Chancery, and passed and entered in the Court of Chancery, according to the practice formerly used, and the Registrar in Lunacy in case of an order, and the Masters in case of a report confirmed by fiat, shall certify under their hand respectively to the said Accountant-General, what stocks, funds, annuities, securities, or other effects are by virtue of any such order or report confirmed as aforesaid (as the case may be) to be sold, transferred, or delivered out in the same manner as the Registrars of the Court of Chancery were formerly accustomed to do."

With reference to the payment of the costs of proceedings in lunacy, the Act 16 & 17 Vic. c. 70, has this provision:

Cap. CXLV. "The Lord Chancellor intrusted as aforesaid(3) may order the costs and expenses of and relating to the petitions, applications, 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 in such manner as he may think proper."

To enable the Masters in Lunacy to investigate any important dealings with the estate of a person, idiot, lunatic, or of unsound mind, which may appear to have occurred before he was under the protection of the Lord Chancellor, the 12th General Order, 7th Nov., 1853, declares,

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(1) 16 & 17 *Vic. c.* 70, s. 2.
(2) *Ibid.* (3) *Ibid.*

"The Masters (1) are to be at liberty from time to time to make such inquiries as to them shall seem expedient respecting any dealings with the lunatic's estate, and the application of the same or any part thereof prior to the date of the inquisition, and respecting the state and condition of the lunatic when any such dealings took place, whether any request or proposal in that behalf shall or shall not have been made to or laid before them, and to report thereon and on the circumstances connected therewith, and the steps, if any, proper to be taken, and by and against whom in relation thereto."

This order is a kind of modification or substitute for the old plan of carrying back the inquisition to the period when the insanity commenced. (2)

And to aid the Masters in their management of the estate, the 13th General Order of 7th Nov., 1853, runs thus,

"The Masters are to be at liberty, when it shall seem to them expedient, to inquire what debts, if any, not open to dispute or question, are due from the lunatic, and to whom, and whether the same or any and what parts or part thereof ought to be paid, and out of what funds or property, and to entertain proposals for the adjustment and settlement thereof, and for the compromise and settlement of any disputed debt, claim, or demand, upon or against the lunatic or his estate, and to report on such matters respectively."

By the 14th General Order of the same date,

"The Masters are also to be at liberty from time to time to receive any proposal and conduct any inquiry touching any other matters affecting the property of the lunatic, whether real or personal, and to report thereon."

The Act 16 & 17 Vic. c. 70, has several provisions to a similar effect.

Sec. LXIX. The Masters shall be at liberty, without an order of reference, to receive any proposal, and conduct any inquiry, respecting the managing, repairing, setting, or letting of the estate, and to report thereon.

Sec. LXX. The Masters shall also be at liberty, without an order of reference, to receive any proposal and conduct any inquiry relating

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(1) *34th G. O., 7th Nov.*, 1853.
(2) See *p.* 255, *47th G. O., 7th Nov.*, 1853.

to the estate, not respecting the managing, repairing, setting, or letting thereof, and any proposal or inquiry whatsoever relating to the person, and to report thereon respectively, if and when they shall be of opinion that if application were made to the Lord Chancellor intrusted as aforesaid concerning the matter of any such proposal or inquiry a reference thereon would be made to the Masters.

Sec. LXXI. Where the Masters, without an order of reference, receive any proposal or proceed in any inquiry relating to the estate, not respecting the managing, repairing, setting, or letting thereof, or any proposal or inquiry whatsoever respecting the person, any person attending before them shall be at liberty to apply by petition to the Lord Chancellor intrusted as aforesaid as he may be advised; and thereupon the Masters shall, pending the application, cease from proceeding on the proposal or in the inquiry, unless the Lord Chancellor intrusted as aforesaid otherwise direct.

Sec. LXXII. Where the Masters, without an order of reference, receive and proceed on a proposal, or conduct an inquiry, but arrive at the opinion that the proposal ought not to be adopted and carried into effect, or that the inquiry was unnecessary, they shall be at liberty to certify whether or not, regard being had to the circumstances, the proposal or inquiry was proper to be made; and if they certify in the affirmative, usual and proper costs of the proposal or inquiry and proceedings thereon shall be allowed on taxation by virtue of their certificate, but if they certify in the negative the Lord Chancellor intrusted as aforesaid shall direct by whom and in what manner the costs shall be paid and borne.

Sec. LXXIII. Where any person requires that the Masters should report on a proposal which they have received and proceeded on without an order of reference, notwithstanding their opinion that it should not be adopted and carried into effect, the Masters shall report on the proposal, and the report shall be brought before the Lord Chancellor intrusted as aforesaid by petition, who shall make such order upon the report and respecting the costs as to him shall under the circumstances seem just.

Sec. LXXIV. Where an application is made by petition to the Lord Chancellor intrusted as aforesaid, either concerning a matter which might have been brought before the Masters in the first instance, or in consequence of the Masters receiving any proposal or proceeding in any inquiry relating to the estate or the person, the Lord Chancellor intrusted as aforesaid may make such order respecting the costs of the application and of the consequent proceedings as to him shall, under the circumstances, seem just.

By the 22d General Order of the same date,

"The Masters are to be at liberty to permit any person whose attendance may appear to them to be proper, and for the security or advantage of the lunatic or his estate, other than the committee and next of kin of the lunatic, to attend on the proceedings, or on any particular proceeding before them in the matter, and all the pro-

visions contained in section 81 of the said (1) Act as to the attendance of next of kin are to extend and apply *mutatis mutandis* to the attendance of such person as aforesaid, as well before the Masters as before the Lord Chancellor or Lords Justices."

And by the 23d General Order of the same date,

"The Masters are to be at liberty to direct that several parties appearing before them by different solicitors shall appear by the same solicitor, or otherwise at their own costs, or that several parties appearing before them by the same solicitor shall appear by different solicitors, and the parties are not to appear otherwise before the Lord Chancellor or Lords Justices, except by special leave, or at their own costs."

Costs in Lunacy payable out of the estate of an idiot, lunatic, or person of unsound mind, are always taxed.

And the 48th General Order of 7th Nov., 1853, declares that

"Where it is ordered that any costs, or costs, charges, and expenses be taxed, the Taxing Master of the Court of Chancery in rotation, or the Taxing Master to whom the taxation of costs in the matter stands referred, (as the case may be) is to tax and certify such costs or costs, charges, and expenses, and also to certify the names of the respective solicitors to whom the same should be paid, and due notice of attending the Taxing Master on the taxation is to be given to such parties as the Masters shall have certified are to attend on the proceedings in the matter; and where it is ordered that the costs, charges, and expenses of any committee or next of kin in the matter of any lunacy be taxed, the Taxing Master in taxing such costs, charges, and expenses is not to allow the costs, charges, or expenses of any petition or application upon which no order shall have been drawn up, unless the same shall by any order be directed to be allowed or ordered to be costs in the matter of such lunacy, nor to allow the costs, charges, or expenses of any proposals or inquiry before the Masters which they shall have disallowed or not thought fit to adopt or carry into effect unless the Masters shall have certified that such proposal or inquiry was proper."

The Masters in Luncy may direct the times, &c., of proceeding before them, inquire into delays and disallow costs: on this head the Act 16 & 17 Vic. c. 70, enacts,

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(1) 16 & 17 *Vic. c.* 70.

Sec. LXXXVI. Subject to the provisions of this Act, and to the general orders in lunacy for the time being in force, and to any order of the Lord Chancellor intrusted as aforesaid, the Masters may, if they think fit, dispense with any summons ordinarily taken out in the course of the proceedings before them, and direct and require any party attending before them to take out a summons for a particular purpose or within a particular time, and fix the time at which any summons shall be returnable before them, or at or within which any proceeding necessary or proper to be taken before them shall be taken, and may proceed *de die in diem* or adjourn the proceedings before them, as they may see fit.

Sec. LXXXVII. The Masters shall from time to time inquire into the circumstances of any delay in the conduct of proceedings before them, or in proceeding upon their reports, certificates, or decisions, and for that purpose may call before them all parties concerned, and may report accordingly, where it seems expedient.

Sec. LXXXVIII. The Masters may, by certificate, disallow, wholly or in part, the costs of any proceeding or document taken or used or proposed to be taken or used before them; and the costs of the attendance of counsel before them shall not be allowed on taxation, unless they certify that such attendance was proper, and for the security or advantage of the lunatic or his estate.

Further, to facilitate the management in lunacy of an estate and to lessen the cost thereof, the 2d General Order issued by the Lord Chancellor on the 7th Nov., 1853, is in the following words:

"All pending proceedings are to be carried on according to the provisions of these orders (1) as far as may be practicable and subject

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(1) *I. e.*, the General Orders of 7th Nov., 1853, the interpretation of which must be sought in the 3d, 4th, 5th, and 6th. The 3d General Order of that date runs thus:—" In these orders, unless there be something in the subject matter or context repugnant to such a construction, words expressed in the singular and in the plural number respectively are to be construed as applicable respectively to several persons or things and to one person or thing, and words importing the masculine gender are to be construed as applicable to females as well as males. The expression 'the Masters' is to be taken to mean the Masters jointly and severally, the expression 'the Accountant-General' to mean the Accountant-General for the time being of the High Court of Chancery, the expression 'the Bank' to mean the Bank of England, the expression 'next of kin' to comprehend heir or heirs-at-law, and also the person or persons who would be entitled to the lunatic's estate or to shares thereof under the statutes for the distribution of the effects of intestates in case he were dead intestate, the provisions referring to Orders in Lunacy are to be deemed to extend as far as they may be applicable *mutatis*

thereto according to the practice (1) heretofore subsisting, and in case of doubt as to the mode of procedure in such of the modes aforesaid as the Masters shall direct, and the provisions of these orders are to be deemed to be subject to variation by special order in any case, and are to be applicable only where there may be no express directions contained in or given by any special order concerning any of the several matters provided for in these orders, or so far as such directions may not extend."

And by way of lessening still further costs in Lunacy, the following General Orders were issued by the Lord Chancellor on the 8th Nov., 1856, in reference to copies of proceedings therein :

I. From and after the 15th day of November, 1856, in lieu of copies of proceedings and documents in matters in lunacy being made and delivered by the officers in lunacy at the office in which they are filed or left, copies of such proceedings and documents (save as hereinafter excepted) are to be made, delivered, charged, and paid for according to the following regulations :—

1. The following copies are exempted from this order, that is to say, office copies of affidavits to be made for and taken by the party filing the same, copies of documents prepared in the offices of the Masters in Lunacy and Registrar in Lunacy respectively, to be made for and taken by the party having the conduct of the

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mutandis to the case of directions contained in reports confirmed by fiat; and the provisions respecting the committee of the estate, his appointment, accounts, payments, allowances, and matters of the like nature, are to be deemed to extend as far as they may be applicable *mutatis mutandis* to the case of a receiver." The 4th General Order of that date adds :—"Where, in these orders or in a special order, a limited time from and after a date or event is appointed or allowed for doing any act or taking any proceeding, the computation of such limited time is not to include the day of such date, or of the happening of such event as aforesaid, but is to commence at the beginning of the next following day; and the act or proceeding is to be done or taken, at the latest, on the last day of the limited time according to this computation." The 5th General Order of that date declares :—"Where, according to these orders or a special order, the time for doing any act or taking any proceeding expires on a Sunday or on a day on which the offices are closed, and by reason thereof the act or proceeding cannot be done or taken on that day, the act or proceeding is, as far as regards the time of doing or taking the same, to be held to be duly done or taken if done or taken on the Monday next following or on the day on which the offices next open, as the case may be." But the 6th General Order of that date explains that "The power of the Lord Chancellor, Lords Justices, and Masters respectively, to enlarge or abridge the time for doing any act or taking any proceeding upon such (if any) terms as shall to him or them seem expedient, is to be deemed unaffected by these orders."

(1) In Lunacy practice, form is, to a certain extent, disregarded. See Lord Cottenham, C., in *Re Dyce Sombre*, 1 H. Tw. 292; and Lord Cranworth, C in *Elliott* v. *Ince*, 3 Jur. N. S. 601. But see also *Re Marrow*, Cr. & Ph. 146.

proceedings, office copies of all documents and proceedings filed in the office of the Registrar in Lunacy, and copies of all documents filed or deposited for safe custody in the office of the Masters in Lunacy

2. The party or his solicitor requiring any copy, save as hereinbefore excepted, is to make a written application to be delivered to the party by whom the copy is to be furnished or his solicitor, with an undertaking to pay the proper charges.

3. Upon such requisition being made with such undertaking as aforesaid, copies of such proceedings or documents are to be made by the party or his solicitor filing or leaving the same, or who, under the first rule, may have taken office copies thereof.

4. The copies are to be ready to be delivered at the expiration of 48 hours after the delivery of such request and undertaking, or within such other time as the Lord Chancellor or the Lords Justices, intrusted as aforesaid, may in any case direct, and are to be delivered accordingly upon demand and payment of the proper charges.

5. The charges for all such copies are to be at the rate of 4d. per folio.(1)

6. Copies of bills of costs are to be made side for side, so as to correspond with the bills of costs left in the office.

7. The folios of all copies are to be numbered consecutively in the margin thereof, and the name and address of the party or solicitor by whom the same are made is to be endorsed thereon, and such party or solicitor is to be answerable for the same being true copies of the originals or of the office copies of the originals of which they respectively purport to be copies, as the case may be.

8. Any party or solicitor who has taken any office copy mentioned in rule 1 is to produce the same in Court or at the office of the Masters in Lunacy, when required for the purpose of the proceedings to which the same relates.

II. All office copies, and copies to be furnished by parties or their solicitors, shall be written on paper of a convenient size with a sufficient margin, and in a neat and legible manner, similar to that which is usually adopted by law stationers; and in the case of copies to be furnished by parties or their solicitors unless so written, the parties or solicitors furnishing them shall not be entitled to be paid for the same.

III. In case any solicitor, who shall be required to furnish any such copy as aforesaid, shall either refuse, or for two clear days from the time when the application for such copy shall have been made, shall neglect to furnish the same, the person by whom such application shall have been made shall be at liberty to procure a copy from the office in which the original document shall be or shall have been filed

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(1) 3*d General Order, July*, 1854: "From and after the 5th day of July, 1854, all office copies and other copies of proceedings and documents in matters of lunacy, shall be counted and charged for after the rate of 72 words per folio; and where such copies, or any portion thereof, shall comprise columns containing figures, each figure shall be counted and charged as one word."

or left, in the same way as if no such application had been made to the solicitor, and in such case no costs shall be due or payable to the solicitor so making default in respect of the copy or copies so applied for.

IV. The Taxing Masters shall not allow any costs in respect of any copy so taken as aforesaid, unless the same shall appear to them to have been requisite, and to have been made with due care.

As to the accounts of the management of the estate of an idiot, lunatic, or person of unsound mind, found so by inquisition.

The 15th General Order, 7th Nov., 1853, declares that

"The committee of the estate is annually or at such longer or shorter periods as the Masters shall fix, to procure his accounts to be delivered into the Masters' office, and is to attend before the Masters from time to time and at or within such time as the Masters shall fix, and have such accounts taken and passed; in taking and passing which accounts the Masters are to make to him all just allowances, including an allowance of his reasonable and proper costs, charges, and expenses of passing the account and those of the next of kin (1) and other persons (if any) allowed to attend on the passing of the account at the costs of the estate."

The next of kin of the person *non compos mentis* should attend the passing of the accounts of the committee of his estate. (2)

The Act 16 & 17 Vic. c. 70, has in reference to the allowance of such accounts, this provision:

Sec. LXVII. "The Masters' allowance of the account of a committee or receiver shall be signified under their hands, and be written under the account, but no certificate shall be made except where it may be specially required with a view to payment of money into Court, or for some other purpose."

The 38th General Order of 7th Nov., 1853, also relates to the accounts, and declares:

"Where it is ordered that the committee of the estate do receive or be at liberty to receive any money on account of the lunatic or his estate, he is to give credit for the same on passing his accounts before the Masters, and where any sum is ordered to be allowed for the maintenance of the lunatic or to be expended for any other purpose out of his estate, the committee of the estate is to be allowed the

(1) See former practice: *Ex parte Wright*, 2 Ves. 25. Lord Eldon, C., in *Tharp v. Tharp*, 3 Meriv. 512; *Re Amoy*, 2 Coo. t. Cott. 105; *Re Cranmer*, Ibid. 107.

(2) *Ex parte Pickard*, 3 V. & B. 127; *Re Stephenson*, *Re Robinson*, *Re James*, and *Re Scarpelain*, Shelf. on Lun. 2d ed. 238, 239.

amount of the allowance for maintenance or the amount to be expended (as the case may be) on passing his accounts before the Masters."

And the 16th General Order of that date lays it down that,

"The balances certified by the Masters to be due from the committee of the estate on passing his accounts from time to time, or so much thereof respectively as the Masters certify to be proper to be paid by him, are to be paid by him, at or within such time as the Masters shall fix, into the Bank, with the privity of the Accountant-General, to the credit of the matter, and the same when paid in, and any sum of cash at the Bank to which the lunatic may be entitled, or so much thereof respectively as the Masters shall by their certificate direct, are from time to time, and in case the Masters shall think fit to fix a time, then within such time as the Masters shall fix, to be laid out in the purchase of bank £3 per cent. annuities in the name and with the privity of the said Accountant-General in trust in the matter, and the dividends from time to time to accrue due on the bank annuities, to be so purchased, and all accumulations of dividends are, unless the Masters shall otherwise certify, as and when the same amount to a competent sum, to be laid out by the Accountant-General in like manner, without any request for the purpose."

To discover what penalty the committee incurs by default in passing his accounts, we may refer to the 17th General Order of 7th November, 1853, and there we find that

"Where the committee of the estate makes default in bringing in his account, or in having the same passed, or in paying the balance certified to be due from him, or in causing the same, or any sum of cash in the bank, to be laid out pursuant to any certificate or direction in that behalf, the Masters are, unless good cause be shown to them to the contrary, not only to disallow any salary claimed by him, or his representatives, but also to charge him or them with interest after the rate of £5 per cent. per annum, upon any balance or cash for the time during which the same respectively appears to have improperly remained in hand or uninvested (as the case may be)."(1)

The passing of the accounts of a committee of an estate vacating office is provided for by the 41st General Order of 7th November, 1853, which is thus expressed:

"Where it is ordered that the committee of the estate be discharged the Masters are to take and pass his account of his receipts and payments for and on account of the lunatic and his estate from his ap-

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(1) See also *Ex parte Hall*, Jac. 160. Sir John Leach, V.C.E., in *Brown* v. *Groombridge*, 4 Mad. 501; *Ex parte Catton*, 1 Ves. 151; *Ex parte Chumley*, 1 Ves. 156, 157. Such conduct will also disentitle the committee to costs: *Ex parte Clarke*, 1 Ves. 296.

pointment, or from the foot of his then last account passed in the matter up to the day of the order, and the balance (if any), which the Masters may certify to be due from the committee on passing the aforesaid account is to be paid by him by virtue of the certificate into the Bank with the privity of the Accountant-General, to the credit of the matter, within such time as the Masters shall by their certificate direct; and in case the Masters shall find a balance to be due to the discharged committee, the same is to be paid to him by the new committee of the estate out of the estate of the lunatic, and upon payment of the aforesaid balance (if any) by the discharged committee in manner aforesaid, or in case there shall not be a balance found due from him, or in case the taking and passing of the account is not required, and may in the opinion of the Masters be properly dispensed with, then his security is to be discharged."

In the event of a committee of an estate dying, the following General Order (the 42d) is useful: (1)

"Where the committee of the estate dies, the Masters are to take and pass the account of his receipts and payments for and on account of the lunatic and his estate from his appointment, or from the foot of his then last account, passed in the matter up to the day of his death. And the balance (if any) which the Masters may certify to be due from the late committee on passing the aforesaid account may be paid by his legal personal representatives, by virtue of the certificate into the bank with the privity of the Accountant-General to the credit of the matter, within such time as the Masters shall by their certificate direct; and in case the Masters shall find a balance to be due to the late committee, the same is to be paid to his legal personal representatives by the new committee of the estate out of the estate of the lunatic, and upon payment of the aforesaid balance (if any) by the legal personal representatives of the late committee in manner aforesaid, or in case there shall not be a balance found due from him, or in case the taking and passing of the account is not required, and may in the opinion of the Masters be properly dispensed with, then his security is to be discharged."

