

Mackall, has been resident in the Maryland Hospital for the last ten months, and is still there; and, during that period, has been of unsound mind and incapable of the management of himself and his affairs.—John P. Mackenzie, attending physician.—22d June, 1829.”

At law it is clear, that the lunacy of the defendant affords him no exemption from arrest in civil cases; nor can he be discharged without bail, in any case where, if sane, he might be held to special bail. *Steel v. Alan*, 2 *Bos. & Pul.* 362; *Pillop v. Sexton*, 3 *Bos. & Pul.* 550. And it appears to be understood, that a lunatic defendant \*in Chancery must be served with process, or summoned in like manner as if he were sane. *Carew v. Johnston*, 2 *Scho. & Lefr.* 292. But the committee, or legally appointed trustee of such lunatic, if he has one, who is not interested in the case, is always appointed, as of course, his guardian *ad litem*. If the committee be adversely interested, or the lunatic has no committee, then the Court will, on application, appoint a guardian to answer for him. 2 *Mad. Pra.* 333; *Mitf. Plea.* 104; *Snell v. Hyatt, Dick.* 287; *Lloyd v. —, Dick.* 460. The awarding of a commission of lunacy is not an absolute matter of right, but rests in the sound discretion of the Chancellor. It may be withheld where no good is likely to result from it. In this instance, the expense of the commission could only be paid out of the fund, already, perhaps, exceedingly deficient, which should be appropriated altogether to the benefit of the creditors of the deceased; in which, and in many similar cases, because of the poverty of the lunatic, as well as with a view to his proper personal treatment, the Court will act upon the fact of his being actually in a condition of mental incapacity as fully as if he had been found to be *non compos mentis* by a regular inquisition. *Sherwood v. Sanderson*, 19 *Ves.* 289; *Ex parte Tomlinson*, 1 *Ves. & Bea.* 57; *Brodie v. Barry*, 2 *Ves. & Bea.* 36; *Ex parte Evelyn*, 7 *Cond. Cha. Rep.* 232; *Exeter v. Ward*, 7 *Cond. Cha. Rep.* 258; *Rebecca Owings' Case*, 1 *Bland*, 290; *Colegate D. Owings' Case*, 1 *Bland*, 372.—*In the matter of Ann Oliver*, 29 *Com. Law Rep.* 165.

Hence where the Court is satisfied, as in this instance, by a certificate of the attending physician of the hospital in which the lunatic has been placed, or by such other proof as the nature of the case will admit, that the intellectual infirmity of the defendant is such, arising from madness, age, or any other cause, as to render him unable to manage his own affairs, on application a guardian *ad litem* may be appointed for him, and charged to defend the suit on his behalf. *Mitf. Plea.* 104; *Loring v. Carverly*, *Pre. Chan.* 229; *Sheldon v. Aland*, 3 *P. Will.* 111, n.; *Wilson v. Grace*, 14 *Ves.* 172; *Barrett v. Tickell*, 4 *Cond. Cha. Rep.* 70; *Howlett v. Wilbraham*, 5 *Mad.* 423; *Carew v. Johnston*, 2 *Scho. & Lefr.* 292. (g) So on the

(g) WORTHINGTON v. CRADDOCK.—Bill for a conveyance in specific performance of the agreement of the deceased ancestor of the defendants. Sub-