

with the executor, or full administrator, when the contest is determined, and the power of the latter is complete to call on him for such account, the author says, "in case of maladministration, the temporary administrator may be cited before the Commissary-General, or his bond may be put in suit," and at page 190 the form of the bond is given. Upon this authority, and the universal practice and fitness of the thing, I should entertain no doubt of the necessity of a bond in such cases, and of the validity of the bond; but in addition to it, we have the case of *State vs. Craddock*, 7 H. & J., 40, in which, though the suit on the bond was not maintained, its legal validity was assumed in the clearest terms.

I am, therefore, of opinion, that so far as the personal estate of the deceased is concerned, the receiver must be discharged, the accounts taken separately, whilst he held it in that capacity and as committee of the lunatic, and the property itself, and its accumulations, be delivered over to the administrator *pendente lite*. And the only remaining question is, shall the receiver be continued with reference to the real estate?

Two or three considerations induce me to answer this question in the negative, and have brought my mind to the conclusion that he should be discharged as to the real estate also. As has been already stated, the constitutional power of this Court to entertain the petition for the appointment of a receiver, and to pass the order of the 9th of February last, has been seriously questioned; and though, for the reasons before mentioned, I am inclined to think that, under the peculiar circumstances of the case at that time, and to the extent and for the purpose contemplated by that order, the Court did possess the power to pass it, I am yet free to admit that it is a question upon which grave doubts may exist, and the very existence of such doubts would incline the Court to forbear to exert the disputed power, unless some urgent necessity for so doing existed. Such necessity appeared to exist at that time, but does not now, because the parties interested are aware of the condition of the estate, as shown by the proceedings in the cause since the date of the order; and it is not to be doubted, if this