

fidence and regard which the lunatic felt for him at the period of their execution.

The introduction of these papers has opened a fruitful subject of inquiry, and has induced the parties to collect a vast mass of evidence touching their validity or invalidity, as testamentary dispositions of property.

It is most certain that these papers cannot be regarded as wills. Miss Colvin, the lunatic, is still living, and though the papers, or either of them, may have been executed when she was *compos mentis*, and she may never be restored to her mental capacity, so as to enable her to revoke them if so disposed, still, in legal contemplation, they are ambulatory until her death, and can confer no rights until then.

To enter at this time into an examination of the circumstances upon which the efficacy of these papers may depend, would be to engage in a duty entirely premature, and out of place; and it occurs to me that it would not be proper, whilst declining to make that examination, to permit these papers to influence the decision of the question now before the Court.

The petitioner, Richard C. Warford, seeks to counteract the effect of the recommendation of Elisha Warford, and those who have united with him in favor of Benjamin H. Ellicott, by showing that, under certain instruments of writing executed by the lunatic, he will, at her death, be entitled to the largest portion of her estate; and thereupon the parties now, in the lifetime of the lunatic, engage in a controversy respecting those papers; and it would, as it appears to me, be the clear duty of the Court to investigate the evidence produced upon this point before it could determine what degree of influence to give these papers. It would be manifestly unjust to suffer them to outweigh, or even weaken the recommendations of the next of kin and presumptive heirs-at-law, without looking into and considering the evidence introduced by them to show, either that the papers never had a legal existence, or if they had, that they were revoked by papers subsequently executed; and thus the Court would find itself engaged in deciding upon the validity or invalidity of a will during the life of the alleged testator.