

had taken the benefit of the insolvent law, and was then utterly insolvent; that the late *Benjamin Mackall* died, leaving a considerable real and personal estate; and these defendants, except *Edmund Key*, his children and heirs at law; that his son *Richard H. Mackall*, had died intestate and without issue; that the defendant *Benjamin B. Mackall* had become a lunatic; in consequence of which the administration granted to him had been revoked, and administration *de bonis non* had been granted to the defendant *Louis Mackall*; and that the personal estate of the intestate was wholly insufficient to pay his debts. Whereupon the bill prayed, that the real estate might be sold for the payment of the debts of the intestate, &c.

The plaintiffs by their petition, filed on the 25th of June, 1829, stated, that the defendant *Benjamin B. Mackall* had been returned summoned; that, as alleged in their bill, he was proved, by the annexed certificates of the attending physician of the Hospital at Baltimore, in which he was then confined, to be a lunatic; but that no commission of lunacy had ever been issued against him. Whereupon they prayed, that a guardian might be appointed to appear and answer for him, &c.

26th June, 1829.—BLAND, Chancellor.—This petition having been submitted, the proceedings were read and considered.

The bill alleges, that one of the heirs, *Benjamin B. Mackall*, is a lunatic, and prays a *subpœna* against all the heirs, in the usual form, to appear, 'the said *Benjamin B. Mackall* by guardian to be appointed in his behalf to answer,' &c. It is not alleged, and it is admitted, that *Benjamin B. Mackall* has not been regularly found and declared to be a lunatic.

A *subpœna* was issued against him to which the sheriff has returned, 'summoned, see certificate;' which certificate annexed to the writ is in these words. 'This is to certify, that *Mr. Benjamin Mackall*, has been resident in the Maryland Hospital for the last ten months, and is still there; and, during that period, has been of unsound mind and incapable of the management of himself and his affairs.—*John P. Mackenzie*, attending physician.—22d June, 1829.'

At law it is clear, that the lunacy of the defendant affords him no exemption from arrest in civil cases; nor can he be discharged without bail, in any case where, if sane, he might be held to special bail. (a) And it appears to be understood, that a lunatic de-

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(a) *Steel v. Alan*, 2 Bos. & Pul. 362; *Pillop v. Sexton*, 3 Bos. & Pul. 550.