

To avoid a proceeding so unusual and anomalous, there seems no alternative but to confine our attention, in deciding upon this application, exclusively to the rights of the parties as they are defined and ascertained by the law; and thus limiting the inquiry, and it appearing, as before remarked, that the recommendation of Mr. Ellicott decidedly preponderates over those in favor of the other persons, it follows that he should be appointed, unless the parties opposing him have succeeded in showing that he is personally unfit for the trust; the ruling principle being the personal fitness of the person for the office.

With a view to make up my judgment upon this point, I have carefully read all the evidence bearing upon it, and have listened with attention and interest to the elaborate arguments of counsel on the one side and the other, and have arrived at the settled conviction that Mr. Ellicott is a fit and proper person to be clothed with this delicate and important trust. His integrity, his business capacity and habits, stand vindicated by the proof, and I can see nothing in the character of the pursuits in which he is engaged from which it can be fairly inferred or reasonably apprehended that he will not faithfully perform his trust. I fully concur in the principle established in the case of *Eunice Salisbury, a lunatic*, 3 *Johns. Ch. Rep.*, 347, and the other cases which have been cited on the same point, that the great and leading object in the selection of persons for the management of the estates of lunatics, and the care and custody of their persons, is to advance their welfare and comfort; and that the interest of those who may be entitled to the succession is wholly subordinate to this. In fact, the old rule which excluded, as a matter of course, the next of kin of a lunatic from the office of committee of his person, if such next of kin was also his heir-at-law, has been broken down, because, contrary to the presumption which prevailed in barbarous times, the law now supposes that those who stand nearest to the lunatic by the ties of kindred, will treat him with more affection and patient fortitude than strangers to his blood; and hence consanguinity, though it confers no positive title, is now considered as a considerable recommendation in the selection of a