

however, unwarranted; in that sense, by any adjudged case whatever. But according to the loose proceedings of the Land Office, it seems, that a warrant of resurvey was obtained by his next friend for the benefit of one who was then *non compos mentis*, although not found to be so by inquisition. *Land H. A.* 150. A lunatic, that is, one who has been found and returned to be *non compos mentis*, can only sue by his committee. *2 Mad. Chan.* 175; *1 Harr. Pra. Chan.* 762. Rebecca has not been judicially declared a lunatic; and consequently she can have no committee by whom to institute any suit.

It follows, therefore, that if there are no other principles upon which Cromwell and wife may be associated in this suit with Rebecca, no relief can be granted upon this bill as it now stands, but it must be amended or dismissed. *The King of Spain v. Machado*, *4 Russ.* 225.

Generally and technically speaking, those only are called lunatics who have been so found and returned. Without an inquest and return thereon, no one can be judicially treated as a lunatic, and be debarred of his liberty, or have the management of his property taken from him. The power to divest a citizen of his personal freedom and of his property is one of a most extraordinary and delicate nature; and should, therefore, never be exercised without observing every precaution required by the law. But, although this Court will, in no case, undertake to go all lengths; * and to confine or dispose of the person of any one, as a lunatic, until he has, upon solemn inquisition, been **294** found to be *non compos mentis*; yet it will grant relief and protection to such persons without and previous to their being adjudged to be *non compos*. On a proper application, the granting of a writ *de lunatico inquirendo* is generally a matter of course; but still it is discretionary. If the Chancellor sees, that the interests of the subject of it, may be promoted, or his health benefited by withholding or suspending it, he may do so. The object of the Chancellor's authority in matters of lunacy is to protect and take care of citizens, who are intellectually unfortunate; hence, it has been always so exercised as most effectually to attain that object. *Ex parte Tomlinson*, *1 Ves. & Bea.* 57; *Brodie v. Barry*, *2 Ves. & B.* 36. If the execution of a commission of lunacy would in all probability have a tendency to confirm the lunatic in his insanity; or if his estate or income is too small to defray the expense of its execution; or if the object in view may be attained as safely and as fully in all respects without it; the execution of the inquisition may be suspended or dispensed with altogether. In short, there are many instances in which the Court will recognize and act upon the fact, that a person is in a partial or complete state of insanity, without requiring that fact to be established by a return to a writ *de lunatico inquirendo*. *Sheldon v. Aland*, *3 P. Will.* 111, note;