

him on the 28th April, and says he shews no evidence whatever of insanity or of mental unsoundness, and although, as was to be expected, there are some evidences of senility, his judgment seems to be excellent. Dr. Raikes swears to the like effect. . . . If the affidavits of the medical men are to be accepted, it would be absurd to allow this action to proceed against the will of the plaintiff. But the next friend files affidavits which indicate that, in the opinion of the affiants at least, the plaintiff is non compos mentis; and set out alleged facts which, if true, rather point to that conclusion. If this be true, and the plaintiff is non compos mentis, the action should not be dismissed, as a whole at all events.

The next friend says that her whole desire is for the good of the plaintiff and submits to any order. . . .

[Reference to *Palmer v. Walesby*, L. R. 2 Ch. 732.]

Following that case, it would seem that where a plaintiff denies and the next friend asserts mental incapacity, the action will not be allowed to proceed without a judicial inquiry of some kind into such mental capacity of the plaintiff.

In *Howell v. Lewis*, 65 L. T. R. 672, 40 W. R. 88, it was held, in such a case, that the Court would direct an inquiry as to the competency to act of the person alleged to be of unsound mind.

No fixed rule is laid down, so far as I can see, which obliges me to take any particular course in respect of this inquiry—and counsel agree that, in case such inquiry be ordered, it shall be before myself in Toronto at the non-jury Court, on the 5th June, 1910.

Instead, therefore, of sending the inquiry to be otherwise made, I shall direct an issue to be tried before myself at Toronto on the 5th June, 1910, in which issue the next friend shall be plaintiff, and the plaintiff and defendants, defendants, and the issues to be tried: (1) whether Michael Fraser was on Saturday the 14th May, 1910, incompetent to retain solicitors to make a motion to dismiss the action; (2) whether the said Michael Fraser on the 17th January, 1910, was of unsound mind and incapable of managing himself or his affairs; and (3) whether the said Michael Fraser is on the day of the trial of unsound mind and incapable of managing himself or his affairs.

This is not to subject the plaintiff herein to examination for discovery—the affidavit of Dr. Raikes, filed, shews that such an examination might have evil effects upon him. The next friend waives all right to examine him upon condition that he be examined by another medical man—and suggests Dr. Bruce Smith. That is a reasonable proposition. . . . The examination should