If the sureties of the committee of an estate die, and he becomes bankrupt, notice of passing his account must be given to his assignees. (2)

Lastly, as to such accounts, the Act 16 & 17 Vic. c. 70, declares,

Sec. LXVIII. Where the Masters are of opinion that any small expenses included in the committee's or receiver's account, have been properly and reasonably incurred for the benefit or enjoyment of the

(1) See 21*st G. O., 7th Nov.*, 1853.
(2) *Re Lacy*, Shelf. on Lun. 2d ed. 243.

lunatic, or the improvement, security, or advantage of his estate, and there is no opposition to the allowance thereof, but it may not be competent to them to allow the same to the committee or receiver, without the sanction of the Lord Chancellor intrusted as aforesaid,(1) they shall distinguish the items by some mark in their allowance of the account, which shall be made subject to the approval of the Lord Chancellor intrusted as aforesaid; and the account, as passed by the Masters, shall be submitted by them to the Lord Chancellor, without petition for his allowance or disallowance, in respect of the items so distinguished by them.

As to the custody of documents and papers belonging to an idiot, lunatic, or person of unsound mind, found so by inquisition.

It seems that the committee of an estate should deposit in the Master's office the title deeds of the estate, unless his possession is necessary to the management of the property; Lord Cottenham, C., declined to deliver out to the committee of an estate, title deeds deposited in the Master's office (deposited when there was no committee), in the absence of an affidavit showing it to be necessary to the proper administration of the estate, that they should be placed in the custody of the committee. (2)

It is the duty of the committee of an estate, having learnt that the idiot, lunatic, or person of unsound mind, has made a will, or a will and codicil, to take immediate steps to have the same deposited in the office of the Masters in Lunacy. (3) To do this no special order is necessary, for, by the 26th General Order of 7th Nov., 1853, it is declared,

"Any person in whose custody, possession, power, or control the same may be, is to be at liberty to deposit any will, codicil, or testamentary paper of the lunatic in the office of the Masters, upon oath, as they may direct, there to remain for safe custody."

The affidavit on depositing, should state how the paper came into the depositor's custody, that it is in the same state as when it came into his custody, and that he believes it to be a will (or

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(1) 16 & 17 *Vic. c.* 70, *s.* 2.
(2) *Re Cooper*, 1 M. & Cr. 33.
(3) *Re Humpleby*, 2 Coo. t. Cott. 166.

codicil, as the case may be), of the idiot, lunatic, or person of unsound mind. (1)

On the subject of "a change in the committeeship of the estate of an idiot, lunatic, or person of unsound mind," it may be well to add a few observations.

The bankruptcy of the committee of the estate is a sufficient ground for his removal,(2) certainly for his suspension, until he shall have obtained his certificate. (3) His disqualification, it seems, not the superiority of another person, is the only justification for his removal ;(4) and it is the duty of a committee of an estate to give up his office if he intends to withdraw permanently out of the jurisdiction of the Lord Chancellor.(5) Where only a temporary absence out of the jurisdiction was contemplated, a reference to appoint an *ad interim* committee was directed ;(6) should a committee wish to retire he must apply for liberty so to do. (7) The circumstances of each case dictate his liability to the costs of the application. Pending the appointment of a new committee of an estate an *ad interim* committee has been appointed.(8)

A committee of an estate has been ordered to be examined by the Master upon interrogatories touching his management and application of the estate.(9) If a committee of an estate misconduct himself he is liable to censure, punishment and removal ;(10) for misappropriation of monies a committee of an estate will of course be removed ;(11) so if he persists in a contempt of Court.(12)

The committees of an estate are responsible for the acts of their agent, but this responsibility will not be enforced by the Lord

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(1) *Elmer*, 61.
(2) *Re Barrow*, Shelf. on Lun. 2d ed. 233.
(3) *Re Chambers*, Shelf. on Lun. 2d ed. 234.
(4) *Re Bangor*, 2 Molloy, 518.
(5) *Re Ord*, Jac. 94.
(6) *Re Aguilar*, Shelf. on Lun. 2d ed. 234. But see *Re Bangor*, 2 Moll. 518.
(7) See *Elmer*, 43, 44 ; *Re Yorke*, Shelf. on Lun. 2d e. 235.
(8) *Re Metcalfe*, Shelf. on Lun. 2d ed. 235.
(9) *Re Lloyd*, Shelf. on Lun. 2d ed. 240.
(10) Lord Redesdale, C., in *Re Fitzgerald*, 2 Sch. & Lef. 438.
(11) *Re Pearson*, Shelf. on Lun. 2d ed. 231.
(12) *Lloyd* v. ——, 2 Dick. 460.

Chancellor where the lunatic, if he recovered, would probably not enforce it. (1)

We may now proceed to the consideration of

The management of the person of an idiot, lunatic, or person of unsound mind, found so by inquisition.

This duty is delegated to the committee of his person, who is responsible to the Lord Chancellor. In the performance of his duty, the committee of the person must blend affection with firmness, (2) and his duty is to provide for the comfort of his charge, regard being had to the allowance for maintenance. (3) Access to a lunatic, or person of unsound mind, found so by inquisition, is sometimes given, but with great caution. (4) When a person entitled to property in default of the exercise of a power by a lunatic petitioned for access to the lunatic (either personally or by physicians), for the purpose of ascertaining whether the lunatic was in a state to exercise the power, Lord Eldon, C., asked whether there was any instance of an order for access to a lunatic upon the principle of *quia timet*, and no instance being produced, his lordship refused the petition, observing that such a visit might be very dangerous and might have a very bad effect in irritating the mind of the lunatic, from the mere purpose of the visit, without any intention of producing that effect. (5) Even before the appointment of a committee, individuals have been restrained from visiting or interfering with the person of a lunatic. (6)

In the absence of any direction by the Lord Chancellor, the residence of the individual *non compos mentis* is determined by the committee of his person, who should from time to time personally visit him.

The choice of an asylum for a lunatic was in one reported

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(1) *Re Moore*, 23 L. J. Ch. N. S. 153.
(2) Lord Eldon, C., in *Re Le Heup*, 18 Ves. 226.
(3) *Ex parte Proctor*, 1 Swanst. 532.
(4) *R.* v. *Clarke*, 3 Burr. 1363; *Re Bariatinski*, 1 Phill. 375.
(5) *Ex parte Lyttleton*, 6 Ves. 7.
(6) *Re Chapman*, Shelf. on Lun. 2d ed. 161.

case, left to the committee of his person, subject to the approbation of the Master in Lunacy. (1)

It seems that the domicil of the committee of the person, is the domicil of his charge. (2)

Leave to take the idiot, lunatic, or person out of the jurisdiction, is very sparingly given; but the Lord Chancellor has permitted a female lunatic to visit Scotland, upon proof that the visit would be beneficial to her, security for her return having been given; (3) and where a lunatic found so by inquisition in England was in Scotland, permission for him to remain in Scotland was granted, it being shown that such residence was beneficial to him, security being also given for his return. (4)

A *habeas corpus*, is unnecessary to restore an individual to the custody of the committee of his or her person; an order of the Lord Chancellor is sufficient. (5)

On petition of the committee of a lunatic praying that directions might be given for bringing within the jurisdiction the lunatic then detained in France, Lord Eldon, C., ordered that a person to be appointed by a Master should repair to France at the expense of the lunatic's estate, and there inquire whether the lunatic could be moved within the jurisdiction without danger or injury to her health; and that if such person found that the lunatic could be so moved, the individuals detaining the lunatic should either themselves bring her to England, or deliver her to such person, in order to her being brought by him to England. (6)

Interference with the custody of the committee of the person is a contempt. (7)

If the committee of the person of "a dangerous lunatic" in lawful custody is desirous of obtaining possession of such lunatic, he should, it seems, apply for his discharge from such custody in

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(1) *Re McDermott*, 3 Dru. & W. 480.
(2) *Phillim. on Domicil*, 55.
(3) *Re Stair*, 1 Coo. t. Cott. 227. See also *Re Dyce Sombre*, 8 Jur. 817, and *Re Hackett*, 3 Ir. Ch. R. 375; s. c. 6 Ir. Jur. 249.
(4) *Re Jones*, 1 Phill. 461.
(5) *Ex parte Cranmer*, 12 Ves. 456.
(6) *Re Wykeham*, 1 T. & R. 537.
(7) *Ash's case*, Prec. in Cha. 203.

the proper quarter before he applies in lunacy for such possession. (1)

The following instructions are sent by the visitors of lunatics to the committee of the person of each lunatic on his appointment.

"Lunatics' Visitors' Office,
"45, Lincoln's Inn Fields, London.
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"The Board of Visitors of Lunatics, direct me to request that you will have the goodness to fill up the answers to the enclosed paper as there directed, and return it without delay to this office.

"I am further to request that you will give careful attention to the directions contained on the other side of this letter, and send to this office from time to time, the communications there mentioned which are required to enable the visitors to discharge their duties.(2)

"I am,
"Your most obedient servant,
"Secretary."

To the committee of the person of the above named lunatic.

[*This paper to be kept as a memorandum of the communications which have to be made from time to time to the Board of Visitors of Lunatics.*]

In re a lunatic.

Half yearly reports.

Reports to be made half-yearly in January and July, each year, by the committee of the person of , and the habitual medical attendant (if any);

Giving information on the following points, namely:—

1. The present residence of (3)
2. What the state of the bodily health during the past half-year has been.
3. Any change which has occurred in the mental state. If no change has occurred, say so.
4. If any change in the treatment has been found necessary, mention it.
5. Add any special observations that you may have to make.

The committee to sign his name with his address. And the medical attendant to do the same.

The medical attendant may make a separate report to accompany the report of the committee.

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(1) *Re Flanagan*, 2 Jo. & Lat.344.

(2) The statutory provisions respecting the visiting idiots, lunatics, and persons of unsound mind, have already been set forth: 8 & 9 *Vic. c.* 100, s. 112; 16 & 17 *Vic. c.* 70, *ss.* 104—107. See also General Orders, 12th Jan. 1855.

(3) See 16 & 17 *Vic. c.* 70, *s.* 106.

If there is no habitual medical attendant, the report of the committee alone is required; but in that case, let it state that there is no habitual medical attendant.

Special reports:—

If any important change should take place in the health or condition, whether bodily or mental of the lunatic, immediate notice thereof is to be transmitted to the board.

Change of residence of the lunatic:—

If the lunatic should leave the present residence, whether permanently or only temporarily, immediate notice is to be sent to this office of the new place of residence, with such particulars as may enable the visitors to find it without difficulty.

Death of the lunatic:—

Immediate notice of this event to be sent with the report of the medical attendant, as to the day and cause of the death.

[*Paper referred to in the foregoing letter.*]

In re a lunatic.

The committee is requested to supply answers to the following inquiries, sign, and return this paper to

The Visitors of Lunatics,
45, Lincoln's Inn Fields, London.

State the name of the place in which the lunatic now resides, and the county . .	
If in a town, the name of the street(1) and number of the house	
And the name of the occupier of the house	
If not in a town, the nearest town.	
The distance from it to the lunatic's house. . . .	
The name of the road or railway station, on or near which the residence is. . .	
The nearest inn or public building.	

(1) See 16 & 17 *Vic. c.* 70, *s.* 106.

State also the name of the person having the care of the lunatic. . . . . }
His address. . . . .
The name of the medical attendant . . . . . }
His address. . . .
Signature of committee.
Address.
Date.

A committee of the person of a lunatic has been removed from office, and committed for a gross contempt, in dedicating a libel on the proceedings in lunacy to the Lord Chancellor; (1) but bankruptcy is not a cause for the removal of the committee of the person, if the allowance for maintenance can be secured without changing the custody of the person. (2)

It was held by Lord King, C., that a mistake in the form of an order for an allowance of maintenance (*i. e.* an allowance expressly, of the whole income, instead of an allowance of a sum equal to the whole income) should not, on bill filed in the Court of Chancery, subject the executors of a committee of the person of a lunatic to account for or refund what such committee had received, unless gross fraud was proved against him. (3) This decision was disapproved of by Lord Brougham, (4) in a case which was appealed from him to the Privy Council, and in which the Council held that the legal personal representatives of a lunatic, could not by petition *in lunacy*, obtain from the committee of his person an account of the expenditure of the allowance for the maintenance of the lunatic; but that such account might under some circumstances be obtained by bill in the Court of Chancery. (5) It seems that savings not improperly made, out of the allowance for the maintenance of an idiot, lunatic, or person of unsound mind found so by inquisition, belong to the committee of his person. (6)

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(1) *Ex parte Jones*, 13 Ves. 237.
(2) *Ex parte Proctor*, 1 Swanst. 531; and see *Ex parte Mildmay*, 3 Ves 2.
(3) *Sheldon* v. *Aland*, 3 P. Wms. 104.
(4) *Grosvenor* v. *Drax*, 2 Knapp. 82.
(5) *Grosvenor* v. *Drax*, 2 Knapp, 82. And see, as to plea to such suit, *Stephenson* v. *Holmes*, 3 Law J. N. S. Ch. 41; and *Billing* v. *Flight*, 1 Mad. 230.
(6) *Re Ponsonby*, 5 Ir. Eq. R. 271. But see *Elmer*. 74.

We will next investigate the proceedings proper on

The mental recovery of a lunatic, or a person of unsound mind, found so by inquisition.

The law presumes that an idiot will during his life remain without discretion, and use of reason ; but in legal contemplation, the mental recovery of a lunatic or person of unsound mind is always possible. (1) It has been truly said, that it is most difficult to prove recovery from insanity, for a delusion may exist, but the patient may have the power to conceal it. (2) Therefore, becoming calm so as no longer to require restraint and coercion, and being so far rational as to be able to converse sensibly upon many, or even most topics, is not conclusive of recovery. (3) Clear proof of recovery is required to obtain a *supersedeas* of an inquisition in lunacy, (4) and the most satisfactory proof is the patient's conviction of the non-reality of delusions, which arose from his disorder. (5) No madman can be said to have recovered his reason, unless he confesses his delusion freely and voluntarily, and without any design of pretending sanity and freedom from delusion. (6) Whenever lunacy or unsoundness of mind is found to exist, a continuance of the same state may be safely presumed on much slighter evidence of mental aberration than might have been required to prove its commencement. (7) And the Lord Chancellor looks rather to facts and to the conduct of the patient, as evidence of his recovery, than to the opinions of his family and acquaintance. (8) Inferiority of mind is in itself a degree of evidence to show that lunacy or unsoundness of mind is

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(1) *Lord Ely's case*, 1 Ridg. P. C. 519 ; 4 Rep. 126 ; 2 Inst. 14 ; Reg. Brev. 267 ; F. N. B. 233, ed. 1794 ; 1 Bl. Com. 302. And see *Sackvill* v. *Aylworth*, 1 Vern. 105 ; 2 Sch. & Lef. 438 ; Sir W. P. Wood, V.C., in *Anon.* 2 Kay & Jo. 441.

(2) Lord Cottenham, C., *Re Dyce Sombre*, 1 M. & Gor. 132.

(3) Sir J. Nicholl, in *Groom* v. *Thomas*, 2 Hagg. E. R. 442.

(4) Sir J. Nicholl, in *Ayrey* v. *Hill*, 2 Add. E. R. 209.

(5) Lord Cottenham, C., *Re Dyce Sombre*, 1 M. & Gor. 183.

(6) Lord Brougham, in *Waring* v. *Waring*, 6 Moo. P. C. 355.

(7) Lord Brougham, in *Waring* v. *Waring*, 6 Moo. P. C. 369 ; *Groom* v. *Thomas*, 2 Hagg. E. R. 443. And see 3 Hagg. E. R. 599, 600.

(8) Sir J. Nicholl, in *Groom* v. *Thomas*, 2 Hagg. E. R. 443.

not rooted out; (1) but the state of mind may be inferior to that possessed previously to disorder, and yet it may be sound. (2) In judging of the validity of an act, after an alleged recovery from lunacy or unsoundness of mind, the question is whether the patient has recovered that *quantum* of disposing mind at the time of the act, which ought to give it effect. (3)

A person by inquisition found to be lunatic or of unsound mind, is on his permanent mental recovery entitled to ask that the custody of his person and estate may cease; (4) he himself (5) should then apply to the Lord Chancellor for a *supersedeas* of the inquisition, and by petition. (6) His committees may be co-petitioners with him; (7) but no relief will be given on the petition, if presented substantially by one who has bargained with the lunatic or person of unsound mind to procure the *supersedeas*. (8) The petition, together with the evidence in support of it, should be left with the Registrar in Lunacy to be answered in the usual way, and a copy with the order thereon for hearing, should be served by the petitioner on his committees, heir, and next of kin. (9) On the hearing of the petition, the petitioner must appear personally in Court; if that is impracticable without injury to his health, he must be so situated that he may be examined by persons acting under the authority of the Lord Chancellor. (10) Where a petitioner for *supersedeas* had escaped from the committee of his person, and was out of the jurisdiction of the Lord Chancellor, Lord Lyndhurst, C., ordered the petition to stand over until the petitioner had come within the jurisdiction. (11)

It is a much more delicate matter to grant a *supersedeas* than to direct an inquiryin the nature of a writ *de lunatico inquirendo*. (12)

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(1) Lord Thurlow, C., in *Att.-Gen.* v. *Parnther*, 3 Bro. C. C. 444.
(2) Lord Eldon, C., in *Ex parte Holyland*, 11 Ves. 11.
(3) Lord Eldon, C., in *Towart* v. *Sellers*, 5 Dow, P. C. 236.
(4) *Ash's case*, Freem. 259.
(5) *Ex parte Stanley*, 2 Ves. 25; *Ex parte Glover*, 1 Meriv. 269.
(6) See form of petition, *Elmer*, 137, 138.
(7) *Ex parte Bumpton*, Moseley, 78.
(8) *Re Dyce Sombre*, 1 H. & T. 285.
(9) *Elmer*, 54.
(10) *Re Dyce Sombre*, 1 Phill. 437.
(11) *Ibid.*
(12) See Lord Lyndhurst, C., in *Re Dyce Sombre*, 1 Phill. 437.

Lord Eldon, C., said, in Lunacy, "There is no part of the duty that occurs in the exercise of this jurisdiction, more unpleasant, and requiring greater caution than that of determining when a commission should be superseded, for though you may upon evidence arrive at a safe conclusion establishing lunacy, it is very difficult to determine when the mind is restored, depending upon circumstances whether the party is led to those topics upon which it was affected." (1) In one case where the permanent recovery of the petitioner seemed doubtful, Lord King, C., made orders that the petitioner should have the liberty of his person; but that the *supersedeas* should be suspended. (2) In a similar case Lord Eldon, C., gave to the petitioner the management also of his estate. (3)

Where a female lunatic had made great progress towards recovery, Lord Cottenham, C., instead of granting a *supersedeas*, ordered that she should be free from control as to her person, and as to the selection and appointment of her servants, and afterwards, on medical certificates of her recovery (she was in Scotland), he ordered that she should be at liberty to attend and act by her own solicitors in proceedings against a late committee of her estate; and that the then committee of her estate should be discharged, and that she should have the control of her whole income. (4) Inasmuch as a petitioner for *supersedeas* asserts that he is of sound mind, he cannot claim the benefit of any relaxation of practice conceded to those persons who are *non compos mentis*. (5) Where the evidence of recovery is not conclusive, the Lord Chancellor may direct an issue. (6)

When a petition stated the recovery of a petitioner four years back, and prayed taxation and payment of the costs of all parties as well as a *supersedeas*, the *supersedeas*, and taxation, and payment were ordered, also a transfer of the stock in Court in the matter into the joint names of the petitioner and his wife; (7) an

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(1) Lord Eldon, C., in *Ex parte Holyland*, 11 Ves. 10.
(2) *Ex parte Ferrars*, Mos. 332.
(3) *Ex parte Fermor*, Jac. 404.
(4) *Re Gordon*, 2 Phill. 242, 244.
(5) Lord Cottenham, C., *Re Dyce Sombre*, 1 Hall & Tw. 292.
(6) *Ex parte Holyland*, 11 Ves. 10.
(7) *Re Walker*, Shelf. on Lun. 2d ed. 281.

order for *supersedeas* has also contained directions to the committees of the petitioner to pass their accounts, and for him to pay the taxed costs, in default of funds in the hands of the committees. (1)

The order for *supersedeas*, and the writ of *supersedeas* are prepared by the Registrar.(2) A petition for a *supersedeas* having failed for want of proof of the mental recovery of the person found to be *non compos mentis*, the Lord Chancellor under the circumstances of the case refused to make any order as to costs; but directed the question of costs to stand over, by way of security against an improper repetition of such proceeding.(3)

On *supersedeas*, the peculiar jurisdiction of the Sovereign ceases in the particular case. (4)

The 43rd General Order, 7th Nov., 1853, provides that

"Where a *supersedeas* is issued, the Masters are to take and pass the account of the committee of the estate of his receipts and payments for and on account of the lunatic and his estate, from his appointment, or from the foot of his then last account passed in the matter up to the day of the date of the order. And the balance (if any) which the Masters may certify to be due from the committee on passing the aforesaid account is to be paid by him to the lunatic. And in case the Masters shall find a balance to be due to the committee, the same is to be paid to him by the lunatic; and upon payment of the aforesaid balance (if any) by the committee in manner aforesaid, or in case there shall not be a balance found due from him, or in case the taking and passing of the account is not required, then his security is to be discharged, and due notice of attending the Masters is to be given to the lunatic."

