

the Penal Code, the offence contemplated by section 136 of the Civil Procedure Code cannot be dealt with summarily by the Civil Court, but will have to be tried under the general provisions of the Criminal Procedure Code.

As to the merits of the order of commitment, we are unable to find any authority for going behind the order the disobedience to which constitutes the contempt. In the present case the appellant relies entirely upon the impropriety of that order, and upon the same grounds as she urged against its being made, and not upon any circumstances which might have supervened and have prevented her fulfilling it. If we were to hold otherwise, we should be virtually giving an appeal against the order of production of documents—an order which is not to be found amongst those enumerated in section 588. It may be said that an appeal against the order of commitment will, under those circumstances, be, as a rule, of little value; but that cannot, we think, be a reason for departing from the ordinary practice, however much it may be for exercising extreme caution in making orders of the nature of that appealed against.

*Appeal dismissed with costs.*

Attorneys for appellant.—Messrs. *Cleveland, Little and Nicholson.*

Attorneys for the respondent.—Messrs. *Ardesir and Hormasji.*

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### ORIGINAL CIVIL.

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*Before Mr. Justice Latham.*

IN THE MATTER OF COWASJI BERAMJI LILAOVALA, AN ALLEGED  
LUNATIC.

*Lunacy—Act XXXIV of 1858, Section 1—Unsound mind.*

The term "unsound mind" in section 1 of Act XXXIV of 1858 comprehends imbecility, whether congenital or arising from old age, as well as lunacy or mental alienation resulting from disease.

IN this case a petition was presented to the Court by Bezonji Cursetji Lilaovala and Jamsetji Cursetji Lilaovala, cousins of the alleged lunatic, praying that the Court would appoint some fit

1882

NAVIVAHOO  
v.  
NAROTAM-  
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1882

October 2.

1882

*In re*  
COWASJI  
BERAMJI  
LILAOVALA.

and proper person to take charge of the property of the alleged lunatic. The petition contained the following allegations :—

That the said Cowasji was seventy-four years of age and had no other relatives than the said petitioners. He was possessed of moveable property of the estimated value of between twenty and thirty thousand rupees, the whole of which property, save certain ready cash, was lying in his house. Mr. Muncherji Framji Cama, a Justice of the Peace and a gentleman of great respectability, was induced, partly by his regard for the lunatic as one of his oldest friends and partly by the request of the petitioners and some other friends, to cause the bulk of the property to be sealed and secured. Cowasji had been for some months past entirely incapable of managing himself and his own affairs. He lived alone with his servants, one of whom, named Beramji, had great influence with him. Of late, attempts had been made by his servant and his son, acting in collusion with a Parsi priest named Shapoordaroo, to remove the seals from the property of the lunatic, and a locksmith was brought on the 20th ultimo to force open the trunks and cupboards. Under the circumstances the petitioners apprehended that, unless the property was at once taken charge of by some proper person appointed by the Court and a permanent committee subsequently appointed, it would be misappropriated, or otherwise made away with.

Pursuant to an order of Court an inquiry was held before LATHAM, J., in Chambers, when Dr. Nolan and Dr. Edulji were examined as to the mental state of the alleged lunatic, and evidence was also taken as to his property.

*Farran* appeared for the petitioners.

Hon. *B. Lang* (Acting Advocate General) for the alleged lunatic.

LATHAM, J.—The only ground on which the Acting Advocate General on behalf of the alleged lunatic objected to my reporting to the Court that his client was “of unsound mind and incapable of managing himself and his affairs,” was the opinion expressed by Dr. Nolan that Cowasji’s mental infirmity was not *unsoundness of mind*, but weakness of mind or imbecility resulting from old age. Dr. Nolan says that, as a medical term, *unsoundness*

