

extraordinary, that any code of laws should recognize a case in which the existence of a wrong is admitted, and the redress for it is postponed until after the death of the injured individual. *Shelf. Law.* 53.

There is, however, one highly respectable English lawyer who has attempted to vindicate this maxim. "Insanity," says he, "being a quality annexed to the mind of the party who is subject to it, is a conclusion upon his state of mind to be drawn only from his own actions. A person therefore may assume this disability, whereas he cannot feign infancy and duress, the proof not originating in himself and his actions, but subsisting independently. That being the case, the law, (which is anxious to provide against the possibility of committing fraud, at the same time that it provides for the protection of rights,) removes the temptation to
382 practise* the former, by prohibiting every man from setting aside his own deliberate acts by stultifying himself, although it furnishes a means by which his heirs, after his death, or his friends, whilst he is living, may avail themselves of this disability. And it is to be observed, that the law in these cases does not proceed upon the ground, that the party is bound; for that cannot be seeing that, by the law of nature, he wants the capacity to assent to a contract; but because the policy of the law, which rather submits to particular mischief than a public inconvenience, sets bounds to the law of nature in point of form and circumstance." 1 *Pow.* *Cont.* 20.

The argument, here derived from considerations of public policy, results in this; that a greater amount of fraud and injustice would be likely to ensue by allowing men to stultify themselves, in order to avoid their contracts, than by refusing them permission to do so for that purpose. And this position is founded on an assumption of the fact, that it is exceedingly easy to counterfeit madness without being detected; or that of those who do deceitfully pretend to be insane the far greater number escape detection; and consequently, but for this maxim the appearance of lunacy would be very frequently put on, for the purpose of practising imposition and fraud. The position however, is not sustained by the fact. it is incumbent upon those who advance this argument to shew, that instances of feigned madness are common; and also that in those instances the detection of the deceit has been rare or difficult. In criminal cases, to defeat the progress of justice, and under various circumstances to escape from oppression or some imminent peril, the artifice of counterfeiting madness has often been resorted to; but no instances of fraud in civil cases, perpetrated by means of pretended lunacy, have been adduced, and I know of none. (i)

(i) The following observations of Messrs. Paris and Fonblanque, in their excellent work on Medical Jurisprudence, are well worthy of attention: