

the moneys he held as committee and trustee. He had not accounted to the Court for these moneys; and he was not relieved from office or discharged by any order of the Court.

Once a testator or donor is shewn to have been incompetent at any time, the onus of proving recovery or a lucid interval is cast upon the person seeking to uphold a subsequent gift or bequest: *Groom v. Thomas* (1829), 2 Hagg. Eccl. Rep. 433, 434.

Nothing was involved in the certificate of the Inspector upon which James Rourke was discharged from the asylum, beyond the decision that it was safe to allow him to live outside the asylum.

There was no evidence to satisfy the learned Judge that, as a matter of fact, James Rourke was of sound mind or capable of dealing with his property at the time of the alleged gifts or at any time subsequent to June, 1908. The defendants had failed to prove his recovery, in the legal sense, from his mental disease, though it was possible that his condition improved in some respects.

Reference to *In re Walker*, [1905] 1 Ch. 160; *Re Robinson* (1910), 1 O.W.N. 893; *In re Dyce Sombre* (1844), 13 L.J. Ch. 335; *Ex p. Stanley* (1750), 2 Ves. Sr. 25; *In re Blackmore* (1863), 32 L.J. Ch. 436; *Martin v. Johnston* (1858), 1 F. & F. 122; *Ferguson v. Borrett* (1859), 1 F. & F. 613; *Ex p. Wright* (1683), 1 Vern. 155; *Hall v. Warren* (1804), 9 Ves. 605, 610.

There was no actual bad faith on the part of either the committee or his son or daughter, and they should not be ordered to pay costs.

Judgment declaring that the alleged gifts to the defendants James Raymond Rourke and Mary McBride were and are null and void, and that the estate of Dennis M. Rourke is accountable for these moneys to the plaintiffs.

No costs against any of the defendants. The plaintiffs to have their costs, upon a solicitor and client basis, out of the estate of James Rourke.