

Opinion No. 232**Insanity—Support of Insane Person
During Commitment—Property
Acquired After Commitment.**

HELD: The state is entitled to have property of insane person, acquired after his commitment, applied to his maintenance during commitment in state hospital, and recital in commitment that insane person shall be cared for at public expense is merely recital of present financial condition and is not an adjudication of the right of the state to recover against property of insane persons subsequently found or acquired.

June 6, 1933.

The question you have submitted is

whether the state is entitled to receive compensation from the property of one of its inmates who, since his commitment, was left an estate by a deceased father in Minnesota, when the order of commitment recited that the said insane person had no property and that his care and keep at the State Hospital should be at the expense of the State of Montana.

It is the policy of the state that the property of insane persons, or their estates, shall be applied towards their maintenance. Section 1444 sets out the procedure for determining how this shall be done, reciting in part: "* * * and if it appears to the court that said insane person has property that can be applied towards his maintenance, it shall be the duty of the court to make an order to that effect, stating how much of the said insane person's property shall be applied, the amount to be fixed with due regard to the proper preservation of the estate of said insane person."

The leading case on the precise question under consideration seems to be that of *Kaiser v. State*, 80 Kan. 364, 102 Pac. 454, 24 L. R. A. (n. s.) 295. I quote from that case as follows: "The record of the hearing which resulted in Freitag's being adjudged insane recites a finding by the probate court that he was without sufficient means for his support, and an order that his maintenance should be at the expense of the state, and the warrant issued in the case directed toward the steward of the asylum so to maintain him. The administrator contends that this shows an adjudication against the right of the state asserted in this proceeding. We think, however, that the purpose of the judicial inquiry into the financial condition of the insane person is rather to advise the public officers of his situation in that regard than to determine the right of the state to reimburse for the expense incurred in his behalf. At all events nothing is decided by it except his circumstances for the time being. Although he may be destitute when committed, any after-acquired property can be applied to his support, and although he may then have abundant means, their subsequent loss will cast the cost of his maintenance upon the state. Whether a claim exists against his estate for his care at the

hospital at any given time depends upon whether at that time he had sufficient property for the purpose. This is a question of fact upon which the state is not concluded by the finding made at the time of his commitment." This case was followed by the court in *State v. Ikey's Estate*, 84 Vt. 363, 79 Atl. 850, where the same question was before the court. In this case the court said: "However the inquiry and finding regarding his estate was only for the purpose of fixing his status at the hospital and was not in contemplation of law an adjudication against the right of the state to charge the expense of his maintenance there against him and his estate."

I call your attention also to 14 R. C. L. (Insanity) Section 18, page 567, wherein the *Kaiser* case, *supra*, is cited and also 32 C. J. 688, Note 97, wherein the *Kaiser* case, *supra*, and other cases are cited. See also *Directors of Insane Asylum v. Boyd* (N. M.) 17 Pac. (2d) 358, where the court quoted the following from *In Re Yturburru's Estate*, 134 Cal. 567, 66 Pac. 729: "'An insane person is liable for the reasonable value of things furnished to him necessary for his support. * * * This was so at common law, where the necessities were furnished by an individual; and we have never seen a case, and do not think any can be found, holding that this rule comes in conflict with any provision of the constitution of this or any other state of the Union. We see no reason why the same rule should not apply to a state hospital for the insane which does and furnishes for the insane person only those things required by the law of the state. The court added "the weight of authority seems to be in accord with this opinion," and cited a considerable number of cases in support thereof, including the cases hereinbefore referred to.

It is therefore my opinion that the recital in the order of commitment is not conclusive; that it merely constituted a recital of the present circumstances of the insane person and is not an adjudication against the right of the state; and that the state may recover for the maintenance of said insane person against any property which may be found or which may be acquired by the insane person after his commitment.