

The predicament of this case is different. The right is admitted to be exclusively in one only of the plaintiffs; and the special prayer is, that the relief may be decreed to the two, who have no interest, for the use of the one who has the right. *Cromwell* and wife, it is clear, can have none, or a very remote interest in the matter now in controversy. The care of *Rebecca's* person was commended to them by the last will of her mother. But it is not even intimated, that they have been thus clothed with the character of her testamentary guardians; and there is in fact not the least foundation for their assuming any such office. They are not the *prochein amys* of *Rebecca*, because they do not so present themselves; nor do they state her to be an infant, *feme covert*, or lunatic; or to be in that situation in which they would be authorized to accompany her into court as *prochein amys*. It may be inferred from what is said in one of the books of practice, that a lunatic may sue by *prochein amy*; (b) the expressions of the compiler are, however, unwarranted, in that sense, by any adjudged case whatever. But according to the loose proceedings of the Land Office, it seems, that a warrant of resurvey was obtained by his next friend for the benefit of one who was then *non compos mentis*, although not found to be so by inquisition. (c) A lunatic, that is, one who has been found and returned to be *non compos mentis*, can only sue by his *committee*. (d) *Rebecca* has not been judicially declared a lunatic; and consequently she can have no committee by whom to institute any suit.

It follows, therefore, that if there are no other principles upon which *Cromwell* and wife may be associated in this suit with *Rebecca*, no relief can be granted upon this bill as it now stands, but it must be amended or dismissed. (e)

Generally and technically speaking, those only are called lunatics who have been so found and returned. Without an inquest and return thereon, no one can be judicially treated as a lunatic, and be debarred of his liberty, or have the management of his property taken from him. The power to divest a citizen of his personal freedom and of his property is one of a most extraordinary and delicate nature; and should, therefore, never be exercised without observing every precaution required by the law. But, although this court will, in no case, undertake to go all lengths;

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(b) 1 Harr. Pra. Chan. 773.—(c) Land H. A. 150.—(d) 2 Mad. Chan. 175; 1 Harr. Pra. Chan. 762.—(e) *The King of Spain v. Machado*, 4 Russ. 225.