

## ORIGINAL CIVIL.

Before Mr. Justice Bayley.

IN THE MATTER OF JOHN THOMSON WELSH.

*Lunacy Act XXXIV of 1858, Sec. 25—Application by curator bonis appointed in Scotland.*

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March 31 ;  
April 8.

A petition was presented through his constituted attorney by a *curator bonis* duly appointed in Scotland to W., a doctor in the Bombay Army, absent from India on leave, praying for an order authorizing the petitioner's attorney to recover and give valid receipts for certain moneys belonging to the said W., and to realize certain shares and bonds also belonging to the said W., and to remit the proceeds according to the directions of the petitioner as such *curator bonis*. The petitioner stated that the said W. had been duly adjudged to be of unsound mind by the Court of Session in Scotland, and annexed a "Court of Session Extract" of the "act and decree" whereby the said *curator bonis* was appointed; but there was no evidence that W. had been found of unsound mind and incapable of managing his affairs, or that the curator had given security, or that funds were required for the maintenance of W. The Court refused the order.

THIS was a petition presented by Duncan Forbes Dallas, who under an "interim act and decree" of the Lords of Council and Session in Scotland dated the 25th August, 1883, had been appointed *curator bonis* to John Thomson Welsh, stated in the title of the petition to be "an inmate of Craig House, Morningside, Edinburgh, a person of unsound mind so found by the Court of Session in Scotland." The petition prayed for an order authorizing Pryce Weedon, as the constituted attorney of the petitioner, to recover, receive payment of, and give valid receipts for, certain moneys belonging to the said John Thomson Welsh, and to sell certain shares and bonds belonging to the said John Thomson Welsh, and to remit such moneys and the proceeds of such sale according to the direction of the petitioner as such *curator bonis*.

The petition was as follows:—

"The above-named John Thomson Welsh, who is a doctor of medicine and is now or lately was a surgeon-major in Her Majesty's Bombay Army, and was lately stationed at Rajkot, in the Bombay Presidency, was, as your petitioner is informed and verily believes and as appears from the Court of Session extract of the said act and decree dated the 25th day of August, 1883, duly adjudged to be of unsound mind by the said Court of Session

and by the said act and decree. Your petitioner, the said Duncan Forbes Dallas, was appointed *curator bonis* to the said John Thomson Welsh with the usual powers.

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"2. The said John Thomson Welsh had, previously to the date when he was adjudged to be of unsound mind as aforesaid—that is to say, on the 15th day of April, 1870—executed in favour of the then partners in the said firm of Grindlay, Groom and Company a power of attorney, bearing that date, giving them (*inter alia*) power to deal on his behalf with all Government securities and shares standing in his name in Bombay and elsewhere in the East Indies, and power to appoint substitutes under them, and by virtue of the said power of substitution the said Pryce Weedon and the other present partners in the said firm were, previously to the said John Thomson Welsh being adjudged of unsound mind as aforesaid, appointed his constituted attorneys, and such power of attorney still remains unrevoked and uncanceled. Your petitioner will, if necessary, rely on the said power of attorney when produced.

"3. The said John Thomson Welsh, as your petitioner is informed and verily believes, was at the date of the said act and decree—that is to say, on the 25th day of August, 1883—possessed of, or entitled to, the undermentioned funds and shares and sums of money in Bombay which stand in his name :—[The petition set forth the particulars of the property in question.]

"4. Your petitioner, the said Duncan Forbes Dallas, as such *curator bonis* to the estate of the said John Thomson Welsh, by a power of attorney dated the 1st day of November, 1883, appointed the said Pryce Weedon and his partners, Charles James Groom and Henry John Cecil Turner, trading in Bombay under the name, style or firm of Grindlay, Groom and Company jointly and severally and each and every of their proper substitute or substitutes to be his true and lawful attorney and attorneys (*inter alia*) for him, in his name, and on his behalf to sell, endorse, assign and transfer all or any stocks, funds, or securities of the Government of India presently standing in the name of the said John Thomson Welsh, and to receive the consideration money, and to sign a receipt or receipts for the same; also for him and in

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his name and on his behalf to demand and receive, all such interest or dividends then due or thereafter to become due to the said John Thomson Welsh and then payable to him as *curator bonis* aforesaid individually, or jointly with others, or as trustee, executor, or administrator, or in any wise whatsoever from the Secretary of State in Council of India for any share or shares in any stocks, funds, securities, or loans of the Government of India, and to sign a receipt or receipts for the same, &c. &c. [The petition set forth the power of attorney.] And your petitioner, as *curator bonis* aforesaid, thereby granted full power to his said attorneys or attorney to substitute and appoint one or more attorneys or attorney under them or him with the same or more limited powers, and such substitutes and substitute at pleasure to remove and others to appoint.

