

The question first raised, has reference to the constitutional power of the Court to pass the order of the 9th of February, 1853. The new Constitution, which abolishes this Court prospectively, was ratified by the people in June, 1851. By the proviso to the 23d section of article 4, it is provided "That no new business shall originate in the said Court; nor shall any cause be removed to the same from any other Court, from and after the ratification of this Constitution." It is clear, therefore, that if the petition upon which the order in question was passed, can be regarded as new business, in the sense of the Constitution, this Court had no power to entertain it. But if, on the contrary, it may be considered as a proceeding in a cause depending here at the period of the adoption of the Constitution, it was quite competent to the Court to receive and act upon it; because by the section referred to, the powers of the Court with reference to depending causes, are continued to a period which has not yet arrived.

In passing the order of the 9th of February, the question of the Court's power, as affected by the new Constitution, was not adverted to. If it had been, there might perhaps have been more hesitation than was felt at the time; though I am not now prepared to say, that the petition to have a receiver appointed in this case can be viewed as the commencement of a new suit in this Court. In the first place, the petition was filed, and properly filed in the lunacy cause. It is very true, and not denied that the death of the lunatic put an end to the office of the committee; and that the jurisdiction of the Court in the lunacy cause was determined by the same event, except for the purpose of having the necessary accounts taken and directing the fund or estate to be paid over to the party or parties entitled. But to this extent, and for this purpose, the jurisdiction remained. The cause, therefore, was not out of Court. Orders passed in it directing accounts to be taken, or proof to be taken, if necessary, and compelling the committee to pay over the property to the party entitled, would not be *coram non judice*.

The situation of the cause then, was this: the Court had in