Before the passing of this order, the security of the committee of an estate was discharged on a petition for a *supersedeas*, at the request of the petitioner. (5)

The 47th General Order of 7th Nov., 1853, declares that

"On a *supersedeas* being issued, the Masters are to ascertain and report who is entitled to receive the several deeds, securities, bonds, papers, effects and things relating to or forming part of the estate and

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(1) *Re Wells*, Shelf. on Lun. 2d ed. 281.
(2) *Elmer*, 54, 140, 147.
(3) *Re Dyce Sombre*, 1 M. & Gor. 121.
(4) *Ex parte Ferne*, 5 Ves. 833; *Ex parte Glover*, 1 Meriv. 269.
(5) *Ex parte Bumpton*, Mos. 78.

property of the lunatic remaining deposited in their office for safe custody, and on such report being confirmed, the same are to be delivered out to the person who may be entitled to receive the same respectively."

A proper proportionate part of the per-centage payable on the income of an idiot, lunatic, or person of unsound mind, found so by inquisition, under the General Order in Lunacy is charged and chargeable upon his estate and is payable thereout, although before payment thereof the inquisition in his case be superseded, but the Lord Chancellor may remit or reduce the amount of the sum to be paid.(1)

The Act 16 & 17 Vic. c. 70, enacts

Sec. LII. "Where it is desired that an inquisition taken on a commission issued under, or a *writ of supersedeas* thereof issued under, the great seal of the United Kingdom or under the great seal of Ireland respectively, should be acted upon in Ireland or in England respectively, the proper officer may, under order of the Lord Chancellor of Great Britain, or the Lord Chancellor of Ireland, as the case may be, transmit a transcript of the record of the inquisition, or of the writ, to the Chancery of Ireland or of England (as the case may be), which transcript shall thereupon be entered and be of record there respectively, and shall, when so entered of record, and if and so long only as the Lord Chancellor of Ireland intrusted as aforesaid, and the Lord Chancellor of Great Britain intrusted as aforesaid (as the case may be), shall see fit, be acted upon by them respectively, and be of the same validity and effect, to all intents and purposes, as if the inquisition had been taken on a commission issued under, or the *writ of supersedeas* had been issued under, the great seal of Ireland or of the United Kingdom, respectively."

All Reports of the Visitors of lunatics relating to a person lunatic or of unsound mind are destroyed, on the inquisition in his case being superseded, unless the Lord Chancellor, within 14 days after the *supersedeas*, order that the same be not destroyed until the death of such person.(2)

It yet remains for us briefly to state

The proceedings on the death(3) of an idiot, lunatic, or person of unsound mind, found so by inquisition.

The first proceeding is, of course, to ascertain his executor

(1) See *antè*, p. 235; 16 & 17 *Vic. c.* 70, *s.* 28.
(2) *Antè*, p. 233; 16 & 17 *Vic. c.* 70, *s.* 107.
(3) As to notice of the death, see *antè*, p. 356.

(if any), and the next to provide for the burial of the deceased; there should be no unseemly wrangle or dispute to interfere with the performance of the last offices to the deceased; *primâ facie* the persons with whom he was living up to the date of his death are the most proper persons to conduct his funeral.(1)

The Act 16 & 17 Vic. c. 70, has a provision in these words:

Sec. LXXXIV. "The Masters may, on being satisfied of a lunatic's death, without order, open and read any paper writing deposited with them and purporting or alleged to be his will,(2) for the purpose of ascertaining who is therein nominated executor thereof, and also whether or not there is any and what direction therein contained concerning his funeral or place of interment, and then deliver the same to the Registrar or other proper officer of the Prerogative or other proper Ecclesiastical Court to the intent that the same may be exhibited in the usual course, and dealt with according to law, and shall certify the death and the opening and delivering out of the paper writing accordingly."( )

The will is opened upon the return of a summons obtained at the Masters' office by production of an affidavit of the death and identity of the lunatic, and on the return of another summons the will is delivered out. (4)

Prior to the passing of the Act 16 & 17 Vic. c. 70, the following case occurred before Lords Justices Knight Bruce and Cranworth: A lunatic died after the approval but *before the appointment of his committees,* and domiciled with his nephew who was one of his next of kin; the nephew prepared the lunatic's funeral and then petitioned the Lord Chancellor for an advance out of funds belonging to the lunatic, and in Court in the lunacy towards the funeral expenses; the lunatic had left a will which was in the Lunacy Office sealed up, and the petitioner proposed that it should be opened to see whether the lunatic had given any directions for his funeral; the other next of kin opposed the petition as unnecessary, on the ground that a warrant taken out at the Lunacy Office would have been sufficient; the Lords Justices directed the will to be opened and the funeral to be com-

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(1) *Re Townsend*, 21 L. J. N. S. Ch. 747.
(2) See 26*th G. O., 7th Nov.*, 1853.
(3) See also *Re Townsend*, 21 L. J. N. S. Ch. 747.
(4) *Elmer*, 48.

pleted by the petitioner, but expressed their inability then to make any further order on the petition which they directed to stand over.(1)

The liability of the committee of the estate to account to the Lord Chancellor for his dealings therewith is, of course, not affected by the death of the owner of the estate.(2) And the 44th General Order, 7th Nov., 1853, provides that

"Where a lunatic dies, the Masters are to take and pass the account of the committee of the estate of his receipts and payments for and on account of the late lunatic, and his estate, from his appointment or from the foot of his then last account passed in the matter up to the day of the decease of the late lunatic. And the balance, if any, which the Masters may certify to be due from the committee on passing the aforesaid account, is to be paid by him to the legal personal representatives of the late lunatic, to be by them applied in a due course of administration, and upon payment of the aforesaid balance (if any) by the committee in manner aforesaid, or in case there shall not be a balance found due from the committee, or in case the taking and passing of the account is not required and may in the opinion of the Masters be properly dispensed with, then his security is to be discharged."

The petition of the executors of a deceased lunatic for payment to them of the balance paid into Court by the committee of his estate should be served on the committee, though his accounts have been passed and his security has been discharged under this order. (3)

The 47th General Order, 7th Nov., 1853, provides that

"On the death of a lunatic the Masters are to ascertain and report who is entitled to receive the several deeds, securities, bonds, papers, effects, and things relating to or forming part of the estate and property of the lunatic, remaining deposited in their office for safe custody, and on such report being confirmed the same are to be delivered out to the person who may be entitled to receive the same respectively."(4)

Long prior to this order, after possession of a lunatic's realty had been given to persons who, on the appointment of the lunatic's committee, had been found to be her heirs, Lord Eldon,

(1) *Re Townsend*, 21 L. J. Ch. N. S. 747.
(2) See Lord Redesdale, C., in *Re Fitzgerald*, 2 Sch. & Lef. 441.
(3) *Re Wylde*, 5 De G. M. & G. 25.
(4) As to the previous practice, see *Re Fitzgerald*, 2 Sch. & Lef. 442; *Pearson*, Coop. C. C. 314.

C., sitting in lunacy, permitted another person claiming to be her heir, but absent in South America when the possession was claimed, to inspect (without taking copies) the title deeds of the same realty which were in the Lunacy Office, in order that it might be established who were or was the heirs or heir of the lunatic; afterwards he intimated that, if the reported heirs obstructed such claimant in his inspection of certain vaults and coffins (which might furnish evidence of the heirship), he (Lord Eldon) would not let the title deeds out of the office.(1)

The Lord Chancellor's authority under the sign manual expires in each case of idiocy, lunacy, or unsoundness of mind with the person *non compos mentis*,(2) but it seems that the Lord Chancellor may, under the sign manual, enforce against the estate devolved on the heir or legal personal representatives of such person, the execution of any order affecting his estate and made under that authority in his lifetime.(3) The Lord Chancellor may also, under the sign manual, after the death of an idiot, lunatic, or person of unsound mind, punish by attachment a person refusing to abide by an undertaking given by him to the Lord Chancellor in the matter and in the lifetime of the idiot, lunatic, or person of unsound mind.(4)

Ex necessitate rei, however, the Lord Chancellor may retain the property of a person *non compos mentis* after his death, and until the persons then legally entitled to possess it appear and pray for the delivery to them of possession.(5) The Lord Chancellor may also direct the receiver (if any) of the estate to collect the arrears of rent,(6) but it has been held that the committee of the estate of a lunatic, tenant *for life*, cannot after the death of such tenant distrain.(7) Mr. Shelford in his work on Lunacy states that persons who claimed as heirs-at-law and

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(1) *Ex parte Clarke*, Jac. 593—597.

(2) Sir A. Hart, C., in *Re Barry*, 1 Moll. 414. *Ex parte Degge*, 3 Bro. C. C. 237, n. seems opposed to this view, but Lord Loughborough, C., in 4 *Bro. C. C.* 235, said that the question of jurisdiction was in that case waived.

(3) *Re Kingston*, 2 Ir. Eq. R. 170.

(4) *Ex parte Roberts*, 3 Bro. C. C. 237, n.

(5) *Re Barry*, 1 Moll. 414. Lord Redesdale, C., in *Re Fitzgerald*, 2 Sch. & Lef. 440.

(6) *Ex parte Clarke*, Jac. 592.

(7) *Re McMahon*, 5 Law R. 168.

next of kin of a lunatic, were restrained after his death 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.(1)

We also find it laid down in *Staundford*, Pr. Reg. 35, b., that if an *idiot* die after office found but before possession of his land has been taken on behalf of the Crown, it may be seised into the hands of the Crown for the purpose of being restored to the right heirs.(2)

There is reason to believe that if a petition has been presented to the Lord Chancellor in the lifetime of the person *non compos mentis*, seeking payment out of such person's personalty of a debt to which it is liable, the Lord Chancellor may, after the death of such person and under the authority of the sign manual, order the payment; for where a Master in Lunacy had disallowed the claim of an attorney against a lunatic, because overreached by the inquisition, and the attorney presented a petition to the Lord Chancellor in lunacy in the lifetime of the lunatic, praying the admission of the claim, or leave to establish it at law, Lord Erskine, C., after the death of the lunatic, and because the petition was presented in the lifetime of the lunatic, gave the leave prayed, observing: "The sum that shall be found due by the verdict shall be paid out of the funds belonging to the lunatic."(3) In that case Lord Erskine also observed: "This petition was preferred during the life, and the universal course in that case is to apply the fund in discharge of the different creditors, unless there is a reasonable doubt whether the debt exists, which must be made the subject of consideration at law. When it is ascertained that the creditor has a demand it is to be paid out of the funds of the lunatic." But where an order had been made in the lifetime of a lunatic, found so by inquisition, for the sale of his lands

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(1) *Re Grove*, Shelf. on Lun. 2d ed. 449.

(2) And see 17 *Edw.* 2, *st.* 1, *c.* 9.

(3) *Ex parte McDougall*, 12 Ves. 385. It must be borne in mind, however, that this petition came on in lunacy *and in a cause of Erskine and others*, creditors of the lunatic, against the personal representatives of the lunatic; 1 *Coll.* 679.

by public auction, Lord Lyndhurst, C., refused, after the death of the lunatic, to confirm a sale of such lands by private contract.(1)

The Lord Chancellor has no authority under the sign manual to order payment of a debt out of the personal estate of a person idiot, lunatic, or of unsound mind, upon a petition presented after his death, because the legal personal representative of such person is then entitled to full possession of the estate.(2) And when an inquiry had been directed in the lifetime of a lunatic, found so by inquisition, as to the propriety of a sale or mortgage of his lands for payment of his debts, the Lord Chancellor refused after the death of the lunatic to order the Master to proceed with the inquiry.(3) Petitions in the matter of an idiot, lunatic, or person of unsound mind, found so by inquisition, if presented after his death, should state the death.(4)

The Lord Chancellor will not, in lunacy, on the death of a person found by inquisition idiot, lunatic, or of unsound mind, determine a dispute as to the person entitled to succeed to his realty ;(5) in the event of such dispute he will retain possession of the realty until, at law or in equity, the dispute has been determined ;(6) if there is no such dispute the Lord Chancellor will, on application to him stating the death, order that the committee of the estate deliver possession of the realty to the person claiming to be entitled.(7) On the death of a lady found lunatic by inquisition, the persons reported by the Master, on the appointment of her committees, to be heirs, petitioned for possession of her realty ; the solicitor of a person who had unsuccessfully resisted the Master's finding, opposed the petition and stated his belief that his client, then absent in South America, would return and re-assert his claim as heir ; Lord Eldon, C., gave possession of the realty to the petitioners, observing that he had no objection

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(1) *Re Loft*, 8 Jur. 206.
(2) *Ex parte Garnett*, and *Ex parte Pochin*, cited in 12 Ves. 385.
(3) *Re Holmes*, Shelf. on Lun. 2d ed. 25.
(4) Re Briscoe, 2 Dru. & W. 501.
(5) *Re Fitzgerald*, 2 Sch. & Lef. 432 ; and see *e Pearson*, Coo. C. C. 317 ; *Re Barry*, 1 Moll. 414.
(6) *Re Fitzgerald*, 2 Sch. & Lef. 432.
(7) Lord Redesdale, C., in prev. case.

to its being stated that the possession was without prejudice to the right of any other person.(1)

An inquiry in lunacy as to the heirship to a lunatic has however been obtained after his death by the acquiescence of all persons interested in the matter.(2) The committee may not put himself or anybody else into possession without the authority of the Lord Chancellor, and he may not use his office as committee to give possession to himself in another character.(3)

The Lord Chancellor also declines to determine in lunacy, after the death of a person found by inquisition idiot, lunatic, or of unsound mind, who are the persons entitled to succeed under the Statutes of Distribution, to his personal property.(4)

On a petition, after the death of a lunatic, praying that a Master, who had been ordered to inquire who were the next of kin of a lunatic, should, notwithstanding the death of the lunatic, make his report, Lord Thurlow, C., observed: "The order does not abate by the death of the lunatic, any party may still prosecute it and take out the Master's report; *I say nothing as to the costs of the report*, that may be a future consideration."(5)

The executors or administrators of an idiot, lunatic, or person of unsound mind should, on his death, petition for the transfer to them of his personal estate, after taxation and payment of any costs in the lunacy, and the committees and next of kin should either join in the petition or be served with it. The next of kin have not primarily any right that can be recognised, they must work out their titles to such personal estate through executors or administrators in the usual way.(6)

It has been held necessary to serve the committees of a lunatic with a petition presented by his executors for payment out of court of funds belonging to him and paid into court in the matter of the lunacy after his death by his committees, although the

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(1) *Ex parte Clarke*, Jac. 589.
(2) *Re Pearson*, Coop. C. C. 317.
(3) *Re Fitzgerald*, 2 Sch. & Lef. 432; Lord Eldon, C., in *Beer* v. *Ward*, Jac. 195; and *Ex parte Clarke*, Jac. 592.
(4) *Wigg* v. *Tiler*, 2 Dick. 552; *Ex parte Gilbert*, 1 Ball & Beav. 297; *Re Barry*, 1 Moll. 414. See *Re Persse*, 3 Moll. 94.
(5) *Re Armstrong*, 3 Bro. C. C. 238.
(6) Sir A. Hart, C., in *Re Barry*, 1 Moll. 414.

security of the committees had been discharged under the 44th General Order, 7th Nov., 1853.(1)

A creditor may take out an administration summons against the legal personal representatives of his deceased debtor, an idiot, lunatic, or person of unsound mind found so by inquisition.(2)

In reference to the Statute of Limitations, time begins to run at least from such debtor's death, against the claims of his creditors, and after his death their claims are not kept alive against his heir by proceedings in lunacy, to which proceedings such heir is not a party.(3)

A lunatic and the committee of his estate, plaintiffs in a suit, obtained an order therein by *consent* of the defendant, giving him liberty to prove in the lunacy his claim against the estate, and restraining him generally from proceeding at law in respect thereof; the defendant having claimed in the lunacy failed, and was then passive during 14 years till the death of the lunatic, when he again set up his claim as plaintiff in a creditor's suit against the lunatic's executors; Sir J. L. Knight Bruce, V.C., held that the Statute of Limitations disposed of the claim.(4)

Solicitors obtained an order in lunacy for taxing their costs of obtaining the commission and of other business in the lunacy, but did not tax. Five years afterwards the lunatic died, leaving only realty. The solicitors, after the lunatic's death, sued at law the committees of his estate, and they successfully set up the Statute of Limitations. On a subsequent petition by the solicitors in the lunacy a second order for taxation of such costs was made, but without *prejudice to any question* whether the petitioners had any claim on the estate.(5)

Where, after the death of a lunatic, the committee of his estate petitioned that a certain sum might be paid to himself out of the estate for maintenance of the lunatic up to her death (no order for maintenance had been made), Lord Cottenham, C., refused to make the order without a reference, although the

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(1) *Re Wylde*, 5 De G. M. & G. 25.
(2) *Chester* v. *Rolfe*, 4 De G. M. & G. 798.
(3) *Wilkinson* v. *Wilkinson*, 9 Hare, 204
(4) *Rock* v. *Cooke*, 1 De G. & Sm. 681.
(5) *Re Hart*, 21 L. J. Ch. 810.

lunatic's administratrix consented, unless the persons beneficially interested in the estate also consented.(1)

The delivery over of the personal estate to the legal persona representative will not be stayed on the application of a person guilty of gross laches in the matter.(2) If the committees of the estate of an idiot, lunatic, or person of unsound mind fail to elect during his lifetime between gifts to him and his legal rights, his next of kin may, at his death, elect.(3)

Lastly, the Act 16 & 17 Vic. c. 70, s. 107,(4) enacts that all the reports of the Visitors of Lunatics relating to any particular lunatic shall be destroyed on his death.

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(1) *Re Patrick*, 2 Phill. 394.
(2) *Re Franks*, 16 Law T. 529.
(3) *Re Hewson*, 23 Law J. Ch. N. S. 257.
(4) *Antè*, p. 233.

CHAPTER VIII.

As to the jurisdiction of the Court of Chancery over idiots, lunatics, and persons of unsound mind.

In the disposition of funds under its control belonging to a person idiot, lunatic, or of unsound mind, the Court of Chancery takes notice of such person's mental condition; it will not usurp the jurisdiction of the Lord Chancellor in Lunacy,(1) but if a person has not been brought by inquisition within his jurisdiction, the Court of Chancery will care for such person and his property; this practice proceeds from the necessity of taking care of a person incapable of managing himself and his property, though not legally found to be so incapable.(2) If the property of such person can bear the cost of the usual proceedings for a commitment of the custody of his person and estate, the Court of Chancery will not make any order for the permanent application, for his benefit, of the funds under its control. The following case seems to establish this doctrine: An order was obtained in a suit for payment of £100 per annum to the mother and guardian of an infant defendant, lunatic, though not found so by inquisition, for his maintenance during his minority; the payments were, through some irregularity, continued 26 years after the minority had ceased and till the mother's death, when the lunatic was entitled to £4252 Consols and £906 3s. 10d. cash in Court in the suit, and realty of the yearly value of £7. A petition by his sister and her husband (she was the lunatic's sole next of kin) was then presented, praying payment of the funds in court in the suit to them for the maintenance of the lunatic, or an inquiry into his

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(1) *Worth* v. *Mackenzie*, 3 M. & Gor. 364.

(2) Lord Eldon, C., in *Sherwood* v. *Sanderson*, 19 Ves. 283—289; *Gilbee* v. *Gilbee*, 1 Phill. 121. See also, as to a Court of Law: *Bray* v. *O'Keefe*, 6 Ir. Jur. 249.

state of mind and circumstances, the approval of a person to receive the income, and an inquiry as to the allowance for his future maintenance; Lord Lyndhurst, C., after adverting to the irregularity, dismissed the petition with the observation that a commission must be taken out, that whenever the Court had to provide, not simply for a temporary occasion, but for the permanent care and management of a lunatic and his property, it was inconvenient to deviate from the regular practice, and that *looking at the amount of the property in this case,* the expense of a commission afforded no ground for the application.(1)

On a petition of defendants in a suit in the Court of Chancery, who were the next of kin of an adult unmarried co-defendant of unsound mind, though not so found by inquisition, whose parents were both dead, praying the sale of his reversionary interest in £4000 in court in the suit, (besides which property he had only £10 per annum), with a view to his maintenance, Lord Lyndhurst, C., said that he could order a sale of the reversionary interest, and apply part of the proceeds in discharge of debts already paid on behalf of the lunatic, but he was not disposed to deal prospectively with the residue of the funds without a commission.(2)

Other decisions have occurred on petitions for the support of idiots, lunatics, and persons of unsound mind (not found so by inquisition) out of their property in the Court of Chancery, and a glance at them arranged tabularly may perhaps give an idea under what circumstances and how far the Court of Chancery will listen to such applications.(3) The dates of these several decisions are an important element in their consideration, and we must not forget that the Act 16 & 17 Vic. c. 70, repealing the 94th and 95th sections of the Act 8 & 9 Vic. c. 100, has, since many of them were decided, much reduced the cost of the legal inquiry into a person's state of mind.(4)

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(1) *Gilbee* v. *Gilbee*, 1 Phill. 121.

