

in this State. Therefore, whether it ought to be now received, or rejected, must depend upon the nature of the reasons and the policy by which it is sustained.

In England, it is said, that the progress of this *notion* is somewhat curious; and although it has been handed down as settled law, yet, that later opinions, *feeling the inconvenience of the rule*, have in many points endeavoured to restrain it.(j) This maxim has received the entire approbation of few of the English lawyers, and, by many of them, it has been not only questioned, but severely reprobated.(k) It is alleged to have been set up in defiance of natural justice and the universal practice of all the civilized nations in the world.(l) It has been shewn from the most unquestionable authority, that the ancient common law, without deviation, down to about the year 1330, recognised the right of the party himself to rely upon and prove his own insanity as a means of avoiding any contract made during his insanity;(m) and in a case which was decided about the year 1420, it appears that the plaintiff was permitted to allege as the ground of the relief he asked and obtained, that he was of great age, and that his discretion many times, and for the most part, had passed away from him, and that the bargain had been made when he was out of himself.(n) It is said by one of the most eminent of the English judges, sitting in an ecclesiastical court, that it is perfectly clear in law, that a party may come forward to maintain his own *past* incapacity, and also that a defect of incapacity invalidates the contract of marriage, as well as any other contract.(o) After the most solemn and deliberate investigation, this maxim has been rejected in Connecticut; and in New York and Virginia it seems to have been put aside as unworthy of the least consideration or notice.(p)

Mere weakness of mind alone, without imposition or fraud, forms no ground for vacating a contract. But if there be any unfairness in the transaction, then the intellectual imbecility of the party may be taken into the estimate, to shew such fraud as will afford a ground for annulling it. Courts of justice disclaiming all pretension to measure men's capacities, recognise no legal distinc-

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(j) 2 Blac. Com. 291; Thompson v. Leach, 3 Mod. 301; 1 Ld. Raym. 313; 2 Stra. 1104.—(k) 1 Coll. Idiots, 406; Coop. Med. Jur. 377.—(l) 1 Fonb. 48. (m) F. N. B. 466; 1 Pow. Cont. 19.—(n) 1 Lond. Jurist, 340.—(o) Turner v. Meyers, 1 Hagg. Con. Rep. 414.—(p) Webster v. Woodward, 3 Day, 90; Rice v. Peet, 15 John. 503; Horner v. Marshall, 5 Mun. 466.