

It is the special duty of the State to take care of those who suffer under any natural infirmity which incapacitates them from taking care of themselves. And, therefore, to adopt a maxim which in its operation casts them out from the protection of the law, of which they stand so much in need, and leaves them to be stripped of their property by the most palpable fraud, appears to be exceedingly unjust and cruel. The reason of this maxim does, in effect, declare, that the unfortunate are to be left unprotected, because they are unfortunate; that no care is to be taken of an innocent lunatic, because, being a lunatic, he knows not what he does, and cannot take care of himself. While on the other hand, it virtually proclaims, that iniquity shall be protected, and that the defrauder shall be allowed to profit by his own wrong, and to enjoy his plunder in perfect security.

It is said, that "if the common law had given a writ of *non compos mentis* to him who has recovered his memory after alienation, certainly the law would have given him remedy for the maintenance of himself, his wife, children and family, although he recovered not his memory but continued *non compos mentis*." (s) I do not clearly see the force of this inference; but it would seem, from what is said, that because a man cannot have a deed set aside

microscopic eye; and hence many things arrest their attention, which escape the notice of physicians.—(*Rush on the Mind*, 158.) Shakspeare has been frequently referred to by writers on the subject of mental disorder.—(*Conolly Ind. Inst.* 319; *Coop. Med. Jur.* 291; 1 *Paris and Fonb.* 316, note.) Justinian quotes a passage from Homer to illustrate the nature of a donation *mortis causa*, (*lib. 2, tit. 7, s. 1*.) and Lord Coke allows, that to cite verses standeth well with the gravitie of our lawyers. (*Co. Litt.* 237.) I shall therefore feel myself justified in placing among the references some extracts from the poets, by way of illustration and in support of what I have said, in the text:

"Poor Ophelia,  
*Divided from herself and her fair judgment,  
 Without the which, we are pictures, or mere beasts."* *Hamlet*, act 4, s. 5.

"If Hamlet from himself be ta'en away,  
 And, when he's not himself, does wrong Laertes,  
 Then Hamlet does it not, Hamlet denies it.  
 Who does it then? His madness." *Hamlet*, act 5, s. 2.

By the statute of 33 *Hen. 8, c. 20*, a person who had, while sane, committed high treason, and after became mad, might be tried in his *absence*, without making his personal *appearance*, &c. From which it may be inferred, that by a legal appearance at the trial, in criminal cases, is meant the actual presence of the *mind* as well as the *body*; thus recognising the position, that in a state of insanity the mind has left the body, and cannot be brought before the court with it.—4 *Blac. Com.* 25.

(s) *Beverley's Case*, 4 *Co.* 124.