

Seeing, then, that Mr. Ellicott stands free from any well-founded personal objection, and that while there is no reason to suppose that he will be unmindful of the interest of the lunatic, he is the choice of more of those entitled to the succession than either of the other persons recommended, I consider it my duty to confer the appointment upon him; but in doing so, and in putting aside the claims of the other persons recommended for the office, I am not to be understood as concurring in the imputation of misconduct, and consequent unfitness for the trust, which has been urged against Richard C. Warford, one of them. Upon that subject I express no opinion, resting my judgment wholly upon what I consider the rule of the Court, other things being equal, to appoint him who is recommended by the greatest number of those who are entitled to be heard.

But whilst I place the property in the hands of Benjamin H. Ellicott, I shall confide the person of the lunatic to the care of Mrs. Mary Ann Ellicott and Miss Rachel J. Warford, her kinswomen. The evidence shows conclusively, and it has been fully conceded on all hands, that they are peculiarly and eminently deserving of the trust, and that their unfortunate relative will receive from them the kindness and tender regard and solicitude which her afflicting situation requires; and as her fortune is ample, the most liberal allowance for her comfort will be made.

The view which I have taken of this case, relieves me from the necessity of expressing an opinion upon the admissibility of the evidence which has been excepted to.

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[Afterwards, to wit, on the 5th of February, 1853, a petition was filed in the cause by Joseph Cain and others, stating that they are among the next of kin of said lunatic, and that said lunatic had departed this life having left a will, the probate of which is disputed; that, in the mean time, there is no one to whom Benjamin H. Ellicott, the committee of her estate, can deliver the same, either personal or real, which is, therefore, liable to loss and injury, and praying that a receiver may be appointed to take possession of the estate of said lunatic,