(2) *Re Walker*, 8 Jur. 49.

(3) See also *antè*, 25, 26; *Gallwey* v. *Christie*, Shelf. on Lun. 2d ed. 216; and *Re Biddulph's Trust*, 5 De G. and Sm. 469, the case of a person deaf, dumb, and blind.

(4) See particularly 16 & 17 *Vic. c.* 70, *s.* 120, 121.

Case.	Application.	Property of the idiot, lunatic, or person of unsound mind.	Order.	Comments.
Wilkinson v. *Letch*, 2 Coo. t. Cott. 195 (1760).	Petition in a suit of a defendant of unsound mind not found so by inquisition.	The defendant had, it seems, only an annuity of £25 for her life, payable out of dividends of Bank Stock in Court in the suit.	Sir T. Clarke, M.R., ordered payment of £20 per annum out of the £25 annuity to a person (who had maintained the defendant), so long as he should maintain the defendant; the surplus £5 to the same person until he was repaid the amount of his charges (£60 4s. 7d.) for the past maintenance of the defendant.	
Price v. *Bedford*, 2 Coo. t. Cott. (1771).	Petition in the suit of the plaintiff of unsound mind (but not found so by inquisition) and of her daughter (not a party to the suit), maintaining her, and entitled in reversion to her property.	The plaintiff had a life interest in an Exchequer Annuity of £40; the dividends of £2000, Million Bank Stock; and £300 East India Stock in Court in the suit.	The Court ordered the annuity and dividends of the stock to be paid to the daughter of the plaintiff during the plaintiff's life, or until further order for the plaintiff's maintenance.	
Price v. *Bedford*, 2 Coo. t. Cott. (April, 1784).	Petition in the suit, and of a person (not a party to the suit) who was devisee in trust of the reversionary interest in the plaintiff's property, and who was maintaining and had during the past year maintained the plaintiff.	The plaintiff had a life interest in an Exchequer Annuity of £40, the dividends of £2000 Million Bank Stock, £300 East India Stock; and was also entitled to £246 cash in Court, arisen from the said annuity and stock, which was in Court in the suit.	Lord Thurlow, C., it seems, directed an inquiry, as to the devise, as to the consent of the next of kin to the receipt by the devisee of the plaintiff's income for her maintenance, and as to the plaintiff's state.	
Price v. *Bedford*, 2 Coo. t. Cott. (December, 1784).	Petition in the suit by the same petitioners to confirm report on inquiries above directed.	Ditto.	Lord Thurlow, C., confirmed the Report, and ordered payment of the £246, cash, and of the annuity and dividends, to the plaintiff's co-petitioner during the plaintiff's life, or until further order for the plaintiff's maintenance and for the costs of the application.	

Eldridge v. *Croucher*, 2 Coo. t. Cott. 196 (1781).	Petition of the plaintiff (infirm in mind from age, but not found by inquisition idiot, lunatic, or of unsound mind), in a suit wherein a decree had been obtained declaring that the defendant was a trustee for the plaintiff of certain shares standing in the defendant's name.	The plaintiff had a life interest in £500, invested in the name of the defendant in shares; and the plaintiff was also entitled to one year's arrear of dividends on the shares in the hands of the defendant.	The Court ordered an inquiry into the state of mind and body of the petitioner, by whom and how she had been maintained, and what those who had maintained her deserved; a transfer of the shares into Court in the suit; and payment *pro. tem.* of the dividends in arrear, at the rate of £15 per annum, to the plaintiff's niece and that niece's husband, who had together at that rate maintained the plaintiff for six years then last past.
Machin v. *Salkeld*, 2 Coo. t. Cott. 198; 201 Dick. 634 (June, 1784).	Petition in the suit of a defendant (of unsound mind, though not found so by inquisition), and of his co-defendants (his sole next of kin and her husband, who were maintaining the defendant).	The defendant, of unsound mind, had a life interest in a moiety of £4433 6s., Reduced Bank Annuities, in Court in the suit, and an annuity of £15 for his life.	The Court ordered an inquiry into the state of mind and body of the defendant, alleged to be of unsound mind, by whom and how he had been maintained since a recent date, and what those who had maintained him deserved, and what should be his future maintenance allowance.
Machin v. *Salkeld*, 2 Coo. t. Cott. 198 (August, 1784).	Petition of said defendants to confirm the Master's Report on the above inquiries.	The defendant had the above-mentioned property, and £33 5s. cash in Court in the suit.	The Court confirmed the Report, and ordered payment of the £33 5s. to the petitioners, the next of kin and her husband, in discharge of their past maintenance of their co-petitioner; and of the costs of their application to the Court and payment of the moiety of the dividends of the £4433 6s., Reduced Annuities, in Court in the suit, to them so long as they should maintain their co-petitioner, or until further order.
Bird v. *Lefevre*, 4 Bro. C. C. 100; 2 Coo. t. Cott. 205 (1792).	Petition in a suit of a plaintiff, imbecile by reason of paralysis, but not found idiot, lunatic, or of unsound mind by inquisition.	It does not appear that the petitioner had any property beyond £962 3s. 11d. cash in Court in the suit; and £1467 14s. 8d. South	Lords Commissioners Eyre, Ashurst, and Wilson, ordered investment in South Sea Stock of the £962 3s. 11d. cash in Court in

Case.	Application.	Property of the idiot, lunatic, or person of unsoundmind.	Order.	Comments.
		Sea Stock, also in Court in the suit; *or*, a life interest in that cash and stock.	the suit, and payment of the dividends of such South Sea Stock, and of the dividends on the £1467 14s. 8d., South Sea Stock, in court in the suit, to the wife of the petitioner, for his maintenance until further order.	
Eyre v. *Wake*, 4 Ves. 795 (1799).	Petition in a suit of a female plaintiff of weak mind, and her next friend (the next friend was her maternal uncle under whose protection she lived).	The plaintiff had a life interest in part and an absolute interest in £1700 Consols, and in £53 8s. 6d. cash; she was also absolutely entitled to £200 and £16 13s. 4d. respectively on mortgage.	Lord Eldon, C., ordered transfer into Court in the suit of the stock and cash, and payment of the dividends of the two next quarters to the plaintiff's next friend, to be applied in payment of his costs, and afterwards in the maintenance of the plaintiff.	The Lord Chancellor considered he was doing an irregular thing, and that the petition was in effect a petition for a commission of lunacy. He declined to order payment of all future dividends, and directed the petitioners to present another petition at the expiration of the two quarters, as he considered that the Court should know from time to time the state of the plaintiff's mind and the amount of her fortune. The plaintiff had a living paternal uncle.
Brodie v. *Barry*, 2 V. & B. 36 (1813).	Petition in a suit of the husband of a lady resident in Scotland (of unsound mind, but not so found by inquisition), to whose separate account funds stood in the suit.	The lady was entitled for her separate use to the income during her life of £20,000, on account of which various payments had been made into Court.	Lord Eldon directed an inquiry "who had maintained the wife, and at what expense; how far the husband was willing and able to maintain her; and, if any part of the fund was to be advanced to any one, what securities should be taken for its due application."	No order appears to have been ever drawn up in this case: 2 Coo. t. Cott. 188, note.
Ex parte Ridgway, 5 Russ. 152; 2 Coo. t. Cott. 207 (1828).	Petition *not in a suit* by the executor of the father of a female, alleged to be of unsound mind, but not found so by inquisition, praying an inquiry into her state of mind and into the amount of	The whole property of the lunatic consisted of £150, and of an annuity of £50.	Lord Lyndhurst C., declined to make any order.	The next of kin consented to the petition. *Eyre* v. *Wake*, *Machin* v. *Salkeld*, and *Ex parte Pickard*, were cited for the petitioner, but the Lord Chancellor stated that what this petition

	her fortune; and if she should be found of unsound mind, a grant of the custody of her estate and person to the petitioner, and payment to him of the £150 and annuity for her maintenance.			called upon him to do was an irregularity, and that he would not add to the number of cases in which the irregularity had been committed.
Steed v. *Calley*, 2 M. & K. 52 (1833).	Petition in the suit by the wife and co-plaintiff of a person of unsound mind, not found so by inquisition.	The family of the plaintiff was in narrow and distressed circumstances, and there was £20 Long Annuities in Court in the suit to the account of the plaintiffs.	Sir John Leach, M.R., ordered payment of the dividends on the £20 Long Annuities to the petitioner on her sole receipt, or to Mr. H., her solicitor and next friend, Mr. H. undertaking to pay the same to the petitioner.	
Peters v. *Grote*, 7 Sim. 238 (1835).	Petition of a defendant in the suit, the brother of a lady of unsound mind (not found so by inquisition), abandoned by her husband, who was abroad.	A fund in court in the suit to the account of the husband and wife; the report does not give the amount, but it was the whole property of the wife.	Sir L. Shadwell, V.C.E., ordered payment out of the principal fund, of a debt to the petitioner for the past maintenance of the lady.	It has been observed by a learned writer that the propriety of this order is questionable, on the ground that the payment ordered deprived the lady of a future maintenance: 2 Coo. t. Cott. 194, n.
Nettleship v. *Nettleship*, 10 Sim. 236 (1839).	Application at the hearing of a suit by a defendant, the husband of a female defendant of unsound mind, not found so by inquisition.	£100 annuity was bequeathed to the separate use of the wife for her life; another annuity of £400 had been given to her absolutely for her life; and she was also entitled absolutely to the dividends of a sum of stock, amounting to £108, for her life.	Sir L. Shadwell, V.C.E., ordered payment of the £400 annuity and of the dividends, to the husband.	The Vice-Chancellor declined to order payment of the £100 annuity, without a more positive affidavit of the husband's means; the husband had sworn to an agreement between himself and the proprietor of a lunatic asylum, for his wife's maintenance at the asylum, for £500 per annum.
Conduit v. *Soane*, 5 M. & Cr. 111; 2 Coo. t. Cott. 205 (1840).	Petition in a suit of the wife and son of a person of unsound mind (not found so by inquisition); he was no party to the suit, but to his account cash and stock were standing in the suit, and to him the cash and dividends of the stock had been ordered to be paid.	The person of unsound mind had not any property beyond the £50 cash in Court in the suit, and a life interest in the dividends of £3333 6s. 8d. Consols in Court in the suit. His family had an annual allowance of £70 made to them by the Royal Academy.	Lord Cottenham, C., ordered payment of the £50 cash to the petitioners, also payment of the dividends of the £3333 6s. 8d. Consols in Court in the suit to the petitioners, so long as their co-petitioner should remain of unsound mind (that fact to be verified by affidavit), they undertaking to apply the same for his benefit.	The Lord Chancellor refused to direct that the son should receive the annuity in the event of the wife dying before her husband.
Re Walker, 8 Jur. 49 (1844).	Petition in a suit of the next of kin of a defendant of unsound	The defendant of unsound mind had the absolute reversionary in-	Lord Lyndhurst, C., ordered a sale of the reversionary interest.	Lord Lyndhurst, C., also observed that he could apply part

Case.	Application.	Property of the idiot, lunatic, or person of unsound mind.	Order.	Comments.
	mind, for sale of his interest in £4000 in the suit, with a view to his maintenance.	terest dependent on the life of his aged grandmother in the £4000; besides it the defendant had only £10 per annum.		of the proceeds in discharge of debts already paid on behalf of the defendant, but he should not be disposed to deal prospectively with the residue of the funds without a commission.
Edwards v. *Abrey*, 2 Coo. t. Cott. 177; 1 Phill. 37 (1846).	Petition in a suit of a defendant, the husband and guardian *ad litem* of a wife of unsound mind since 1838 (not found so by inquisition, but by Report in the suit, and declared to be incurable), for sale of stock in Court standing in the suit to her separate account, and repayment to himself thereout of £413 (found by a Report in the suit to have been expended by him out of his capital in maintaining his wife during her mental disorder), and for payment to him of £70 per annum (found by a Report in the suit to be a proper maintenance allowance for the wife), out of the dividends of the stock.	The wife's fortune consisted of stock in court yielding £90 per annum, settled to her separate use. [The husband's means were slender; he was a farmer with three children, and his income was about £100 per annum.]	Lord Cottenham, C., ordered the application of the Reduced Bank Annuities towards the repayment of the £413; payment of the £70 per annum to the husband for his wife's maintenance, out of the dividends of the residue of the stock; and if any surplus dividends, those to be paid to the husband until the £413 should have been repaid.	The Lord Chancellor observed that it was not necessary then to consider whether there could be any appropriation of the surplus dividends (£20) not wanted for the maintenance of the wife after the husband's debt was liquidated, and he said that the husband need not enter into any recognizance duly to apply the maintenance allowance of £70. In the course of his judgment the Lord Chancellor also observed: "Where the property was too small to admit of a commission being taken out, and there was a suit and a fund to the credit of the suit to which the lunatic was entitled, the Court had a power very like that of the Lord Chancellor sitting in lunacy."
Knox v. *Watters*, 10 Ir. Eq R. 358 (1847).	Petition of a defendant of unsound mind from his birth (not found so by inquisition), by his next friend, and petition of plaintiffs in a suit for a rehearing.	The defendant was entitled to £60 rent-charge during his life.	The Right Hon. Mezière Brady, C., declared that the defendant was entitled to the £60 rent-charge for his life; and then, inserting in the order a recital that it appeared to the Court that the defendant was of unsound mind, and that his property would not admit of the expense of a commission, ordered an inquiry into	

			his state of mind and body; by whom he had been maintained; what should be his future maintenance, and to whom it should be paid.	
Carr v. *Boyce*, 13 Ir. Eq. R. 102 (1848).	Motion for a receiver by the plaintiffs in a suit instituted by the next friend of a person of unsound mind (not so found by inquisition), praying that the arrears of a rent-charge of £50 devised to such person might be raised.	The plaintiff of unsound mind was entitled to a rent-charge of £50, which the defendant refused to pay to him, on the ground of his insanity.	The Right Hon. T. B. C. Smith, M.R., granted the motion on the authority of *Eyre* v. *Wake*, *Bird* v. *Lefevre*, and *Conduit* v. *Soane*, and because the expense of a commission of lunacy would consume the rent-charge for a year or two; he required the next friend to undertake to apply the rent-charge from time to time to the maintenance of the plaintiff.	
Volans v. *Carr*, 2 De G. & Sm. 242 (1848).	Hearing of suit on further directions; to funds in the suit an idiot resident in America was entitled; he had been found idiot by inquisition in America but not in England.	Neither the amount of property to which the idiot was entitled nor the amount of the fund belonging to him in the suit, appears in the Report.	Sir J. L. Knight Bruce, V.C., ordered payment of the dividends of the funds in Court in the suit, to which the idiot was entitled, to his mother (who was one of the American committees of his person and estate), on her undertaking to apply them for the benefit and support of the idiot.	It is worthy of notice that the mother seems to have been resident out of the jurisdiction of the Court of Chancery.
Re Berry, 13 Beav. 455 (1849).	Petition under the Trustee Relief Act of an adult daughter, alleged to be of unsound mind, living with her father, who was alleged to be unable to maintain her.	The daughter was entitled to £770 15s. 4d. Consols, paid into court under the Trustee Relief Act.	Sir J. Romilly, M.R., ordered that the dividends to accrue due on the residue of the said £770 15s. 4d. Consols, after payment of the costs, should be paid to the petitioner's father, for her maintenance, until the further order of the Court.	

Lord Brougham, C., said that the jurisdiction exercised by the Court of Chancery where, from the small amount of the property, no commission of lunacy had been taken out, to direct an inquiry touching soundness of mind, and to make orders relative to their maintenance and support, was confined to cases of persons who were *parties or quasi parties to suits*, the funds dealt with uniformly, as he believed, standing to the credit of such suits: *Re Astley*, 2 Coo. t. Cott. 207, n.; see also Sir T. Clarke, M.R., in *Wilkinson* v. *Letch*, 2 Coo. t. Cott. 195; but see *Re Dodsworth's Trust*, 10 Hare, 16.

After decree in a suit in the Court of Chancery a commission of lunacy issued against the plaintiff, a *feme coverte*, who sued by a next friend, the husband of the plaintiff being a defendant in the suit, applied to stay the suit pending the result of the commission, this application was opposed by the next friend, but Sir L. Shadwell, V.C.E., made the order, observing: "the only question is, whether I shall allow a sort of fraud (using that word in the sense in which it is used in this Court) to be practised on the jurisdiction in lunacy. *Primâ facie* there is good ground for supposing that the suit, instead of being conducted by the next friend, will be conducted under the jurisdiction in lunacy, therefore nothing ought to be done in the Master's office until the Court has been informed what has been the result of the proceedings under the commission of lunacy.(1)

Where a lunatic lady (found so by inquisition) being possessed of property yielding £438 per annum, and being interested in property yielding £674 per annum which had been bequeathed "in trust to pay the income to her for life, or to apply the same or so much as might be necessary for her support and maintenance," had a maintenance allowance of £750, Sir J. L. K. Bruce and Sir Geo. J. Turner, LL.J., in a suit in the Court of Chancery, held that the latter income was applicable in *pro tanto* exoneration of the former.(2)

A bill may be filed in the Court of Chancery by the administrator of a person of unsound mind against the administrator of the committee of the estate of such person for an account.(3)

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(1) *Hartley* v. *Gilbert*, 13 Sim. 596.
(2) *Rudland* v. *Crozier*, 6 W. R. 305.
(3) *Sheldon* v. *Aland*, 3 P. Wms. 104; *Grosvenor* v. *Drax*, 2 Knapp, 82; and see *Stephenson* v. *Holmes*, 3 L. J. N. S. Ch. 41.

On petition in a suit in the Court of Chancery praying the application of funds in that court in the suit belonging to a party idiot, lunatic, or of unsound mind, not found so by inquisition, a Vice-Chancellor to whose court the suit is attached has as much jurisdiction as the Lord Chancellor.(1)

For the necessary maintenance of an idiot, lunatic, or person of unsound mind (not found so by inquisition), possessed of property too small to bear the costs of a commission, the Court of Chancery has jurisdiction to apply not only the income but also the principal funds in court of such person. [See the three cases in table on following page.]

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(1) Sir J. L. Knight Bruce, L.J., in *Davies* v. *Davies*, 2 De G. Mac. & Gor. 53; and in *Volans* v. *Carr*, 2 De G. & Sm. 242.

Case.	Application.	Property.	Order.	Comments.
Davies v. *Davies*, 2 De G. M. & G. 51 (1852).	Petition in the suit of a spinster defendant of unsound mind (not found so by inquisition), aged 47, for 17 years past insane, and latterly maintained by her mother, who was aged, infirm, and in very poor circumstances, and of her mother and brother.	Petitioner was entitled in possession to £762 16s. Consols, £41 19s. 5d. cash respectively in Court in the suit, and she was entitled in reversion (on the death of a person aged 42) to £3600, Consols. She had also a life interest in £600 3 per cent. Reduced Bank Annuities in Court in the suit, and she was entitled in reversion to one-seventh of the £600.	Sir J. L. Knight Bruce and Lord Cranworth, LL.J., ordered that the petitioner, the brother of the defendant, should be at liberty to contract with the Commissioners for the Reduction of the National Debt for the purchase in the name and on the life of the defendant of such a Government annuity as could be purchased with £600 of the said £762 16s. stock, and that the Commissioners should pay the said annuity to the brother until the further order of the Court, he undertaking to apply it towards the maintenance of the defendant; that the interest on the residue of the £762 16s. be in like manner paid to the defendant during her life; that the taxed costs of the petitioners should be paid out of the £41 19s. 5d. cash in Court, and that the residue of the cash should be paid to the brother, for the maintenance of the defendant.	There has been a similar order in a subsequent and precisely similar case (*Re Bingley's Trust*, 22 Law T. 166).
Re Dodsworth's Trust, 10 Hare, 16 (1852).	Petition under the Trustee Relief Act of an idiot, aged 49, not found so by inquisition, and of A. B., a relation of the idiot.	The idiot was entitled to £519 9s. 4d. Reduced Bank Annuities, paid into Court under the Trustee Relief Act; his income was £14.	Sir Geo. J. Turner, V.C., gave liberty to A. B. to purchase with the £519 9s. 4d. stock a Government annuity from the Commissioners for the Reduction of the National Debt, in the name and on the life of the idiot, and ordered the Commissioners to pay the annuity to A. B., he undertaking to apply it towards the maintenance of his co-petitioner.	The Vice-Chancellor made the order, on the authority of *Re Stonard*, 18 Ves. 285.

