

action, because they were not evicted from lot 2, and were not injured by Whitney's eviction. Whitney can maintain no action against the defendants, because lot 2 is not conveyed to him. He is a stranger to Ayer's title. For similar reasons, if the deed to Whitney is made to convey lot 2; while Ayer's deed to the plaintiffs conveys lot 1, neither Whitney nor the plaintiffs will have any cause of action against the defendants. By the correction of either deed alone the rights and liabilities of the defendants are not affected, nor those of the plaintiffs and Whitney, except as between themselves. Both deeds must be reformed so as to convey lot 2, in order to be of any benefit to the plaintiffs or to Whitney as against the defendants. The sole object of any correction is to make Whitney's eviction from lot 2, by Locke, in 1883, a breach of Ayer's covenant of warranty, instead of the plaintiff's eviction from lot 1, in 1863, upon which the right of action is barred by the statute. Upon the question whether the deed shall be reformed, all the parties interested are entitled to be heard. The defendants are not affected by the correction of the plaintiffs' deed to Whitney, because neither they nor their ancestor Ayer were parties to that proceeding. Whitney is not a party to this bill for the correction of Ayer's deed to the plaintiffs, and will not be affected by any judgment that may be rendered. As he is not bound by any decree in this suit, neither will the defendants be bound by it in any suit which he may bring against them.

The bill must be dismissed on both grounds,—(1) because it does not appear that justice requires the correction to be made, and (2) because a decree in this suit, reforming the deed, would be of no benefit to the plaintiffs.

Bill dismissed.

ALLEN, J., did not sit: the others concurred.

MCQUINN'S PETITION.

A person discharged from the asylum for the insane cannot be remanded to prison if the term of his imprisonment has expired.

PETITION to be discharged from the asylum for the insane. Facts found by a justice of this court, to whom the petition was presented, and by whom it was adjourned into the law term, August 29, 1888.

At the March term, 1888, the petitioner was convicted of an assault upon an officer, sentenced to the house of correction for three months, and committed. May 18, 1888, upon the petition of the jailer, representing that McQuinn was insane, he was com-

mitted to the asylum. The cause of his commitment to the asylum has ceased.

D. F. O'Connor, for the petitioner.

CARPENTER, J. "Any person committed to the asylum may be discharged by any three of the trustees, or by a justice of the supreme court, whenever the cause of commitment ceases, or a further residence at the asylum, in their opinion, is not necessary; but any person so discharged, who was under sentence of imprisonment at the time of his commitment, the period of which shall not have expired, shall be remanded to prison." G. L., c. 10, s. 22. If the proper construction of this language is open to a possible doubt, a reference to previous statutes for which the section was substituted in the revision of 1867 makes it certain. Rev. St., c. 9, s. 17; Laws of 1845, c. 246; Com. Report of 1867, c. 10, ss. 18, 20, 21; Gen. St., c. 10, s. 18.

A person discharged from the asylum cannot be remanded to prison, if at the time of the discharge the term for which he was sentenced to imprisonment has expired.

Petitioner discharged.

SMITH, J., did not sit: the others concurred.

PRESTON v. CUTTER, *Ex'r.*

Upon a bill in equity against an executor to set aside conveyances made by the testator in fraud of his creditors, the plaintiff, prevailing, has execution for costs against the goods or estate of the deceased.

BINGHAM, J. The plaintiff is administrator *de bonis non*, with the will annexed, of Franklin Munroe, and a creditor of the estate. The defendant is executor of the last will and testament of Mary R. Munroe, the widow of Franklin. The proceeding is in equity, to annul conveyances and transfers of property made and caused to be made by Franklin, fraudulent as against his creditors. The possession of the property passed to Mary at or about the time it was conveyed, and at the death of Mary it came to the defendant as the executor of her will. It appears in the record that the cause of action stated in the bill, answered by the defendant, heard and reported by the referee, and decided by the court, 64 N. H. 461, existed against the deceased, Mary R. Munroe. The decree was for the plaintiff, and he moved that execution issue for costs against the defendant *de bonis propriis*, which the court