

The
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HIGH COURT OF JUSTICE.

BRITTON, J., IN CHAMBERS.

NOVEMBER 29TH, 1909.

RE BENNETT, BENNETT v. PHILP.

Will — Construction — Provision for Lunatic — “Permanently Cured” — “May be Placed in her Possession” — Executors—Discretion—Administration Order.

Motion for administration of the estate of George Bennett, deceased.

G. N. Weekes, for Maggie Bennett.

J. O. Dromgole, for the executors.

BRITTON, J.:—The will of George Bennett, so far as material for the purpose of this motion, is as follows: “I give devise and bequeath to my executors hereinafter named all the real and personal property of what nature soever of which I may die possessed, for the sole and only benefit of my adopted daughter, familiarly known by the name of M. B. . . . That is to say, provided that my said adopted daughter M. B. remain in the asylum for the insane, the amount shall be invested for her benefit and the interest accruing from time to time paid to her if necessary. If at any time my said adopted daughter should be dismissed from the asylum and be pronounced permanently cured, the entire amount may be placed at once in her possession. If not pronounced permanently cured, it is my desire that the interest only be paid her, or such additional amount as my executors deem advisable.”

The will was made on the 1st July, 1903. The testator died on the 22nd August, 1903. M. B. was placed in the asylum for the insane at London on or about the 10th October, 1902. There was no finding or declaration of her lunacy. On the 11th February, 1903, she was allowed to leave the asylum “on probation,” as it was termed. She was therefore out “on probation” at the time of the making of the will. She afterwards returned to the asylum,