Case.	Application.	Property.	Order.	Comments.
Re Irby, 17 Beav. 334 (1853).	Petition under the Trustee Relief Act of a person of unsound mind (not found so by inquisition) by his next friend for payment of the income of funds in Court belonging to such person, unto certain near relatives, for his maintenance so long as he should remain of unsound mind.	The person of unsound mind was entitled to £4451 17s. 3d. Consols, £1606 Reduced Bank Annuities, £795 Reduced Bank Annuities, and £560 cash paid into Court under the Trustee Relief Act.	Sir J. Romilly, M.R., refused to make any order.	The Master of the Rolls observed that the orders cited by the petitioner (*Price* v. *Bedford*, *Eldridge* v. *Croucher*, *Machin* v. *Salkeld*, *Bird* v. *Lefevre*, *Eyre* v. *Wake*, *Ridgway* v. *Darwin*)* were made in causes, and not under the Trustee Relief Act, and that the income exceeded £200 per annum, and that order asked was an order in lunacy.

* But see *Re Dodsworth's Trust*, 10 Hare, 16; and *Re Weldon*, 18 Law T. 85.

For the protection of a lady mentally affected by epilepsy though not found idiot, lunatic, or of unsound mind by inquisition, Lord Eldon, C., by order on petition in a suit, restrained her from executing any instrument disposing of funds in the Court of Chancery, except in the manner and with the attestation directed by the order.(1)

Although it is the duty of the Court of Chancery to protect the property of an idiot, lunatic, or person of unsound mind, not found so by inquisition, the Court will not so exercise that duty as to deprive him of his pecuniary means of opposing an inquiry into his state of mind.(2)

It seems that Lord King, C., as head of the Court of Chancery, restrained the abduction of a person alleged to be *non compos mentis* from England, and ordered the institution of proceedings to bring her as a lunatic under the custody of the Crown.(3) Mr. Shelford also states that an order to restrain the removal of a supposed lunatic out of England was made upon a petition for a commission of lunacy, the hearing of which petition was adjourned.(4)

Where, in an administration suit, an inquiry was directed whether it was proper to apply for a commission in lunacy against a party to whom a testator had directed payment of the entire income of a trust fund, if she was capable of managing her affairs, but a portion only of the income if she was declared incapable; Lord Cottenham, C., ordered payment of the costs of the inquiry out of the income.(5)

The Court does not merely regard the property of idiots, lunatics, or persons of unsound mind not so found by inquisition; it exercises a special and parental jurisdiction over themselves for their protection.(6)

Where costs had been properly incurred in suing out and

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(1) *Ridgway* v. *Darwin*, 8 Ves. 65; Shelf. on Lun. 2d ed. 216; but see *Re Walker*, Cr. & Ph. 147.

(2) *Re Holmes*, 4 Russ. 187; and see *Re Holmes*, *Re King*, and *Re Galloway*, Shelf. on Lun. 2d ed. 159.

(3) *Marr's case*, Ambl. 82. See also Lord Langdale, M.R., in *Nelson* v. *Duncombe*, 9 Beav. 232; and *Re Pearce*, 8 Jur. 89; *antè*, 67.

(4) *Shelf. on Lun. 2d ed.* 129.

(5) *Winthrop* v. *Winthrop*, 15 L. J. 403.

(6) Lord Langdale, M.R., in *Nelson* v. *Duncombe*, 9 Beav. 218, 219, 232.

executing a commission of lunacy against a party to a suit, Lord Eldon, C., with a view to their payment out of funds in the suit belonging to the lunatic, and upon the principle on which the Court of Chancery protects persons in a state of mental incapacity, ordered taxation of the costs.(1)

So upon the petition in an abated suit in the Court of Chancery of the committees of the deceased lunatic plaintiff, and of the plaintiff's sons, praying that £2835 (composed of taxed sums payable in respect of the commission of lunacy, and of other sums declared to be payable out of the lunatic's estate) might be raised by a sale of stock standing to the lunatic's credit in the suit, Lord Truro, C., made the order prayed; he met a suggestion on the part of the lunatic's executors, that there might be other prior creditors of the lunatic, by the observation that they the executors had not substantiated their suggestion, and that the estate of the lunatic ought to be applied in payment of costs, which appeared to have been incurred under the sanction of the Court, and in proceedings for the benefit of his estate.(2)

Upon the same principle, after the marriage of a lunatic infant ward of the Court of Chancery, that Court will direct an inquiry whether she was of sound mind when she married, and whether it would be for her benefit to issue a commission of lunacy, and to pay the expense of such inquiries.(3)

And upon the same principle, in a suit in the Court of Chancery by a plaintiff *cestui que trust* against a defendant trustee the Court gave credit to the trustee for monies expended by him for the protection and safety, and for the maintenance and support of his *cestui que trust* when incapable of taking care of himself by reason of lunacy, though he had not been found by inquisition to be lunatic.(4)

On a bill filed in the Court of Chancery by the committees of a lunatic against her mother's executors, for an account of the monies the mother had received in respect of her daughter's

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(1) *Sherwood* v. *Sanderson*, 19 Ves. 280.
(2) *Tayler* v. *Tayler*, 3 De G. M. & G. 426.
(3) Anon. case cited by Lord Eldon, in *Sherwood* v. *Sanderson*, 19 Ves. 289; and in *McAdam* v. *Walker*, 1 Dow, 178.
(4) *Nelson* v. *Duncombe*, 9 Beav. 211. See also *Shallcross* v. *Wright*, 12 Beav. 558.

estate, an inquiry was directed what annual sum was proper to be allowed to the mother for the maintenance of the daughter.(1)

The Court of Chancery considers that it is the duty of those who manage the property of an idiot, lunatic, or person of ununsound mind not so found by inquisition, to act as a provident owner would do; therefore a legatee of a testator's "money at his residence" cannot insist in the Court of Chancery against a legatee of the testator's "stock," that large sums of money paid at the residence of the testator, who died insane, and laid out for him in stock during his insanity, should be treated in equity as money at the testator's residence.(2)

How far and when the Court of Chancery will interfere to set aside the transactions of a lunatic, or person of unsound mind, may be gathered from the cases cited in the preceding chapter as to the civil incapacity of idiots, lunatics, and persons of unsound mind; and from the judgment of Sir William Grant, M.R., in *Niell* v. *Morley* (3). In that case a plumber in May, 1800, attended an auction, was the highest bidder thereat for certain lots of building materials, paid part of the purchase money, and for other part gave promissory notes and a warrant of attorney to confess judgment; he then resold at a loss part of the materials, and was afterwards in August 1800 by inquisition found a lunatic from May 1797 without lucid intervals; he traversed the inquisition, and on the traverse failed. His committee and he then filed a bill in the Court of Chancery against the vendor of the lots, praying that such vendor should be decreed to repay to the committee the monies paid for the lots; that the purchases of the lots should be set aside, that the notes should be delivered up, and that an injunction should issue to restrain legal proceedings by the vendor. On dismissing the bill Sir W. Grant, M.R., said, "Suppose him (the plaintiff) to be considered in strictness a lunatic at that time (the time of the purchase), 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 to him the possession of all the money he has paid in

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(1) *Gaitskell* v. *Scott*, Shelf. on Lun. 2d ed. 293.
(2) *Browne* v. *Groomridge*, 4 Mad. 501.
(3) 9 *Ves.* 478.

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; . . . . I do not believe the defendant gave credit to the information he received, and proceeded *malâ 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 will leave the party to law. The inconvenience of carrying back the finding is great if that is to be followed through all the legal consequences: assuming it to be the legal consequence, 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. 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 show the loss was

occasioned by an exorbitant price to him), a Court of Equity is called upon to make the defendant refund, and to give to the one party all 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 10 or 12 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 *malâ fide*, (1) as having notice, that would be a distinct and different ground for the interference of a court of equity."

In *Price* v. *Berrington* (2) (a suit to set aside a deed on the ground of the lunacy of the grantor), Lord Truro, C., after citing *Niell* v. *Morley*, observed, "although the circumstances of the case just cited and the present are, of course, not identical, and may be considered as distinguishable in some respects, the principle of that decision is clear, and I think is applicable to the present case. The contract here has been executed with the knowledge of the family; the estate has been enjoyed for 27 years, and without the occurrence or discovery of any new circumstances, the transaction after that period is now sought to be avoided: *the purchaser having acted* bonâ fide, *dealt with the estate, believing it to be his own, made important family arrangements upon that footing, the disturbance of which*

(1) In *Price* v. *Berrington*, 3 Mac. & Gor. 490, Lord Truro, C., observed, "It is upon the ground of fraud that the plaintiff claims to be entitled to the relief which is sought to be obtained by this bill, the fraud being alleged to consist of the following facts, 1st, that Price, the grantor, was insane at the time he executed the conveyance, of which Moggridge and his solicitor had notice; 2d, that a small part only of the consideration was actually paid, and that the nominal consideration was much below the real value of the property sold; 3d, that Moggridge, the buyer, was aware of the real value of the estate, and that it contained available minerals, which facts were concealed from Price; 4th, that the conveyance was procured by suppression, intimidation, and coercion. *If these facts have been established by the evidence, the plaintiff will undoubtedly be entitled to the relief prayed for.*"

(2) *Price* v. *Berrington*, 3 Mac. & Gor. 499.

would, I think, be not only highly inconvenient but unjust. To hold that the Court ought not to grant the relief prayed under these circumstances, is consistent with the principle of *Niell* v. *Morley*, and of Lord Hardwicke's ruling in *Sergeson* v. *Sealey*"(1). The language of Lord Cottenham, C., in a later case, would lead to the conclusion that a *bonâ fide* transaction with a lunatic, or person of unsound mind, not found so by inquisition, will not be set aside by the Court of Chancery, even if the parties thereto can be placed *in statu quo.* He is reported as saying, "The result of the authorities seems to be that dealings of sale and purchase by a person apparently sane, though subsequently found to be insane, will not be set aside against those who have dealt with him on the faith of his being a person of competent understanding (2).

The Court of Chancery has no jurisdiction to determine a question of the mental capacity of a person when that determination is to be made the ground of depriving such person of a beneficial interest in property and giving it to another. (3)

Where a person has been found by inquisition idiot, lunatic, or of unsound mind, the Court of Chancery will not usurp the jurisdiction of the Lord Chancellor acting under the sign manual; (4) further, no inferior judge of the Court of Chancery may disregard an order of the Lord Chancellor acting under the sign manual; thus, on bill filed disputing the proper application of monies applied pursuant to an order in lunacy, Sir John Romilly, M.R., considered that, as to the propriety of the application, he was bound by the order in lunacy; to obviate any injustice to the plaintiff, he directed all proceedings in the suit to stand over for six months, with liberty to the plaintiff in the meantime to apply to the Lord Chancellor in Lunacy concerning such order. (5)

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(1) *Sergeson* v. *Sealey*, 2 Atk. 412; there a lunatic, apparently sane, purchased land, which was conveyed to him. He was afterwards found by inquisition lunatic at the date of such purchase. Lord Hardwicke would not, against the lunatic's heir, treat the land as personalty.

(2) Lord Cranworth, C., in *Elliott* v. *Ince*, 3 Jur. N. S. 599; and see *Beavan* v. *McDonnell*, 9 Exch. 309, 313.

(3) *Winthrop* v. *Winthrop*, 1 Coo. t. Cott. 196.

(4) *Murray* v. *Frank*, Dick. 555.

(5) *Norris* v. *Lord Dudley Stuart*, 16 Beav. 364; and see Sir J. L. Knight Bruce, V.C., in *Rock* v. *Cooke*, 1 De G. & Sm. 680.

Sir W. P. Wood, V.C., considers that the Court of Chancery has judicial notice of the practice in Lunacy. (1) Sir J. L. Knight Bruce, V.C., expressed a contrary opinion (2)

A judge of the Court of Chancery may in the exercise of his judicial discretion determine in a suit in that court, a question of sanity without the intervention of a jury; (3) but if he entertains a doubt on the question, he directs an issue (4) in order that the fact may be investigated where the mode of taking evidence is more adapted to such an inquiry; (5) to use the language of Lord Eldon, C., an issue is directed by the Court of Chancery, "to inform its conscience:" (6) where a judge of the Court of Chancery entertains no doubt on the question of sanity, he will himself determine the question without the intervention of a jury. (7)

If a judge of the Court of Chancery is dissatisfied with the verdict of the jury on the trial of an issue of sanity directed by him, he may direct a new trial. (8)

The Court will not direct such an issue unless a finding thereon is in any event material to its decision. (9)

In a suit in the Court of Chancery to set aside deeds on the ground of the lunacy of the grantor, Lord Langdale, M.R., directed an issue in these words: "It is ordered that the parties do proceed to the trial at law at the sittings of the Court of

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(1) Sir W. P. Wood, V.C., in *Stedman* v. *Hart*, 1 Kay, 612.

(2) Sir J. L. Knight Bruce, V.C., in *Rocke* v. *Cooke*, 1 Coll. 479.

(3) Lord Eldon, C., in *Warden, &c., of St. Paul's, London* v. *Morris*, 9 Ves. 168; in *Bullen* v. *Michel*, 4 Dow, 318-320; and in *Hampson* v. *Hampson*, 3 V. & B. 42. Lord Langdale, M.R., in *Snook* v. *Watts*, 11 Beav. 110. Sir J. Wigram, V.C., in *Raine* v. *Cairns*, 4 Hare, 333.

(4) *Clerk* v. *Clerk*, 2 Vern. 413; *Niell* v. *Morley*, 9 Ves. 478; *Frank* v. *Mainwaring*, 2 Beav. 115; *Snook* v. *Watts*, 11 Beav. 110. See also *Price* v. *Berrington*, 7 Hare, 397.

(5) Lord Eldon, C., in *O'Connor* v. *Cook*, 6 Ves. 671; *Ellis* v. *Bowman*, 17 L. T. 11; *Elliott* v. *Ince*, 3 Jur. N. S. 599-601. Sir W. P. Wood, V.C., in *Harrod* v. *Harrod*, 1 Kay & Jo. 7; *Long* v. *Long*, 4 Ir. Ch. R. 106. Sir W. Grant, in *Hall* v. *Warren*, 9 Ves. 611. Lord Cottenham, C., in *Cooke* v. *Cholmondeley*, 2 Mac. & Gor. 28.

(6) Lord Eldon, C., in *Hampson* v. *Hampson*, 3 V. & B. 42; and in *Bullen* v. *Michel*, 4 Dow, 319.

(7) *Evans* v. *Blood*, 3 Bro. P. C. 632; *Harrod* v. *Harrod*, 1 Kay & Jo. 7.

(8) *Att.-Gen.* v. *Parnther*, 3 Bro. C. C. 444. See also *Pemberton* v. *Pemberton*, 11 Ves. 50; and *White* v. *Wilson*, 13 Ves. 87; *Bootle* v. *Blundell*, 19 Ves. 494; *Lorton* v. *Lord Kingston*, 4 Cl. & Fin. 260; *Wilson* v. *Beddare*, 5 Jur. 624.

(9) *Lewis* v. *Thomas*, 3 Hare, 26, 33; *Price* v. *Berrington*, 7 Hare, 403.

Common Pleas in the county of Middlesex, after Hilary Term next, upon the following issue, that is to say, whether E. F., deceased in the pleadings named, was of sound mind, so as to be sufficient for the management of himself, his manors, &c., goods and chattels, at the several and respective times following, that is to say, when he executed, &c." (1)

In a subsequent and similar suit the issue was worded, "whether on the 1st day of May, 1847 (the date of the execution of a deed by the lunatic), Mrs. C. (the lunatic) was of sound mind sufficient to govern herself, her lands, hereditaments, goods and chattels;" the words "sufficient, &c.," were objected to, but Lord Cranworth, C., thought the words proper, as they followed the form of an inquisition. (2)

The Court of Chancery may elect on behalf of a party to a suit incapable of electing, and the Court in such election considers what is most advantageous for him; (3) but it will not elect unless the interest of the party himself requires an election. (4)

Lord Eldon, C., permitted a Master of the Court of Chancery to receive, under a decree in a creditor's suit, any evidence that would be satisfactory to such Master of the debt of a woman, who was mentally incapable of proving her debt (though not found idiot, lunatic, or of unsound mind by inquisition), and who possessed no other property than the debt, and the interest thereon, together amounting to £380 only. (5)

Orders in lunacy are not evidence in the Court of Chancery of the facts on which they are based, though entitled there to great respect. (6)

The practice of the Court of Chancery in the case of an idiot, lunatic, or person of unsound mind, party to a proceeding therein, has been stated in previous chapters. (7)

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(1) *Frank* v. *Mainwaring*, 4 Beav. 38.
(2) *Elliott* v. *Ince*, 3 Jur. N. S. 602.
(3) Sir W. Grant, M.R., in *Forbes* v. *Moffatt*, 18 Ves. 392.
(4) *Ashby* v. *Palmer*, 1 Meriv. 296.
(5) *Herbert* v. *Matthews*, 19 Ves. 612. And see *Ex parte Clarke*, 2 Russ. 575.
(6) *Berry* v. *Usher*, 4 Jur. 5. See, however, 16 & 17 *Vic. c.* 70, *s.* 100; *antè*, 294.
(7) *Antè*, pp. 30, 31, 39 to 44.

CHAPTER IX.

As to Trustees and Mortgagees, Lunatic, or of unsound mind.

The Act 13 & 14 Vic. c. 60, known as the Trustee Act, 1850, and the Act 15 & 16 Vic. c. 55, known as the Trustee Extension Act, and the Act 15 & 16 Vic, c. 87, for the relief of the suitors of the Court of Chancery, contain several provisions to obviate the difficulties, loss, and inconvenience, which might, in the absence of any such enactments, happen in the case of a trustee or mortgagee, found lunatic by inquisition, or incapable from infirmity of mind of acting in reference to the trust or mortgaged property.

It is provided by the Act 13 & 14 Vic. c. 60,

Sec. III. Where any lunatic or person of unsound mind,(1) shall be seised(2) or possessed(3) of any lands,(4) upon any trust,(5) or by way

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(1) In this Act the word "lunatic" means any person who shall have been found to be a lunatic upon a commission of inquiry in the nature of a writ *de lunatico inquirendo;* and the expression "a person of unsound mind," means any person not an infant who, not having been found to be a lunatic, is incapable from infirmity of mind to manage his own affairs: 13 & 14 *Vic. c*, 60, *s.* 2. See 11 *Geo.* 4, and 1 *Wm.* 4, *c.* 60; *Re Wakeford,* 1 Jo. & Lat. 2; *Re Jones,* 6 Jur. 545; *Re Walker,* 1 Cr. & Ph. 147.

(2) In this Act "seised" is applicable to any vested estate for life or of a greater description, and extends to estates at law and in equity, in possession or in futurity, in any lands: 13 & 14 *Vic. c.* 60, *s.* 2.

(3) In this Act "possessed" is applicable to any vested estate less than a life estate at law or in equity, in possession or in expectancy, in any lands: 13 & 14 *Vic. c.* 60, *s.* 2.

(4) In this Act the word "lands" extends to and includes manors, messuages, tenements, and hereditaments, corporeal and incorporeal, of every tenure or description, whatever may be the estate or interest therein: 13 & 14 *Vic. c.* 60, *s.* 2.

(5) In this Act the word "trust" means not the duties incident to an estate conveyed by way of mortgage, but with this exception, the words "trust" and "trustee" shall extend to and include implied and constructive trusts (but see *Re Angelo,* 5 De G. & Sm. 278; *Re Wise,* 5 De G. & Sm. 415; *Re Carpenter,* 1 Kay, 418; *Re Burt,* 9 Hare, 289; *Re Propert,* 22 L. J. Ch. 948; *Re Franklin,* 3 Eq. R. 719; *Re Dennison,* 2 De G. M. & G. 900; *Re Collinson,* 3 De G. M. & G. 409), and extend to and include cases where the trustee has some beneficial interest or estate in the subject of the trust (*Re Lynn,* 2 Jur. 200; *Re Gartside,* 1 W. R. 196); and extend to and include the duties incident to the office of personal representative of a deceased person: 13 & 14 *Vic. c.* 60, *s.* 2.

of mortgage, (1) it shall be lawful for the Lord Chancellor (2) intrusted by virtue of the Queen's sign manual, with the care of the persons and estates of lunatics, to make an order that such lands be vested in such person, (3) or persons in such manner, and for such estate as he shall direct, and the order shall have the same effect as if the trustee (4) or mortgagee had been sane and had duly executed a conveyance (5) or assignment (6) of the lands in the same manner for the same estate.