of mind answers to what is popularly styled lunacy, and is applied only to the state of mind resulting from disease, not to congenital imbecility or senile decay of the mental powers ; or, as I suppose it might be put, to *amentia* not *dementia*. The expression "whether the alleged lunatic is of unsound mind and incapable of managing himself and his affairs" is taken from Stat. 16 and 17 Vic., c. 70, secs. 44 and 47, and is repeated in the later English Act 25 and 26 Vic., c. 86, sec. 3. From Taylor's Medical Jurisprudence (2nd ed., 1873), Vol. 2, p. 480, it seems that, in that learned writer's opinion, "unsound mind" is not a medical but a legal expression, denoting an incapacity to manage affairs. It would seem to answer to the old legal term, *non compos mentis*, which according to Co. Lit. 246 (b) is equivalent to "of no sound memorie", and is of four sorts : (1) "Ideota, which from his nativity, by a perpetual infirmitie, is *non compos mentis* ; (II) He that by sickness, grief, or other accident, wholly loseth his memorie and understanding ; (III) A lunatique that hath sometime his understanding and sometime not, *aliquando gaudet lucidis intervallis*, and, therefore, he is called *non compos mentis* so long as he hath not understanding ; (IV) He that by his own vitious act for a time depriveth himself of his memorie and understanding, as he that is drunken." "But that last kind of *non compos mentis*", adds Lord Coke, "shall give no privilege or benefit to him or to his heirs" ; nor would it justify a finding under Act XXXIV of 1858 that the sufferer was incapable of managing himself and his affairs. But I think that any one of the three classes of unsoundness of mind firstly described would justify such a finding.

Lord Eldon in *Ridgeway v. Darwin* (1) said "that of late the question (in issuing a Commission of Lunacy) has not been whether the party is absolutely insane ; but the Court has thought itself authorized to issue the Commission, provided it be made out that the party is unable to act with any proper or providential management ; liable to be robbed by any one ; under that imbeciity of mind, not strictly insanity, but as to the mischief calling for as much protection as actual insanity." And he refers to two cases, in one of which the Commission issued because the patient's

1882

*In re*  
COWASJI  
BERAMJI  
LILAOVALA.

1882

*In re*  
COWASJI  
BERAMJI  
LILAOVALA.

mind was worn out by years and attention to business ; and in the other because the party, though when he could be kept sober a very sensible man, yet was in a constant state of intoxication and perfectly incapable when in that state. Lord Erskine in *Ex parte Cranmer* (1) held that the Commission of Lunacy was applicable to incapacity from causes distinct from lunacy, as old age. It has been said that these cases give a greater latitude of meaning to the words "unsound mind" than was the case in Lord Hardwicke's time: see Shelford on Lunatics (2nd ed.), pages 5 and 105. To some extent this may be true, but I think that the divergence has been exaggerated; as, in *Ex parte Barnsley* (2), Lord Hardwicke's objection was to the form of the return "that the said William Barnsley was from the weakness of his mind incapable of governing himself and his lands and tenements," and he said that the proper return was that the party was *lunaticus* or *non compos mentis* or *insane mentis*, or, since the proceedings have been in English, of *unsound mind*, which amounts to the same thing." His Lordship said distinctly that idiocy equally with express lunacy called for the care of the Court.

I may also refer to the case of *Empress v. Husen* (3), where Melvill and Nanabhai Haridas, JJ., held that between imbecility and unsound mind there was a distinction without a difference.

I think I should put an unduly restricted meaning on the term *unsound mind*, and, moreover, a mischievous meaning tending greatly to lessen the usefulness of the Act, if I did not hold these words to comprehend imbecility whether congenital or arising from old age, as well as lunacy or mental alienation resulting from disease. And I have accordingly reported that the alleged lunatic is of unsound mind and incapable of managing himself and his affairs.

Attorneys for the petitioner.—Messrs. *Ardasir and Hormasji*.

Attorney for the alleged lunatic.—Mr. *J. C. Cama*.

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(1) 12 Ves. 445.

(2) 3 Atkins 168.

(3) I.L.R. 5 Bom. 262.