

RIDDELL, J., IN CHAMBERS.

MAY 17TH, 1910.

## FRASER v. ROBERTSON.

*Lunatic—Action Brought in Name of Alleged Lunatic by next Friend—Motion by Nominal Plaintiff to Dismiss Action — Action to Declare Marriage Ceremony Void — Inquiry as to Mental Condition of Plaintiff—Issues Directed to be Tried—Parties — Statutory Inquiry — Stay of Action—Retention of Motion.*

Motion on behalf of the plaintiff for an order dismissing this action, which was brought in his name by one Catherine McCormick, his cousin, as his next friend, but, as he alleged without his authority.

J. King, K.C., for the plaintiff.

A. McLean Macdonell, K.C., for the next friend.

RIDDELL, J.:—This action is, I am informed, wholly without precedent.

The plaintiff, Michael Fraser, is an old retired farmer, over 80 years of age (84 it is said); the defendants are a lady about 30, with whom it is said the plaintiff went through a ceremony of marriage on the 13th January, 1910, and her father . . . . .

Catherine McCormick, alleging that the plaintiff was of unsound mind, brought this action, with herself as next friend, in the name of the plaintiff . . . . charging the defendants with conspiracy and forcing an entrance into the plaintiff's house. It is further alleged that the defendants assert that the plaintiff and the female defendant were then married—but that such a ceremony was performed, the pleader denies, and says further that, if it was performed, the plaintiff was wholly incompetent, mentally and physically, to enter into such a contract, and had no reasonable perception or understanding of the same. The claim is made to have the said ceremony declared a nullity and void, for a committee of the person and estate of the plaintiff, and general relief.

The defendants deny all charges of conspiracy or wrongdoing, assert the capacity of the plaintiff, and that the marriage was entered into by him with deliberation and full competence—they say that the plaintiff is not the real plaintiff, but that he is dragged into Court against his will. . . . .

Many affidavits are filed, and the evidence of the female defendant was taken before an examiner. The plaintiff presents affidavits by Dr. Clark, of the Asylum at Toronto, who examined