With reference to this section, Sir J. Stuart, V.C., in a suit before him for the partition of land of which a lunatic found so by inquisition, was tenant in tail in possession, made use of the following language:—"An argument had also been founded on the Trustee Act; the third section gave an enormous power to the Lord Chancellor of dealing with the real estate of a lunatic, an authority which it could hardly be doubted would justify the Lord Chancellor in making an order in this suit, and in the lunacy, for the purpose of working out the partition, declaring that the estate tail in the lunatic and all remainders were so effectually destroyed and cut off by force of the order, and were

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(1) In this Act the word "mortgage" is applicable to every estate, interest, or property in lands or personal estate which would in a court of equity be deemed merely a security for money: 13 & 14 *Vic. c.* 60, *s.* 2 (*Re Underwood*, 3 Kay & Jo. 745).

(2) In this Act the words "Lord Chancellor" mean as well the Lord Chancellor of Great Britain as any lord keeper or lords commissioners of the great seal for the time being: *Ibid.*

(3) In this Act the word "person" used and referred to in the masculine gender includes a female as well as a male, and includes a body corporate: *Ibid.*

(4) See previous page, note 5.

(5) In this Act the words "convey" and "conveyance" applied to any person, mean the execution by such person of every necessary or suitable assurance for conveying or disposing to another lands whereof such person is seised or entitled to a contingent right, either for the whole estate of the person conveying or disposing, or for any less estate, together with the performance of all formalities required by law to the validity of such conveyance, including the acts to be performed by married women and tenants in tail, in accordance with the provisions of an Act passed in the fourth year of the reign of his late Majesty King William the Fourth, intituled "An Act for the Abolition of Fines and Recoveries, and the substitution of more simple Modes of Assurance (see *Powell* v. *Matthews*, 1 Jur. N. S. 973) and including also surrenders and other acts which a tenant of customary or copyhold lands can himself perform preparatory to or in aid of a complete assurance of such customary or copyhold lands (see *Rowley* v. *Adams*, 14 Beav. 137): 13 & 14 *Vic. c.* 60, *s.* 2.

(6) In this Act the words "assign" and "assignment" mean the execution and performance by a person of every necessary or suitable deed or act for assigning, surrendering, or otherwise transferring lands of which such person is possessed, either for the whole estate of the person so possessed, or for any less estate: *Ibid.*

to be so taken, that the fee simple should be at once under the order put into the owners of the other shares:" the Lords Justices, Sir J. L. K. Bruce and Sir Geo. J. Turner, afterwards made an order in the suit and in the lunacy for a conveyance of the land by the committee of the lunatic. (1)

Sec. IV. When any lunatic, or person of unsound mind (2) shall be entitled to any contingent right in any lands, (3) upon any trust (4) or by way of mortgage, (5) it shall be lawful for the Lord Chancellor intrusted as aforesaid (6) to make an order wholly releasing such lands from such contingent right or disposing of the same to such person (7) or persons as the said Lord Chancellor shall direct, and the order shall have the same effect as if the trustee (8) or mortgagee, (9) had been sane, and had duly executed a deed so releasing or disposing of the contingent right.

Sec. V. When any lunatic or person of unsound mind, (10) shall be solely entitled to any stock (11) or to any chose in action upon any trust, (12) or by way of mortgage, (13) it shall be lawful for the Lord Chancellor intrusted as aforesaid (14) to make an order vesting in any person (15) or persons the right to transfer (16) such stock or to receive the dividends or income thereof or to sue for and recover such chose in action, or any interest in respect thereof, and when any person or persons shall be entitled jointly with any lunatic, or person of unsound mind to any stock or chose in action upon any trust, or by way of mortgage, it shall be lawful for the said Lord Chancellor to make an order vesting the right to transfer such stock, or to receive the dividends or income thereof, or to sue for and recover such chose in action or any interest in respect thereof, either in such person or persons so jointly entitled as aforesaid, or in such last mentioned person or persons together with any other person or persons the said Lord Chancellor may appoint.

Sec. VI. When any stock (17) shall be standing in the name of

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(1) *Re Bloomar*, 6 W. R. 178; and see 16 & 17 *Vic. c.* 70, *s.* 124.

(2) 13 & 14 *Vic. c.* 60, *s.* 2.

(3) In this Act the words "contingent right" as applied to lands, mean a contingent or executory interest, a possibility coupled with an interest, whether the object of the gift or limitation of such interest or possibility be or be not ascertained; also a right of entry, whether immediate or future, and whether vested or contingent: 13 & 14 *Vic. c.* 60, *s.* 2.

(4) 13 & 14 *Vic. c.* 60, *s.* 2. (5) *Ibid.*

(6) 13 & 14 *Vic. c.* 60, *s.* 3. (7) 13 & 14 *Vic. c.* 60, *s.* 2.

(8) *Ibid.* (9) *Ibid.* (10) *Ibid.*

(11) In this Act the word "stock" means any fund, annuity, or security transferable in books kept by any company or society established or to be established, or transferable by deed alone or by deed accompanied by other formalities, and any share or interest therein: *Ibid.* See *Re Angelo*, 5 De G. & Sm. 278. The word "stock" in this Act also means shares in ships registered under the Merchant Shipping Act, 18 & 19 Vic. c. 91, s. 10.

(12) 13 & 14 *Vic. c.* 60, *s.* 2. (13) *Ibid.*

(14) 13 & 14 *Vic. c.* 60, *s.* 3. (15) 13 & 14 *Vic. c.* 60, *s.* 2.

(16) In this Act the word "transfer" means the execution and performance of every deed and act by which a person entitled to stock can transfer such stock from himself to another: *Ibid.* (17) 13 & 14 *Vic. c.* 60, s. 2.

any deceased person, whose personal representative is a lunatic, or person of unsound mind, (1) or when any chose in action shall be vested in any lunatic or person of unsound mind as the personal representative of a deceased person, it shall be lawful for the Lord Chancellor intrusted as aforesaid (2) to make an order vesting the right to transfer (3) such stock, or to receive the dividends or income thereof, or to sue for and recover such chose in action or any interest in respect thereof in any person or persons he may appoint.

Sec. XX. In every case where the Lord Chancellor intrusted as aforesaid, (4) or the Court of Chancery shall under the provisions of this Act, be enabled to make an order having the effect of a conveyance (5) or assignment (6) of any lands, (7) or having the effect of a release or disposition of the contingent right (8) of any person (9) or persons born or unborn, it shall also be lawful for the Lord Chancellor intrusted as aforesaid, or the Court of Chancery as the case may be, should it be deemed more convenient, to make an order appointing a person to convey (10) or assign (11) such lands, or release or dispose of such contingent right, and the conveyance, or assignment, or release, or disposition of the person so appointed, shall when in conformity with the terms of the order by which he is appointed, have the same effect in conveying, or assigning the lands, or releasing, or disposing of the contingent right as an order of the Lord Chancellor intrusted as aforesaid, or the Court of Chancery would in the particular case have had under the provisions of this Act, and in every case where the Lord Chancellor intrusted as aforesaid, or the Court of Chancery shall under the provisions of this Act, be enabled to make an order vesting in any person or persons the right to transfer any stock transferable in the books of the Governor and Company of the Bank of England, or of any other company or society established, or to be established, it shall also be lawful for the Lord Chancellor intrusted as aforesaid, or the Court of Chancery if it be deemed more convenient, to make an order directing the secretary, deputy secretary, or Accountant-General, for the time being of the Governor and Company of the Bank of England, or any officer of such other company or society at once to transfer or join in transferring the stock to the person or persons to be named in the order, and this Act shall be a full and complete indemnity and discharge to the Governor and Company of the Bank of England, and all other companies or societies, and their officers and servants, for all acts done or permitted to be done, pursuant thereto.

Where a person had been appointed under 11 Geo. 4 and 1 Will. 4, c. 60, to convey in the place of a refusing trustee, it was held unnecessary to recite the order in the conveyance, if it was expressed in the attestation clause that the conveying

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(1) 13 & 14 *Vic. c.* 60, *s.* 2. (2) 13 & 14 *Vic. c.* 60, *s.* 3.
(3) 13 & 14 *Vic. c.* 60, *s.* 2. (4) 13 & 14 *Vic. c.* 60, *s.* 3.
(5) 13 & 14 *Vic. c.* 60, *s.* 2. (6) *Ibid.*
(7) *Ibid.* (8) *Ibid.* (9) *Ibid.* (10) *Ibid.* (11) *Ibid.*

party executed in the place of the refusing trustee, and pursuant to the order,(1) but such recital would have been more regular.

Sec. XXVI. Where any order shall have been made under any of the provisions of this Act, vesting the right to any stock (2) in any person (3) or persons appointed by the Lord Chancellor intrusted as aforesaid,(4) or the Court of Chancery, such legal right shall vest accordingly, and thereupon the person or persons so appointed are hereby authorized and empowered to execute all deeds and powers of attorney, and to perform all acts relating to the transfer (5) of such stock into his or their own name or names or otherwise, or relating to the receipt of the dividends thereof to the extent and in conformity with the terms of such order, and the Bank of England and all companies and associations whatever, and all persons shall be equally bound and compellable to comply with the requisitions of such person or persons so appointed as aforesaid to the extent and in conformity with the terms of such order as the said Bank of England or such companies, associations, or persons would have been bound and compellable to comply with the requisitions of the person in whose place such appointment shall have been made, and shall be equally indemnified in complying with the requisition of such person or persons so appointed, as they would have been indemnified in complying with the requisition of the person in whose place such appointment shall have been made, and after notice in writing of any such order of the Lord Chancellor intrusted as aforesaid, or of the Court of Chancery concerning any stock shall have been given, it shall not be lawful for the Bank of England or any company or association whatever, or any person having received such notice to act upon the requisition of the person in whose place an appointment shall have been made in any matter whatever relating to the transfer of such stock or the payment of the dividends or produce thereof.

Sec. XXVII. Where any order shall have been made under the provisions of this Act either by the Lord Chancellor intrusted as aforesaid,(6) or by the Court of Chancery vesting the legal right to sue for or recover any chose in action, or any interest in respect thereof in any person (7) or persons, such legal right shall vest accordingly, and thereupon it shall be lawful for the person or persons so appointed to carry on, commence, and prosecute in his or their own name or names any action, suit, or other proceeding at law or in equity, for the recovery of such chose in action in the same manner in all respects as the person in whose place an appointment shall have been made could have sued for or recovered such chose in action.

Sec. XXVIII. Whensoever, under any of the provisions of this Act an order, shall be made either by the Lord Chancellor intrusted as aforesaid,(8) or the Court of Chancery, vesting any copyhold or customary lands (9) in any person (10) or persons, and such order shall

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(1) *Ex parte Foley*, 8 Sim. 395.
(2) 13 & 14 *Vic. c.* 60, *s.* 2.
(3) *Ibid.*
(4) 13 & 14 *Vic. c.* 60, *s.* 3.
(5) 13 & 14 *Vic. c.* 60, *s.* 2.
(6) 13 & 14 *Vic. c.* 60, *s.* 3.
(7) 13 & 14 *Vic. c.* 60, *s.* 2.
(8) 13 & 14 *Vic. c.* 60, *s.* 3.
(9) 13 & 14 *Vic. c.* 60, *s.* 2.
(10) *Ibid.*

be made with the consent of the lord or lady of the manor whereof such lands are holden, then the lands shall, without any surrender or admittance in respect thereof, vest accordingly; and whenever, under any of the provisions of this act, an order shall be made either by the Lord Chancellor intrusted as aforesaid, or the Court of Chancery, appointing any person or persons to convey (1) or assign (2) any copyhold or customary lands, it shall be lawful for such person or persons to do all acts and execute all instruments for the purpose of completing the assurance of such lands, and all such acts and instruments so done and executed shall have the same effect, and every lord and lady of a manor, and every other person shall, subject to the customs of the manor, and the usual payments, be equally bound and compellable to make admittance to such lands and to do all other acts for the purpose of completing the assurance thereof as if the persons in whose place an appointment shall have been made being free from any disability, had duly done and executed such acts and instruments.(3)

Sec. XXX. Where any decree shall be made by any court of equity for the specific performance of a contract concerning any lands,(4) or for the partition or exchange of any lands, or generally when any decree shall be made for the conveyance (5) or assignment (6) of any lands either in cases arising out of the doctrine of election or otherwise, it shall be lawful for the said court to declare that any of the parties to the said suit wherein such decree is made are trustees of such lands or any part thereof within the meaning of this Act, or to declare concerning the interests of unborn persons who might claim under any party to the said suit, or under the will or voluntary settlement of any person deceased who was, during his lifetime, a party to the contract or transactions concerning which such decree is made, that such interests of unborn persons are the interests of persons who, upon coming into existence, would be trustees within the meaning of this Act, and thereupon it shall be lawful for the Lord Chancellor intrusted as aforesaid, (7) or the Court of Chancery, as the case may be, to make such order or orders as to the estates, rights, and interests of such persons born or unborn as the said Court or the said Lord Chancellor might, under the provisions of this Act, make concerning the estates, rights, and interests, of trustees born or unborn.(8)

Sir John Stuart, V.C., has decided that in a suit for partition

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(1) 13 & 14 *Vic. c.* 60, *s.* 2.
(2) *Ibid.*
(3) *Re Flitcroft*, 1 Jur. N. S. 418; *Re Howard*, 3 Eq. R. 846; *Cooper* v. *Jones*, 2 Jur. N. S. 59; *Ayles* v. *Cox*, 17 Beav. 585; *Re Hey's Will*, 9 Hare, 221.
(4) 13 & 14 *Vic. c.* 60, *s.* 2; *Ex parte Countess of Mornington*, 17 Sim. 59; 4 De G. M. & G. 537.
(5) 13 & 14 *Vic. c.* 60, *s.* 2. (6) *Ibid.*
(7) 13 & 14 *Vic. c.* 60, *s.* 3.
(8) See *Barfield* v. *Rogers*, 8 Jur. 229; *Meyrick* v. *Bowyer*, 8 Jur. 566; *King* v. *Leach*, 2 Hare, 57; *Schofield* v. *Heafield*, 8 Sim. 470; *Re Blackwell*, 7 Jur. 9; 11 *Geo.* 4 and 1 *Wm.* 4, *c.* 60. A person was appointed to convey in lieu of a party decreed to convey, but after the decree become lunatic, though not found so by inquisition: *Blake* v. *Blake*, 9 Ir. Eq. R. 592.

of land of which a lunatic is tenant in tail in possession, and an infant is the next remainderman in tail, and a *feme coverte* is then next interested in remainder, such *feme coverte* and her husband are not unnecessary parties, because a conveyance can be obtained from the lunatic only by an exercise of the discretionary powers of the Lord Chancellor under the Trustee Act, 1850; further, that the costs of suit of the lunatic and remaindermen should be declared to be a charge on the allotted portion in which the lunatic would be tenant in tail in possession.(1)

Sec. XXXI. "It shall be lawful for the Lord Chancellor, intrusted as aforesaid,(2) or the Court of Chancery to make declarations and give directions concerning the manner in which the right to any stock (3) or chose in action, vested under the provisions of this Act, shall be exercised, and thereupon the person (4) or persons in whom such right shall be vested shall be compellable to obey such directions and declarations by the same process as that by which other orders under this Act are enforced."

Sec. XXXVII. An order under any of the hereinbefore contained provisions for the appointment of a new trustee (5) or trustees, or concerning any lands,(6) stock,(7) or chose in action subject to a trust (8) may be made upon the application of any person (9) beneficially interested(10) in such lands, stock, or chose in action whether under disability or not, or upon the application of any person duly appointed as a trustee thereof, and an order under any of the provisions hereinbefore contained concerning any lands, stock, or chose in action subject to a mortgage(11) may be made on the application of any person beneficially interested in the equity of redemption whether under disability or not, or of any person interested in the monies secured by such mortgage."

Sec. XL. "Any person or persons entitled in manner aforesaid (12) to apply for an order from the said Court of Chancery or from the Lord Chancellor intrusted as aforesaid,(13) may, should he so think fit,(14) present a petition in the first instance to the Court of Chancery or to the Lord Chancellor intrusted as aforesaid, for such order as he may deem himself entitled to, and may give evidence by affidavit or otherwise in support of such petition before the said Court or the Lord Chancellor intrusted as aforesaid, and may serve such person or persons

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(1) *Singleton* v. *Hopkins*, 4 W. R. 107. See also *Cox* v. *Cox*, 3 Kay, 554.

(2) 13 & 14 *Vic. c.* 60, *s.* 3. (3) 13 & 14 *Vic. c.* 60, *s.* 2.

(4) *Ibid.* (5) *Ibid.*

(6) *Ibid.* (7) *Ibid.* (8) *Ibid.* (9) *Ibid.*

(10) *Rowley* v. *Adams*, 14 Beav. 130; *Ayles* v. *Cox*, 17 Beav. 584.

(11) 13 & 14 *Vic. c.* 60, *s.* 2. (12) 13 & 14 *Vic. c.* 60, *s.* 37.

(13) 13 & 14 *Vic. c.* 60, *s.* 3.

(14) See 13 & 14 *Vic. c.* 60, *ss.* 38, 39; and 15 & 16 *Vic. c.* 80.

with notice of such petition as he may deem entitled to service thereof." (1)

The committee of the estate of a lunatic in whose place a new trustee is appointed should be served with the petition for vesting the trust property in the new trustee.(2)

Sec. XLI. "Upon the hearing of any such motion or petition it shall be lawful for the said Court or for the said Lord Chancellor should it be deemed necessary to direct a reference to one of the Masters in ordinary of the Court of Chancery(3) to inquire into any facts which require such an investigation, or it shall be lawful for the said Court or for the said Lord Chancellor to direct such motion or petition to stand over to enable the petitioner or petitioners to adduce evidence or further evidence before the said Court or before the said Lord Chancellor, or to enable notice or any further notice of such motion or petition to be served upon any person or persons.

Sec. XLII. Upon the hearing of any such motion or petition whether any certificate or report from a Master shall have been obtained or not, it shall be lawful for the Court or the Lord Chancellor intrusted as aforesaid,(4) to dismiss such motion or petition with or without costs or to make an order thereupon in conformity with the provisions of this Act.

Sec. XLIV. "Whenever any order shall be made under this Act either by the Lord Chancellor intrusted as aforesaid, (5) or by the Court of Chancery for the purpose of conveying (6) or assigning (7) any lands, (8) or for the purpose of releasing or disposing of any contingent right, (9) and such order shall be founded on an allegation of the personal incapacity of a trustee(10) or mortgagee(11) or on an allegation that a trustee or the heir or devisee (12) of a mortgagee is out of the jurisdiction of the Court of Chancery or cannot be found, or that it is uncertain which of several trustees or which of several devisees of a mortgagee was the survivor, or whether the last trustee or the

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(1) Notice of petition, to whom necessary: *Re Thomas*, 15 Jur. 187; *Re Hazeldine*, 16 Jur. 853; *Re Smyth's Settlement*, 2 De G. & Sm. 781; *Re Richard's Trust*, 5 De G. & Sm. 636; *Re Sloper*, 18 Beav. 596; *Re Fellow's Settlement*, 2 Jur. N. S. 62; *Re Farrant's Trust*, 17 L. T. 309; *Re Matthews' Settlement*, 22 L. T. 211; *Re Maynard*, 16 Jur. 1084; *Re Prescott*, 19 L. T. 371; *Re Saumarez*, 26 L. J. N. S. Ch. 575; *Re Sharpley's Trust*, 21 L. T. 71; *Re Baxter*, 2 Sm. & Giff. App. 5.

(2) *Re Saumarez*, 25 L. J. N. S. Ch. 575. (3) 15 & 16 *Vic. c.* 80.
(4) 13 & 14 *Vic. c.* 60, *s.* 3. (5) *Ibid.*
(6) 13 & 14 *Vic. c.* 60, *s.* 2. (7) *Ibid.* (8) *Ibid.*
(9) *Ibid.* (10) *Ibid.* (11) *Ibid.*

(12) In this Act the word "devisee" shall, in addition to its ordinary signification, mean the heir of a devisee and the devisee of an heir, and generally any person claiming an interest in the lands of a deceased person, not as heir of such deceased person, but by a title dependent solely upon the operation of the laws concerning devise and descent: 13 & 14 *Vic. c.* 60, *s.* 2.

heir or last surviving devisee of a mortgagee be living or dead, or on an allegation that any trustee or mortgagee has died intestate without an heir, or has died and it is not known who is his heir or devisee, then in any of such cases the fact that the Lord Chancellor intrusted as aforesaid, or the Court of Chancery, has made an order upon such an allegation shall be conclusive evidence of the matter so alleged in any court of law or equity, upon any question as to the legal validity of the order: Provided always, that nothing herein contained shall prevent the Court of Chancery directing a reconveyance or reassignment of any lands conveyed or assigned by any order under this Act, or a redisposition of any contingent right conveyed or disposed of by such order, and it shall be lawful for the said Court to direct any of the parties to any suit concerning such lands or contingent right to pay any costs occasioned by the order under this Act, when the same shall appear to have been improperly obtained."

