

cial proceedings, been found to be a person of unsound mind, or *non compos mentis*. Nor do the plaintiffs Cromwell and wife show, or claim any interest whatever in the matter in controversy.

All these facts are admitted by the defendant; and he also admits, that he has never, at any time, maintained, or paid anything towards the maintenance of Rebecca. But he alleges, that he has always been ready and willing to maintain her, when called upon; and, that he would have done so, if he had been permitted. (The acquittance from his mother, which he has exhibited, and seems to place some reliance upon, may be at once laid aside as having no material bearing upon this case.)

The plaintiffs, by their bill, pray specially, that the defendant William Owings may be compelled to pay to John Cromwell and Urath his wife, for the use and benefit of the said Rebecca Owings, whatever may be now due, or may hereafter become due to her under her late father's will: and generally, that the plaintiffs may have such other relief as may be agreeable to equity and right.

Thus it appears, that justice is demanded in behalf of one of that unfortunate class of persons who are held to be most peculiarly under the guardianship of this Court. The case is of a delicate and anomalous nature; yet it is one in which, it is quite evident, that relief, by some means or other, ought to be granted. There are, however, difficulties in the way, which must be overcome or removed.

The first of them which presents itself, is as to the parties. If all those who have an interest in the subject, and who ought to have been brought before the Court, have not been made parties, it may be taken advantage of by demurrer, by plea, or at the hearing. On the other hand, if a person be made a defendant unnecessarily, the bill may be dismissed as to him, and proceed as to the others. 2 *Mad. Chan.* 174. * The predicament of this case is different. The right is admitted to be exclusively in one only of the plaintiffs; and the special prayer is, that the relief may be decreed to the two, who have no interest, for the use of the one who has the right. Cromwell and wife, it is clear, can have none, or a very remote interest in the matter now in controversy. The care of Rebecca's person was commended to them by the last will of her mother. But it is not even intimated, that they have been thus clothed with the character of her testamentary guardians; and there is in fact not the least foundation for their assuming any such office. They are not the *prochein amys* of Rebecca, because they do not so present themselves; nor do they state her to be an infant, *feme covert*, or lunatic; or to be in that situation in which they would be authorized to accompany her into Court as *prochein amys*. It may be inferred from what is said in one of the books of practice, that a lunatic may sue by *prochein amy*; 1 *Harr. Pra. Chan.* 773; the expressions of the compiler are,