

IN THE MATTER OF THE ESTATE OF }  
 RACHEL COLVIN, A LUNATIC. } JULY TERM, 1851.

[LUNACY AND LUNATICS—RECEIVERS—JURISDICTION—ADMINISTRATOR  
 PENDENTE LITE—APPEALS.]

THE authority of the Court of Chancery in this State, to take charge of the estates and persons of idiots and lunatics, is derived from the 6th section of the Act of 1785, ch. 72, which gives the Chancellor full power, in all cases, to superintend, govern, and manage their estates and persons.

The power of appointment of a committee for a lunatic is a discretionary one in the Chancellor, and cannot be reviewed by any other Court, though it should not be exercised arbitrarily or capriciously, and without regard to the wishes or recommendations of those interested in the estate, or who feel an interest in the person of the lunatic.

Though the committee is usually appointed on the nomination of the person who sues out the commission of lunacy, yet a *caveat* may be entered against the appointment, and when this is done, the recommendations of the parties interested will be considered, and proof taken to aid the Court in making the selection.

Though in this State it is more usual to appoint the same party committee of the person and estate, yet not unfrequently the practice is different, and from peculiar circumstances it is sometimes eminently proper to intrust the person of the lunatic to one committee, and his estate to another.

The rule of the Court in making such appointment, other things being equal, is to appoint him who is recommended by the greatest number of those who are entitled to be heard.

The will of a lunatic, though made when she was *compos mentis*, and though she may never be restored to mental capacity so as to revoke it, is still, in legal contemplation, ambulatory until her death, and until then can confer no rights, and can have no influence on the Court in appointing her committee.

The great and leading object in the selection of persons for the management of the estates of lunatics, and the custody of their persons, is to advance their welfare and comfort, and the interests of those who may be entitled to the succession is wholly subordinate to this.

The law now presumes that the nearest of kin to the lunatic will treat him with more affection than strangers to his blood, and hence consanguinity, though it confers no positive title, is now considered a recommendation in the selection of a committee, and a strong ground must be shown before it will be disregarded.

If the person recommended is embarrassed by pecuniary difficulties, and