Sec. XLV. It shall be lawful for the Lord Chancellor intrusted as aforesaid,(1) or the Court of Chancery to exercise the powers herein conferred for the purpose of vesting any lands,(2) stock,(3) or chose in action in the trustee (4) or trustees of any charity or society over which charity or society the said Court of Chancery would have jurisdiction upon suit duly instituted (5) whether such trustee or trustees shall have been duly appointed by any power contained in any deed or instrument, or by the decree of the said Court of Chancery, or by order made upon a petition to the said Court under any statute authorizing the said Court to make an order to that effect in a summary way upon petition."

Sec. XLVIII. Where any infant or person of unsound mind (6) shall be entitled to any money payable in discharge of any lands,(7) stock,(8) or chose in action conveyed,(9) assigned,(10) or transferred (11) under this Act, it shall be lawful for the person by whom such money is payable to pay the same into the Bank of England in the name and with the privity of the Accountant-General in trust in any cause then depending concerning such money, or if there shall be no such cause, to the credit of such infant or person of unsound mind, subject to the order or disposition of the said Court; and it shall be lawful for the said Court upon petition in a summary way to order any money so paid to be invested in the public funds, and to order payment or distribution thereof, or payment of the dividends thereof as to the said Court shall seem reasonable, and every cashier of the Bank of England who shall receive any such money is hereby required to give to the person paying the same a receipt for such money, and such receipt shall be an effectual discharge for the money therein respectively expressed to have been received.

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(1) 13 & 14 *Vic. c.* 60, *s.* 3.
(2) 13 & 14 *Vic. c.* 60, *s.* 2. (3) *Ibid.* (4) *Ibid.*
(5) 16 & 17 *Vic. c.* 137, *ss.* 28, 32; *Re Davenport's Charity*, 4 De G. M. & G. 839.
(6) 13 & 14 *Vic. c.* 60, *s.* 2.
(7) *Ibid.* (8) *Ibid.* (9) *Ibid.* (10) *Ibid.* (11) *Ibid.*

Sec. LI. The Lord Chancellor intrusted as aforesaid, (1) and the Court of Chancery may order the costs and expenses of, and relating to the petitions, orders, directions, conveyances, (2) assignments, (3) and transfers, (4) to be made in pursuance of this Act or any of them to be paid and raised out of or from the lands (5) or personal estate, or the rents or produce thereof, in respect of which the same respectively shall be made, or in such manner as the said Lord Chancellor or Court shall think proper.

Where a mortgagor petitioned for an order under the Act 4 Geo. 2, c. 10, s. 1, since repealed (which section was somewhat similar to the third section of 13 & 14 Vic. c. 60), Lord Eldon, C., gave the costs of the petition out of the estate of the mortgagee who had been found by inquisition lunatic, because that was the practice if the committee of the lunatic had petitioned. (6) Lord Cottenham, C., said he should hesitate to follow this decision whenever an opportunity for reconsidering the point should occur, (7) nevertheless, it has been followed. (8) Lord St. Leonards, C., thought it contrary to principle, and opposed to the settled rule "that the costs occasioned by the mortgagees putting the mortgaged estate into settlement, are to be paid by the mortgagor;" (9) and when a mortgagor and the committee of the estate of a lunatic mortgagee joined in an application under the Act 13 & 14 Vic. c. 60, s. 3, praying for an order which should vest the mortgaged premises in the mortgagor upon repayment by him of the mortgage money, Lord St. Leonards, C., gave the costs out of the lunatic mortgagee's estate, but observed "the proceedings in such cases as this should originate with the committee, and not with the mortgagor, and in future, therefore, unless the committee declines to present a petition, I will not give the mortgagor his costs." (10) In a subsequent case when, by reason of the mental condition of a mortgagee of unsound mind not found so by inquisition, the mortgagors petitioned for a vesting order under the section, the payment of the costs was ordered out of the

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(1) 13 & 14 *Vic.* c. 60, *s.* 3. (2) 13 & 14 *Vic. c.* 60 *s.* 2.
(3) *Ibid.* (4) *Ibid.* (5) *Ibid.*
(6) *Ex parte Richards*, 1 J. & W. 264.
(7) *Re Marrow*, Cr. & Ph. 146.
(8) *Re Townsend*, 2 Phill. 348.
(9) Lord St. Leonards, in 1 De G. M. & G. 436.
(10) *Re Wheeler*, 1 De G. M. & G. 434.

mortgage money.(1) And when the plaintiff in a creditor's suit for administration of a mortgagor's estate presented a similar petition, the mortgagee being of unsound mind though not so found by inquisition, the Lords Justices held, that there was no doubt the costs of the petition should be paid by the mortgagee. (2) It seems, however, that the costs will fall on the mortgagor if he has personal notice that the mortgagee was a trustee of the mortgage money; (3) but the fact of the mortgagor being a *cestui que trust* of the mortgagee is not *per se* sufficient to fix the mortgagor with notice of the trusts of the mortgage money. (4)

Sec. LII. Upon any petition being presented under this Act to the Lord Chancellor, intrusted as aforesaid, (5) concerning a person of unsound mind, (6) it shall be lawful for the said Lord Chancellor, should he so think fit, to direct that a commission in the nature of a writ *de lunatico inquirendo*, shall issue concerning such person, and to postpone making any order upon such petition, until a return shall have been made to such commission.

Sec. LIII. Upon any petition being presented under this Act to the Lord Chancellor intrusted as aforesaid, (7) or to the Court of Chancery, it shall be lawful for the said Lord Chancellor or the said Court of Chancery to postpone making any order upon such petition until the right of the petitioner or petitioners shall have been declared in a suit duly instituted for that purpose. (8)

Sec. LVI. The powers and authorities given by this Act to the Lord Chancellor of Great Britain, intrusted as aforesaid, (9) shall extend to all lands (10) and personal estate within (11) any of the dominions, plantations, and colonies belonging to her Majesty (except Scotland and Ireland).

On a petition under the Trustee Act, 1850, in the matter of a person of unsound mind, not found so by inquisition, Lord Truro, C., declined to investigate the evidence of the unsoundness, and

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(1) *Re Biddle*, 2 W. R. 50; and see *Re Thomas*, 20 Law T. 299.
(2) *Hawkins* v. *Perry*, 4 W. R. 686.
(3) *Re Lewes*, 1 Mac. & Gor. 23; *Re Townsend*, 1 Mac. & Gor. 687; and 11 *Geo.* 4, and 1 *Wm.* 4, *c.* 60.
(4) *Re Townsend*, 1 H. & Tw. 185.
(5) 13 & 14 *Vic. c.* 60, *s.* 3.
(6) 13 & 14 *Vic. c.* 60, *s.* 2.
(7) 13 & 14 *Vic. c.* 60, *s.* 3.
(8) *Collinson* v. *Collinson*, 3 De G. Mac. & Gor. 409. See also *Re Burt*, 9 Hare, 289.
(9) 13 & 14 *Vic. c.* 60, *s.* 3.
(10) 13 & 14 *Vic. c.* 60, *s.* 2.
(11) See 11 *Geo.* 4, and 1 *Wm.* 4, *c.* 60; *Price* v. *Dewhirst*, 8 Sim. 617.

directed a reference on the point. (1) No order will be made under the Act on the ground of the idiocy, lunacy, or unsoundness of mind of any person, if that fact has not been found by inquisition, and is disputed. (2)

On petition under the Trustee Act, 1850, in the matter of an idiot, lunatic, or person of unsound mind, found so by inquisition, if the committee of the estate of such person is not the petitioner he must be served with the petition. (3) Lord Truro, C., decided that when the object of an application under this Act for the appointment of a new trustee, was to vest the estate of a lunatic trustee in the new trustee, the lunacy afforded such a case of difficulty as to warrant the appointment of a new trustee under the 32d section, although there was an exercisable power of appointment of a new trustee in the instrument creating the trust, (4) and this decision has been followed by Lords Justices Sir J. L. Knight Bruce and Sir Geo. J. Turner. (5)

An application under the Trustee Act in the case of a trustee lunatic or of unsound mind though not so found by inquisition, should be to the Lord Chancellor or Lords Justices in lunacy;(6) but where a trustee was an infant as well as of unsound mind not found so by inquisition, Lords Justices Sir J. L. Knight Bruce and Sir Geo. J. Turner held that the Court of Chancery had jurisdiction to make an order under the Act.(7)

It was not intended by the 54th section (8) of the Act to give

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(1) *Re Were*, 3 Mac. & Gor. 233. But see *Parker* v. *Burney*, 1 Beav. 492; and *Barfield* v. *Rogers*, 8 Jur. 229.

(2) *Re Campbell*, 18 Law T. 202.

(3) *Re Saumarez*, 27 Law T. 212.

(4) *Re Davies*, 3 Mac. & Gor. 278. The 32d section runs thus:—"Whenever it shall be expedient to appoint a new trustee or trustees, and it shall be found inexpedient, difficult, or impracticable so to do, without the assistance of the Court of Chancery, it shall be lawful for the said Court of Chancery to make an order appointing a new trustee or trustees, either in substitution for or in addition to any existing trustee or trustees." See also *Re Porter's Trust*, 2 Jur. N. S. 349, and 15 & 16 *Vic. c.* 55, *s.* 9.

(5) *Re Cooper's Settlement*, 4 W. R. 729. But see now 16 & 17 *Vic. c.* 70, *ss.* 136, 137; *antè*, p. 317.

(6) *Re Good Intent Benefit Society*, 2 W. R. 671; and see *Cramer* v. *Cramer*, 5 De G. & Sm. 312; and *Re Bloomer*, 30 L. T. 238; and *Re Davidson*, 20 L. J. N. S. Ch. 644.

(7) *Re Thompson*, 6 W. R. 642.

(8) "The powers and authorities given by this Act to the Court of Chancery in England shall extend to all lands and personal estate within the dominions, plantations, and colonies belonging to her Majesty (except Scotland)."

to the Lord Chancellor of Great Britain, sitting in lunacy, a concurrent jurisdiction over lands in Ireland. (1)

Inquiries under the Trustee Act, 1850, are expressly excepted from the clause in the Lunacy Regulation Act, (2) which directs that all inquiries and matters connected with the persons and estates of lunatics which were at the time of the passing of the Act 5 & 6 Vic. c. 84, usually referred to the Masters in Chancery, should be referred to the Masters in Lunacy; and by that Act, the committee of the estate of such a person, may exercise any power vested in him as a trustee; (3) where under the Lunacy Regulation Act, the committee of an estate exercises a power of appointing new trustees vested in an idiot, lunatic, or person of unsound mind, such an appointment has the effect of an appointment by the Court of Chancery, under the Trustee Act, 1850, and the Lord Chancellor may in such case make any order which might have been made in the same case under the Trustee Act, 1850, or any Act amending the same, on the appointment thereunder of new trustees. (4)

By the Act 15 & 16 Vic. c. 55, passed to extend the provisions of the Trustee Act, 1850, it was enacted

Sec. I. "When any decree or order shall have been made by any court of equity directing the sale of any lands (5) for any purpose whatever, every person (6) seised (7) or possessed (8) of such land or entitled to a contingent right (9) therein, being a party to the suit or proceeding in which such decree or order shall have been made and bound thereby, or being otherwise bound by such decree or order, shall be deemed to be so seised or possessed or entitled (as the case may be) upon a trust within the meaning of the Trustee Act, 1850; and in every such case it shall be lawful for the Court of Chancery, if the said Court shall think it expedient for the purpose of carrying such sale into effect, to make an order vesting such lands or any part thereof for such estate as the Court shall think fit either in any purchaser or in such other person as the Court shall direct, and every such order shall have the same effect as if such person so seised or possessed or entitled had been free from all disability, and had duly executed all proper conveyances and assignments of such lands for such estate."

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(1) *Re Davies*, 3 Mac. & Gor. 280.
(2) 16 & 17 *Vic. c.* 70, *s.* 8; *antè*, p. 227.
(3) 16 & 17 *Vic. c.* 70, *s.* 137; *antè*, p. 317.
(4) 16 & 17 *Vic. c.* 70, *s.* 138; *antè*, p. 317.
(5) See 13 & 14 *Vic. c.* 60, *s.* 2; 15 & 16 *Vic. c.* 55, *s.* 12.
(6) *Ibid.* (7) *Ibid.* (8) *Ibid.* (9) *Ibid.*

A decree anterior to this Act is within the operation of this section.(1)

Sec. VI. "When any order being or purporting to be under this Act or under the Trustee Act, 1850, shall be made by the Lord Chancellor intrusted as aforesaid,(2) or by the Court of Chancery, vesting the right to any stock, or vesting the right to transfer any stock, or vesting the right to call for the transfer of any stock in any person or persons, in every such case the legal right to transfer such stock shall vest accordingly, and the person or persons so appointed shall be authorized and empowered to execute all deeds and powers of attorney, and to perform all acts relating to the transfer of such stock into his or their own name or names, or otherwise, to the extent and in conformity with the terms of the order; and the Bank of England and all companies and associations whatever, and all persons shall be equally bound and compellable to comply with the requisitions of such person or persons so appointed as aforesaid to the extent and in conformity with the terms of such order as the said Bank of England or such companies, associations, or persons would have been bound and compellable to comply with the requisitions of the person in whose place such appointment shall have been made. (3)

Sec. VII. Every order made or to be made, being or purporting to be made under this or the Trustee Act, 1850, by the Lord Chancellor intrusted as aforesaid,(4) or by the Court of Chancery, and duly passed and entered, shall be a complete indemnity to the Bank of England and all companies and associations whatsoever, and all persons for any act done pursuant thereto, and it shall not be necessary for the Bank of England or such company or association or person to inquire concerning the propriety of such order, or whether the Lord Chancellor intrusted as aforesaid, or the Court of Chancery had jurisdiction to make the same.

Sec. X. "In every case in which the Lord Chancellor, intrusted as aforesaid,(5) has jurisdiction under this Act or the Trustee Act, 1850, to order a conveyance or transfer of land or stock, or to make a vesting order, it shall be lawful for him also to make an order appointing a new trustee or new trustees, in like manner as the Court of Chancery may do in like cases, without its being necessary that the order should be made in Chancery as well as in lunacy, or be passed and entered by the Registrar of the Court of Chancery."

Sec. XI. All the jurisdiction conferred by this Act on the Lord Chancellor intrusted by virtue of the Queen's sign manual with the

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(1) *Wake* v. *Wake*, 17 Jur. 545.

(2) *I.e.*, intrusted by virtue of the Queen's sign manual with the care of the persons and estates of lunatics: see 13 & 14 *Vic. c.* 60, *s.* 3, and 15 & 16 *Vic. c.* 55, *s.* 12.

(3) See 13 & 14 *Vic. c.* 60, *ss.* 26, 31; *Re Smyth's Settlement*, 4 De G. & Sm. 499.

(4) *I.e.*, intrusted by virtue of the Queen's sign manual with the care of the persons and estates of lunatics: see 13 & 14 *Vic. c.* 60, *s.* 3, and 15 & 16 *Vic. c.* 55, *s.* 12.

(5) See previous note.

care of the persons and estates of lunatics, shall and may be had, exercised, and performed by the person or persons for the time being intrusted as aforesaid.

Sec. XII. This Act shall be read and construed according to the definitions and interpretations contained in the second section of the Trustee Act, 1850, and the provisions of the said last mentioned Act (except so far as the same are altered by or are inconsistent with this Act) shall extend and apply to the cases provided for by this Act in the same way as if this Act had been incorporated with and had formed part of the said Trustee Act, 1850.

The doubts raised as to the jurisdiction under the Trustee Act, 1850, led to the enactment of this 11th section. (1)

The object of this section is also provided for by the Act 15 & 16 Vic. c. 87, which runs thus:

Sec. XV. "All the jurisdiction and all the powers and authorities of a judicial nature given by the Act of the session holden in the first year of the reign of King William the Fourth, chapter 65, by the Trustee Act, 1850, and by any other Acts or Act of Parliament now in force to the Lord Chancellor intrusted by virtue of the Queen'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, shall belong to and may be exercised by all or any of the persons or person for the time being intrusted as aforesaid."

By the Act 16 & 17 Vic. c. 137 (the Charitable Trusts Act), it is provided,

Sec. XXVIII. Where the appointment or removal of any trustee or any other relief, order, or direction, relating to any charity of which the gross annual income for the time being exceeds £30, shall be considered desirable, and such appointment, removal, or other relief, order, or direction might, at the date of that Act, be now made or given by the Court of Chancery, in respect either of its ordinary or its special or statutory jurisdiction, or by the Lord Chancellor intrusted with the care and commitment of the custody of lunatics, it shall be lawful for any person authorized in this behalf by the order or certificate of the said board,(2) or for the Attorney-General to make application (without any information, bill, or petition) to the Master of the Rolls or one of the Vice-Chancellors sitting at chambers, for such order, direction, and relief, as the case may require, and the Master of the Rolls or the Vice-Chancellor to whom any such application shall be made, shall and may proceed upon and dispose of such application in chambers, save where he may think fit otherwise to direct, and shall and may have and exercise thereupon all such jurisdiction, power, and authority, and make such

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(1) See *Re Waugh's Trust*, 2 De G. M. & G. 279; *Re Pattinson*, 21 L. J. Ch. 280.

(2) *I.e.*, the Board of the Charity Commissioners for England and Wales.

orders and give such directions in relation to the matter of such application as might now be exercised, made, or given by the Court of Chancery or by the Lord Chancellor intrusted as aforesaid, in a suit regularly instituted, or upon petition, as the case may require. . . .

Under this section the Master of the Rolls or a Vice-Chancellor may appoint at chambers new trustees of a charity in the place of the last surviving trustee, a lunatic found so by inquisition, and also at chambers making an order vesting the funds of the charity in the new trustees (1)

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(1) *Re Davenport's Charity*, 4 De G. M. & G. 839.

CHAPTER X.

As to idiots, lunatics, and persons of unsound mind, by foreign adjudication.

The Lord Chancellor cannot administer the property in England of a person residing beyond his jurisdiction, and by a foreign tribunal declared idiot, lunatic, or of unsound mind, except in conformity with the law of such foreign tribunal; (1) but Lord Eldon, C., said that the existence of a foreign commission (of lunacy) is no reason why a commission should not issue here; on the contrary it is evidence of the absolute necessity that there should be somebody authorized to deal with the person and estate of the lunatic; while the lunatic is here, no court will have any authority over him or his property unless a commission is taken out. (2) A *curator bonis*, duly appointed in Scotland to a lunatic resident in that country, has been held capable of recovering and giving a discharge for the lunatic's personal property in England, (3) and upon a bill filed here in the Court of Chancery on behalf of a lunatic Englishman resident in Scotland by his Scotch *curator bonis*, as next friend, against a trustee of government stock, the property of the lunatic, such trustee was ordered to transfer the stock into the name of the curator. (4)

The sum of £600 Consols, standing in the name of a lunatic resident at Genoa, was transferred under 56 Geo. 3, c. 60, to the commissioners for the reduction of the national debt, and the dividends thereon were unclaimed for 13 years.; on the petition of the Genoese *curator bonis* of the lunatic praying a transfer of the Consols to himself, the curator, and payment to himself of the unclaimed dividends, Lord Cranworth, C., said, "the 5th section

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(1) *Newton* v. *Manning*, 1 Mac. & Gor. 364; and see *Ex parte Lewis*, 1 Ves. 298.
(2) Lord Eldon, C., in *Re Houston*, 1 Russ. 312.
(3) *Scott* v. *Bentley*, 1 Kay & Joh. 281.
(4) *Hessing* v. *Sutherland*, 27 L. T. 280.

of the Act declares that it shall be lawful for the governor, &c., of the Bank of England to direct the proper officer to retransfer any stock which shall have been transferred to the commissioners for the reduction of the national debt, into the names of any person or persons who shall show to the satisfaction of such governor, &c., his or their right or title thereto, and to pay the dividends due thereon; but in case such governor shall not be satisfied of the justice or legality of the claim which shall have been made to any stock so transferred, then, and in every such case the claimant or claimants shall by petition in a summary way, state and verify his or their claim to the Court of Chancery, &c.; and the Court was thereby authorized to make such order thereon, either for the transfer of the stock, and for the payment of the dividends which shall have accrued, or become due and payable thereon as it shall think fit. The petition has been served according to the provisions of that section, and therefore I do not question that I have jurisdiction. The Act authorizes me to direct transfer and payment in such a manner as shall appear just. The identity of this party must be established, and subject to that being sufficiently made out I shall direct the principal of the stock to be transferred into the name of the Accountant-General in trust in this matter, and the arrears of dividends to be paid to the curator, and that the accruing dividends shall be paid from time to time to the curator, so long as he should continue to be curator; the costs of all parties must come out of the dividends." (1)

An Irish inquisition or *supersedeas* may be transmitted to the Court of Chancery here, and when recorded in such court it is effectual in this country. (2)

As to persons residing out of England and Wales, who have by a foreign tribunal been declared idiot, &c., the Act 16 & 17 Vic. c. 70, provides,

Sec. LXXXV. "The Masters shall be at liberty, without order or reference, to inquire and report whether or not any person residing out of England and Wales, and where, has been declared idiot, lunatic, or of unsound mind, and whether or not his personal estate or some and what part thereof has been vested in a curator or other and

(1) *Re Sargazurieta*, 20 L. T. 299.
(2) 16 & 17 *Vic. c.* 70, *s.* 52; *antè*, 257, 363.

what person appointed for the management therof, according to the laws of the place where the person is residing, and whether or not any and what stock, portion of the capital, stock or share of any, and what company or society is standing in the name of, or is vested in that person, and what is his interest therein."

