

estate, and to apply the whole to their use; although he recovers not his memory, but continues *non compos mentis*. *Beverley's Case*, 4 Co. 127.

But we are told, that although the lunatic himself may be fettered by this maxim, yet there is a mode in which he may obtain redress; and that his heirs and personal representatives are not bound by this maxim. A commission of lunacy may be taken out, he may be declared a lunatic, and a committee appointed to take charge of his person and estate; and such committee may sue and have any deed, made by the lunatic, during his insanity, vacated for his benefit. But why this circuitry? The issue joined between the committee of the lunatic and his grantee must be exactly the same, and it must be met by precisely the same proof as if the lunatic himself had been the party. But even this circuitous mode of redress, is often lame, tardy, or wholly inefficient. It is, however, better than none at all.

But if a lunatic, in the condition of having been defrauded of his property, should recover his reason, then there is an end even of this circuitous remedy. He is discharged from the government and protection of his committee, and left to regain his property as \*he can; taking care, however, that he does not allege his own former insanity as a ground for vacating any contract **381** 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. 1 *Coll. Idiots*, 67; *Rebecca Owings' Case*, ante, 290. 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 re-imbusement 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 wrong-doer, 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 wrong-doer 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