"5. Your petitioner applied by his said constituted attorney to the Bank of Bombay for payment of the amount deposited with them by the said John Thomson Welsh, but they declined to comply with his request unless his authority to recover the amount so deposited was confirmed by an order of this Honourable Court.

"6. Your petitioner believes that in all probability the other corporations in which the said John Thomson Welsh holds shares and the Port Trustees of Bombay would object to recognize the authority of the said Pryce Weedon to deal with the said shares and the said bond, unless the sanction of this Honourable Court were obtained to his so doing.

"7. Under the circumstances above mentioned, your petitioner prays that an order may be made by this Honourable Court authorizing the said Pryce Weedon, as your petitioner's constituted attorney, to recover, receive payment of, and give valid receipt for the money so deposited with Messrs. Grindlay, Groom and Company and the Bank of Bombay, with interest which may be due thereon, and to sell the said shares and the said Port Trust bond at the market rate of the day, and to remit the proceeds of such sale, together with the money so drawn from Messrs. Grindlay, Groom and Company and the Bank of Bombay, less his commission, the costs of and incidental to this petition, and order to

or according to the directions of your petitioner the said Duncan Forbes Dallas as such *curator bonis* as aforesaid."

The "act and decree" referred to in the first paragraph of the petition was in the following terms:—

"At Edinburgh the 25th day of August, 1883. In the petition and application presented to the Lords of Council and Session for and in name of James Welsh, Doctor of Medicine, Kinghorn, Fifeshire, *Petitioner*, praying for the appointment of a *curator bonis* to his only brother, John Thomson Welsh, Doctor of Medicine, Surgeon-Major Bombay Army, some time residing at Rájkot, Bombay Presidency, India, and presently at Craig House, Morningside, Edinburgh: After sundry procedure sitting in judgment the said Lords by the Lord Ordinary officiating on the Bills appointed and hereby appoint Duncan Forbes Dallas, Solicitor Supreme Courts, to be *curator bonis* to the said John Thomson Welsh with the usual powers, and decerned and hereby decern. Extracted upon two pages by me, Principal Extractor in the Court of Session at Edinburgh, this 6th day of November, 1883."

*Jardine* for the applicant presented the petition, and asked for an order in terms of the prayer thereof. He cited *Scott v. Bentley*<sup>(1)</sup>.

*Cur. adv. vult.*

8th April, 1884. BAYLEY, J.—This is a petition in which, under section 25 of the Lunacy Act XXXIV of 1858, an order is sought enabling the constituted attorney of the petitioner to recover and to realize certain moneys and shares belonging to Dr. John Thomson Welsh, of the Bombay Army, who is stated in the title of the petition to be "a person of unsound-mind so found by the Court of Session in Scotland".

The petitioner is one Duncan Forbes Dallas, and by his attorney, Mr. Pryce Weedon, of Bombay, he presents this petition to the Court as *curator bonis* appointed to the said Dr. Welsh under an interim act and decree of the Lords of Council and Session in Scotland dated the 25th August, 1883, by which said act and decree the petitioner states that Dr. Welsh was adjudged to be of unsound mind.

(1) 1 K. & J., 281.

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The petition sets forth that Dr. Welsh is possessed of certain shares and sums of money in Bombay, a portion of which money is lodged in the Bank of Bombay, and that the petitioner, as *curator bonis*, executed a power of attorney, dated 1st November, 1883, appointing Mr. Pryce Weedon to be his attorney in Bombay for the purpose of receiving and realizing the property belonging to Dr. Welsh; that, on application by Mr. Weedon to the Bank of Bombay for payment of the moneys deposited there, the Bank declined to pay it, unless the authority of the petitioner to receive the amount was confirmed by an order of this Court; that, believing that a similar objection would probably be made by other companies in which Dr. Welsh holds shares the petitioner is desirous of obtaining the order for which the present application is made. The application being a novel one in this Court, I have taken time to consider my decision.

The application is made under section 25 of Act XXXIV of 1858 (His Lordship read the section<sup>(1)</sup>.) Section 32 defines the word "lunatic" to mean "any person found by due course of law to be of unsound mind or incapable of managing his affairs." It is necessary for the Court, therefore, before making such an order as is now asked for, to be satisfied that the person whose property will be affected is really a person of unsound mind, and incapable of managing his affairs. In this case there is no evidence of that fact. The first paragraph of the petition states that the petitioner is informed and duly believes that Dr. Welsh was duly adjudged to be of unsound mind by the Court of Session in Scotland, and it refers to the act and decree of the 25th August, 1883, by which the petitioner was appointed *curator bonis*.