Sec. CXLI. Where any stock, or any portion of the capital stock, or any share of any company or society, whether transferable in books or otherwise, is standing in the name of or vested in a person residing out of England and Wales, the Lord Chancellor intrusted as aforesaid, upon proof to his satisfaction that the person has been declared idiot, lunatic, or of unsound mind, 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 he is residing, may order some fit person to make such transfer of the stock or such portion of the capital stock or share as aforesaid, or any part or parts thereof respectively, to or into the name of the curator or other person appointed as aforesaid, or otherwise, and also to receive and pay over the dividends thereof, as the Lord Chancellor intrusted as aforesaid may think fit. (1)

It seems that a Scotch decree appointing a *curator de bonis* of a person, falls short of establishing under this Act the idiocy, lunacy, or unsoundness of mind of such person, (2) the Lord Chancellor may in his discretion refuse to make any order under the Act 16 & 17 Vic. c. 70, s. 141; and where no reason was shown, Lord Commissioner Langdale, and Lord Cottenham, C., declined to make orders under a somewhat similar enactment in favour of curators from whom security had not been taken sufficient to cover the subject of the orders. (3) Pursuant to a reference directed on a petition by Lord Cottenham, C., a Master had reported that a certain individual, resident in Scotland, had been declared lunatic according to the law of that country, and that the petitioner was appointed in that country his curator, and as such was entitled to have a transfer of certain East India and Bank Stocks. Lord Truro, C., after some hesitation permitted the transfer, observing that he assumed that no security was required of the curator by the foreign jurisdiction, and none therefore had been given. His Lordship also intimated that if it had been shown that the lunatic was a Dutch subject, (it did not appear

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(1) See *Sylva* v. *Da Cost.* (1803) 8 Ves. 316.
(2) *Re Stark*, 2 M. & Gor. 174; 1 & 2 Geo. 4, c. 15, and 1 Wm. 4, c. 65.
(3) *Re Moryan*, 1 H. & Tw. 213; *Re Stark*, 2 M. & Gor. 175.

whether he was or not), he should have had no difficulty in making the order.(1) It is not clear that an order under sec. 141, for payment of dividends of stock *de anno in annum*, can be acted upon, because the officers of the Bank decline to receive evidence from time to time of the continuance of insanity. (2)

The removal to England of Indian idiots, lunatics, and persons of unsound mind, and their subsequent treatment in England, is the subject of an Act of Parliament, 14 & 15 Vic. c. 81, entitled, "An Act to authorize the removal from India of insane persons charged with offences, and to give better effect to inquisitions of lunacy taken in India." The Act is as follows:

I. If any person shall have been or shall hereafter be indicted for or charged with any crime or offence in any Court in India, and shall have been or shall hereafter be acquitted of or not be tried for such crime or offence, on the ground of his being found to be of unsound mind, and shall by reason of the premises be lawfully in custody in India, it shall be lawful for the person or persons administering the Government of the Presidency, in which such person shall be so in custody to order such person to be removed from India to any part of the United Kingdom, there to abide the order of her Majesty concerning his or her safe custody, and to give such directions for enabling such order to be carried into effect, as may be deemed fit and proper.

II. The orders and directions of the said government of any of the said presidencies for the removal of any person under the provisions of this Act, shall be a sufficient warrant and authority to all commanders of vessels, and others to whom the care and custody of any such person shall be committed for the removal of such person from India to the United Kingdom, in conformity with such directions, and for his detention in custody there, until an order shall be made by her Majesty as hereinafter is mentioned, and upon the arrival of any such person in the United Kingdom, it shall be lawful for her Majesty to give such order for the safe custody of such person during her pleasure in such place, and in such manner as to her Majesty shall seem fit, in like manner, as if such person had been indicted for an offence, and found insane, and were thereby subject to the provisions of the Act passed in the 39th and 40th year of his late Majesty King George the Third, intituled an Act for the safe custody of insane persons charged with offences.

III. All expenses attending the removal from India, and the safe custody and maintenance in Great Britain or Ireland of all such persons as aforesaid shall be borne and defrayed by the East India Com-

(1) *Re Elias*, 3 Mac. & Gor. 234.

(2) *Re Morgan*, 1 H. & Tw. 213. But see *Re Sargazurieta*, 20 L. T. 299; *Newton* v. *Manning*, 1 M. & Gor. 364; and *Re Elias*, 3 M. & Gor. 234.

pany, who are hereby authorized to charge the amount of such expenses upon the revenues of the government of India.

IV. The amount of all expenses incurred by the East India Company, in respect of the removal and custody of any such person as aforesaid, shall be a debt from such person to the East India Company, and for securing the payment thereof, the East India Company shall be entitled to enter up against such person as of the date of the order for removal from India, any judgment in England or Ireland, in an amount sufficient to secure the payment of all expenses incurred and to be incurred in respect of the matters aforesaid, and the costs of ascertaining the same as after mentioned, and on production at the office in Edinburgh for the registration of writs in the books of council, and session of a copy of any order of the court of directors directing such judgment to be entered up, certified by the secretary of the said company, such order shall be registered in the said books in like manner as a bond executed according to the law of Scotland, with a clause of registration, and a decree shall be interponed thereon, which shall have the like effect as if such person had executed such bond, but without prejudice to the provisions herein contained for ascertaining the sum actually due, and upon application to be from time to time made to the Lord Chancellor of Great Britain in England, or Chancellor in Ireland, being intrusted with the care of persons of unsound mind, or the Court of Session in Scotland, the amount of such expenses, reasonably and properly incurred, shall be ascertained by a reference to one of the Masters of the Court of Chancery, or by a remit to the Accountant of the Court of Session, or otherwise in such manner as the person or persons to whom such application shall be made, shall direct, and the East India Company shall be entitled from time to time to recover payment of the amount so ascertained, and the costs of ascertaining the same, by proceeding on the judgment in England or Ireland, and registered order and decree in Scotland, and enforcing the same against the property, but not against the person of the debtor, in the same manner as if such judgment had at the date of the said order of removal been recovered against the debtor when of sound mind, and had been entered up at the date of such order, or as if such bond had been granted by the debtor when of sound mind at the date of such order, and had been duly registered in the books of council and session, and a decree of the Court of Session interponed thereto.

V. In all cases where a guardian, keeper, or curator of the person and estate of any idiot, lunatic, or person of unsound mind, shall have been or shall be appointed by the supreme Court of judicature at any of the presidencies of India it shall be lawful for such supreme court to declare that such person ought to be removed from India to any part of the United Kingdom, and thereupon to make such further or other order or orders authorizing or directing his removal, and touching his safe custody and maintenance, as to such supreme Court shall seem fit and proper: Provided always, that in every such case a transcript of the proceedings in the matter of the idiocy or lunacy of such person shall, under the provisions hereinafter contained, be transmitted to that part of the United Kingdom to which such person shall be removed.

VI. In all cases where a guardian, keeper, or curator of the

person and estate of any idiot, lunatic, or person of unsound mind, shall have been or shall be appointed by any of the supreme Courts in India as aforesaid, it shall be lawful for the proper officer of the said supreme Court by the order of such Court to transmit a transcript under the hand and seal of the Chief Justice or senior judge of such supreme Court of the proceedings by which the idiocy, lunacy, or unsoundness of mind shall have been found, and by which such guardian, keeper, or curator shall have been appointed to the Chancery in England, and the Court of Session in Scotland, and the Chancery of Ireland respectively, as the case may require, and such transcript when so received shall be entered as of record in the Court or Courts to which the same shall be transmitted, and in the case of any *supersedeas* of any such proceedings the same shall be certified, and transmitted, and recorded in like manner, and the record of any such proceedings or of any such *supersedeas* as aforesaid shall, in case and so long and so far as the Lord Chancellor of Great Britain or other persons, intrusted as aforesaid, or the Court of Session in Scotland, or the Chancellor of Ireland intrusted as aforesaid, as the case may require, shall respectively see fit be acted upon by him and them respectively, and be of the same force and validity, and have the same force and effect as if such proceedings or *supersedeas* or proceedings or a *supersedeas* to the like effect had taken place in England, Scotland, or Ireland respectively; and it shall be lawful for the Lord Chancellor or other persons, intrusted as aforesaid, the Court of Session in Scotland, and the Chancellor of Ireland intrusted as aforesaid respectively, from time to time to make and give all such orders or directions, by appointing any committee or committees, curator or curators, or otherwise as may appear necessary or proper for securing proper care and protection to the person and estate of such idiot, lunatic, or person of unsound mind.

VII. The powers and authorities given by this Act to the Lord Chancellor of Great Britain or other persons, 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, or any other person or persons 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, or any other person or persons for the time being intrusted as aforesaid.

CORRIGENDA ET ADDENDA.

Page 4, to the cases cited in n. (2) *add*, B. Rolfe, in *R.* v. *Layton*, 4 Cox, Cr. Ca. 149; *R.* v. *Turton*, 6 Cox, Cr. Ca. 327.

,, 5, to cases cited in n. (5) *add*, Dr. Radcliffe, in *Walcot* v. *Alleyn*, Milw. 676.

,, 14, *add* to note (7), but see *Price* v. *Berrington*, on appeal, 3 M. & Gor. 498.

,, 15, in note (1), *read*, *Dawson* for *Vernon*.

,, 16, to cases cited in n. (2) *add*, *Stulz* v. *Schœffle*, 16 Jur. 909.

,, 17, in fourth line, *after* back *insert*, at law.

,, 18, *add*, The widower of a lunatic may set off against his liability to pay arrears of her pin money payments by him of debts to which that money was applicable: *Digby* v. *Howard*, 2 Cl. & Fin. 634.

,, 18, *add* to n. (1), And see *Gaitskell* v. *Scott*, Shelf. on Lun. 2d ed. 292.

,, 19, *add* to this page, When an Ecclesiastical Court doubted not the insanity of a testator, it directed his will to be left in the registry, and granted administration of his estate: *Re Bourget*, 1 Curt. 591; *Perry* v. *Dykes*, 6 W. R. 275.

,, ,, *add* to cases cited in n. (19), *Piers* v. *Piers*, 2 H. L. Ca. 331; *Dumoncel* v. *Dumoncel*, 13 Ir. Eq. R. 97; *Harrison* v. *Corp. of Southampton*, 4 De G. M. & G. 137.

,, 23, in 2d line from top, *for* may by the different Courts be adjudged sane and insane, *read*, might by the different Courts have been adjudged sane or insane; but the Court of Probate now unites in itself this divided jurisdiction: 20 & 21 *Vic. c.* 77, *ss.* 61, 62.

,, 25, *insert* before first paragraph this paragraph: It seems that if a legacy is given to put an infant into holy orders, and he becomes lunatic, it may be applied for his benefit in another way: Sir W. Grant, M.R., in *Barton* v. *Cooke*, 5 Ves. 463.

,, 27, *add to* cases cited in n. (5), B. Platt, in *Read* v. *Legard*, 15 Jur. 496, and *Re Walcott*, 3 Bingh. 423.

,, 28, *add* to n. (6), *R.* v. *Marshall*, 1 Car. & M. 147; and see *R.* v. *Eriswell*, 3 T. R. 707.

,, *add* to n. (11), 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: Lord Eldon, C., in *Ex parte Smith*, 1 Swanst. 6. And see *post*, p. 355.

,, 30, in n. (5), *for* 11 Beav. 211, *read* 9 Beav. 231.

,, 34, *add* to cases in n. (1), V.C. Wood, in *Anon. case*, 2 Kay & Joh. 441.

,, *add* to n. (2), And see *Worth* v. *McKenzie*, 3 M. & Gor. 363; *Egremont* v. *Egremont*, 2 De G. M. & G. 730.

add to n. (7), And see *Bentley* v. *Robinson*, 9 Hare, App. 76.

,, 42, *add* to n. (2), But see *Moore* v. *Platel*, 7 Beav. 583; *Anon.* 9 Hare, App. 27.

,, 44, *add* to n. (7), And see *Anon.* 2 Jur. N. S. 324.

Page 47, *add*, after 547 in n. (1), Lord Tindal, C.J., in *R.* v. *Vaughan*, 1 Cox, Cr. Ca. 80. Rolfe, B., in *R.* v. *Layton*, 4 Cox, Cr. Ca. 149.

„ 49, *insert*, at beginning of n. (2), See *R.* v. *Frances*, 4 Cox, Cr. Ca. 57; *Doe d. Bainbrigge*, 4 Cox, Cr. Ca. 149.

„ 57, *add* to n. (1), See also Rolfe, B., in *R.* v. *Layton*, 4 Cox, Cr. Ca. 149.

„ 59, *add* to n. (2), See also *R.* v. *Davies*, 6 Cox, Cr. Ca. 326.

„ 66, *add* to n. (1), See also 5 & 6 *Vic. c.* 22, *s.* 14.

„ 67, *add* to n. (1), And see *Re Flanagan*, 2 Jo. & Lat. 344.

„ 92, sec. 92. See 16 & 17 *Vic. c.* 96, *s.* 27.

„ 122, sec. 12. See *Anon.* 6 Ir. Eq. R. 389.

„ 136. The provisions of 11 Geo. 4 and 1 Wm. 4, c. 20, s. 70, were by 2 & 3 Vic. c. 51, extended to insane army pensioners and pensioners of civil departments of the navy; the latter Act was repealed as to Chelsea and Greenwich out-pensioner by 9 & 10 Vic. c. 10, concerning whom, if insane, 19 & 20 Vic. c. 15, has provisions.

„ 184, *add* to n. (3), It is sufficient to address the order to the clerk of the guardians of the parish, and the bare recital in such order of the order sending the lunatic to the asylum raises a legal presumption that such latter order was valid: *R.* v. *Crediton*, 6 W. R. 517.

„ 216 n. (1). A bill is before Parliament to repeal 18 & 19 Vic. c. 105, s. 14, and to substitute the following provision:—"Where any pauper lunatic is not settled in the parish by which or at the instance of some officer or officiating clergyman of which he is sent to an asylum, registered hospital, or licensed house, and it cannot be ascertained in what parish such pauper lunatic is settled, and such was found in a borough having a separate court of quarter sessions of the peace, and which is not liable under the Act of the session holden in the 5th and 6th years of King William 4, c. 76, s. 117, to the payment of a proportion of the sums expended out of the county rate, or in any borough which under the said Act of the 12th and 13th years of her Majesty is exempted from liability to contribute to the payment of the expenses incurred for maintaining pauper lunatics chargeable to the county in which such borough is situate, such lunatic may be adjudged to be chargeable to such respective borough; and it shall not be lawful for any justices to adjudge such lunatic to be chargeable to any county, nor to make any order upon the treasurer of any county for the payment of any expenses whatsoever incurred or to be incurred in respect of such lunatic; and all the provisions in the Lunatic Asylums Act, 1853, as to the mode of determining that a pauper lunatic is chargeable to a county, and as to the orders to be made for payment of expenses and other monies in respect of such lunatic, and for the repayment thereof to the treasurer of a county, shall extend to and include the case of such borough as if the said provisions were re-enacted in this Act, and such borough were therein mentioned or referred to instead of such county."

„ 240, in n. (3), *dele* a petition of.

„ 247, *add* to n. (7), *Re Clare*, 3 Jo. & Lat. 591.

„ 286, in n. (2), *read* 2 Phill. 39, *for* 1 Phill. 39.

„ 302, in n. (3) *for* 468, *read* 438.

„ 327, in 9th line from top, *dele* or.

„ 351, *add* to n. (2), but see 18 *G. O.*, 7*th Nov.*, 1853.

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s. 2. In this Act, unless there be something in the subject matter or context repugnant to the construction,

The expression, "Lord Chancellor," shall be construed to mean the Lord High Chancellor of Great Britain for the time being, and to include and be applicable to the Lord Keeper, or Lords Commissioners for the custody of the Great Seal of the United Kingdom for the time being; and the expression, "the Lord Chancellor," entrusted as aforesaid, shall be construed to mean the Lord High Chancellor

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of Great Britain for the time being, entrusted by virtue of the Queen'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 when and so long as the Lords Justices of the Court of Appeal in Chancery for the time being shall be entrusted as aforesaid, concurrently with the Lord Chancellor, then and so long the last-mentioned expression shall be construed to include or be applicable to the Lords Justices aforesaid, so that all the powers, authorities, and duties to be had, exercised, and performed under this Act by the Lord Chancellor entrusted as aforesaid, shall and may be had, exercised, and performed, as well by the Lord Chancellor, acting either alone or jointly with both or either of the Lords Justices aforesaid, as by both the Lords Justices aforesaid acting jointly apart from the Lord Chancellor.

And the expression, "the Lords Justices," shall be construed to mean the Lords Justices aforesaid for the time being, or one of them.

And the expression, "the Lord Chancellor of Ireland," shall be construed to comprehend the Lord Keeper or Lords Commissioners for the custody of the Great Seal of Ireland for the time being.

And the expression, "the Masters," shall be construed to mean the Masters in Lunacy for the time being jointly or severally.

And the expression, "the Registrar," shall be construed to mean the Registrar in Lunacy for the time being.

And the word "commission" shall be construed to mean a commission in the nature of a writ *de lunatico inquirendo*, and to comprehend the General Commission by this Act authorized to be issued.

And the word "land" shall be construed to comprehend any manor, messuage, tenement, hereditament, or real property, of whatsoever tenure, and also 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.

And the word "stock" shall be construed to comprehend any fund, annuity, or security transferable in books kept by any company or society, or any money payable for the discharge or redemption thereof, or any share or interest therein.

And the word "dividends" shall be construed to comprehend interest or other annual produce.

And the provisions relating to the Bank of England, shall be construed to extend and be applicable to the East India Company, the South Sea Company, and every other company or society established or to be established.

And the word "conveyance" shall be construed to comprehend any release, surrender, assignment, or other assurance, including all acts, deeds, and things necessary for making and perfecting the same.

And the word "transfer" shall be construed to comprehend any assignment, payment, or other disposition.

And the word "lunatic" shall be construed to mean any

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person found by inquisition idiot, lunatic, or of unsound mind, and incapable of managing himself or his affairs.

And the expression, "next of kin," shall be construed to refer to the next of kin of a lunatic, and to comprehend his heir or heirs at law, and also the person or persons who would be entitled to his estate, or to shares thereof, under the statutes for the distribution of the effects of intestates in case he were dead intestate.

And the word "person" or "party" shall be construed to mean a body corporate.

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s. 49. The foregoing provisions with respect to the inquisition shall apply only where the petition for an inquiry is presented after the commencement of this Act; and every petition for inquiry theretofore presented, and on which an order has not then been made, shall with respect to the inquisition be proceeded on as if this Act had not been passed.
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s. 153. The Lord Chancellor, with the advice and assistance aforesaid, may from time to time make such orders as to him shall seem meet for carrying into effect the purposes of this Act, and for regulating the form and mode of proceeding before and by the Masters and the practice in matters in lunacy, and for regulating the duties of the several officers

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in lunacy, and so far as to him may seem expedient for altering the course of proceeding hereinbefore prescribed in respect of the matters to which this Act relates, or any of them; and any such order as aforesaid may be from time to time rescinded or varied by the like authority, and every such order as aforesaid which shall alter the course of proceeding hereinbefore prescribed in respect of the matters to which this Act relates, or any of them, shall be laid before both Houses of Parliament within 14 days after the making thereof, if Parliament be then assembled, and if not then within 14 days after the meeting of Parliament then next following; and if either House of Parliament shall by resolution passed within 36 days next after any such order as aforesaid has been laid before it resolve that the whole or any part thereof ought not to continue in force, in that case the whole order or the part of the order specified in the resolution (as the case may be) shall from and after the passing of the resolution cease to be binding.

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