

he can ; taking care, however, that he does not allege his own former insanity as a ground for vacating any contract by which he may have been defrauded of it. Hence as regards his property, the recovery of his reason, instead of being a blessing, may be his greatest misfortune ; for he may, notwithstanding he is in fact the owner of a large estate, be by the operation of this maxim, fixed in penury during the remainder of his days. The granting of a commission of lunacy it is said, is a matter not of right but of sound discretion under all circumstances.(v) But if this maxim prevails it should be held to be a matter of right, since it may be often indispensably necessary as the only means by which a lunatic can obtain justice.

The heirs and personal representatives of the lunatic are, however, not restrained by this maxim. They may obtain the redress which has been denied to *him*. The heir may recover the imperishable realty ; but of whom is reimbursement to be obtained for the years of waste and devastation that may have been committed upon it during the life of the lunatic ? The only remedy against the wrongdoer, in its best form, is a mere personal claim for an account of the rents and profits ; but he may be a beggar. The administrator of the lunatic may reclaim his personal property itself, if to be found ; or if not, he may sue for its value, if the wrongdoer can be found ; and recover from him its full value, if he should be worth as much. He who delays to pay what is due, pays less than is due ; but suspended and indefinitely deferred justice is a tantalizing pernicious mockery. It appears to be most extraordinary, that any code of laws should recognise a case in which the existence of a wrong is admitted, and the redress for it is postponed until after the death of the injured individual.(w)

There is, however, one highly respectable English lawyer who has attempted to vindicate this maxim. "Insanity," says he, "being a quality annexed to the mind of the party who is subject to it, is a conclusion upon his state of mind to be drawn only from his own actions. A person therefore may assume this disability, whereas he cannot feign infancy and duress, the proof not originating in himself and his actions, but subsisting independently. That being the case, the law (which is anxious to provide against the possibility of committing fraud, at the same time that it provides for the protection of rights,) removes the temptation to prac-

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(v) 1 Coll. Idiots, 67 ; Rebecca Owings' Case, ante, 290.—(w) Shelf. Lun. 53.