(1) Section 25.—Where any stock or Government securities or any share in a company (transferable within the said territories, or the dividends of which are payable there) is standing in the name of, or is vested in, a lunatic beneficially entitled thereto or in a committee of the estate of a lunatic, or in a trustee for him, and the committee dies intestate, or himself becomes lunatic, or is out of the jurisdiction of the Court, or it is uncertain whether the committee be living or dead, or he neglects or refuses to transfer the stock, securities or shares, or to receive and pay the dividends to a new committee, or, as he directs, within fourteen days after being required by him to do so, then the Court may order some fit person to make such transfer, or to transfer the same, and to receive and pay over the dividends in such manner as the Court may direct; and such transfer or payment shall be valid and effectual for all purposes.

That document is headed "Second Extract—Court of Session Extract", and it purports to appoint the petitioner to be *curator bonis* with the usual powers. Even if otherwise sufficient, that document could not be accepted by this Court, as it is not authenticated, as required by the provisions of the Indian Evidence Act; but, apart from this circumstance, this extract does not state that Dr. Welsh has been adjudged a person of unsound mind. It merely purports to appoint the petitioner to be *curator bonis*. From this fact the Court is asked to conclude that Dr. Welsh has been found to be a lunatic. But it is clear that we can make no such inference, for the Scotch law allows of an appointment of a *curator bonis* in other cases than those in which a person has been adjudged to be of unsound mind (see Bell's Principles of the Law of Scotland, p. 787, pl. 2121 ; Phillips on Lunatics, p. 410).

A reference to the English authorities shows how cautiously the Court should exercise its powers in cases like the present. Sections 25 and 26 of the Indian Act XXXIV of 1858 are based upon, and abbreviated from, Stat., 1 Wm. IV, cap. 65, ss. 33 and 34, and upon these latter sections there are several reported cases. (His Lordship referred to, and commented on, *In re Morgan*<sup>(1)</sup>; *Re Stark*<sup>(2)</sup>; *In re Elias*<sup>(3)</sup>; *Scott v. Bentley*<sup>(4)</sup>; *Ex parte Lewis*<sup>(5)</sup>; *Johnson v. Beatty*<sup>(6)</sup>.)

The most recent decision upon the subject appears to be the case of *In re Garnier*<sup>(7)</sup> in which a *curator bonis*, appointed by a French Court to an Englishman resident in France and found a lunatic by the law of that country, applied for payment to him of a fund which had been lodged in a Court to which the lunatic was entitled. Vice-Chancellor Malins held that the Court could exercise a discretion, and he retained the *corpus* of the fund in Court, and ordered the dividends only to be paid over to the curator. In the present case I am asked to make an order authorizing the curator, or his attorney, to deal, not merely with the dividends of Dr. Welsh's property, but the whole of the pro-

(1) 1 Hall &amp; Twells, 212

(4) 1 K. &amp; J., 281.

(2) 2 M. &amp; G., 174.

(5) 1 Ves., 298.

(3) 3 M. &amp; G., 234.

(6) 10 Cl. &amp; F., 442.

(7) L. R., 13 Eq., 532.

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perty itself. The Vice-Chancellor (p. 543) said: "In the case before me no reason, in my opinion, or anything amounting to a reason is assigned for the transfer, and, in the case I have first referred to, so small a sum as £4,000 was refused, and the Court directed payment of the dividends only, and exercised its discretion in refusing the capital." In this case, also, I may say no reason is suggested why I should hand over Dr. Welsh's property to the curator. On referring to the Indian Civil List I find that he has left India on medical certificate for eighteen months' leave from the 26th October, 1882, which leave will not expire until the 26th of the present month, and it may be extended beyond that date. I find also that during his absence he is in receipt of an allowance of over Rs. 400 a month. So that it is clear that at present he is not in need of the money for which this application is made. Under these circumstances and upon the materials now before this Court I do not think I would be justified in making the order asked for. As I have already shown, I have no evidence that Dr. Welsh is of unsound mind, and incapable of managing his affairs, and it is only when satisfied of that fact that the Court can exercise the powers given by section 25 of Act XXXIV of 1858. Further, it does not appear that the curator has given security; and, according to the cases to which I have referred, it would seem to be the invariable practice to require such security. Nor do I find that any of the authorities sanction the payment to the curator of the capital or *corpus* of the lunatic's estate, and the application here is for an order authorizing the realization of the whole estate, and not merely for the payment of dividends. And, lastly, assuming that Dr. Welsh has been duly adjudged to be a lunatic, there is no suggestion that the money is required for his maintenance.

I am, therefore, unable at present to grant the order prayed for, but I shall allow the matter to stand over in case it should be deemed advisable hereafter to make any further application to the Court.

Attorneys for the petitioner.—Messrs. *Smith and Frere*.

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