

the terms of payment as to the amount of coal delivered in July, and represented thereby, and must fail as to it. Of course, this question is not important if I have rightly decided as to the question of the construction of the guaranty.

The action will be dismissed with costs.

SUTHERLAND, J., IN CHAMBERS.

JULY 23RD, 1910.

RE FRASER.

*Lunatic—Application for Declaration of Lunacy—Conflict of Evidence—Expert Testimony—Limitation of Number of Expert Witnesses—Evidence Act, 9 Edw. VII. ch. 43, sec. 10, Application of—Order Directing Trial of Issue—Lunacy Act, 9 Edw. VII. ch. 37, secs. 6 (1), 7 (1), (2), (5)—Jury—Costs.*

Application on behalf of Catherine McCormick, one of the next of kin of Michael Fraser, for an order declaring him to be a lunatic, or directing the trial of an issue as to his alleged lunacy.

The application was made under sub-sec. 1 of sec. 6 and sub-secs. 1 and 5 of sec. 7 of 9 Edw. VII. ch. 37, which read as follows:—

“6.—(1) The Court upon application supported by evidence may by order declare a person a lunatic if the Court is satisfied that the evidence establishes beyond reasonable doubt that he is a lunatic.”

“7.—(1) Where in the opinion of the Court the evidence does not establish beyond reasonable doubt the alleged lunacy, or where for any other reason the Court deems it expedient so to do, instead of making an order under sub-section 1 of section 6, the Court may direct an issue to try the alleged lunacy.”

“(5) On the trial of the issue the inquiry shall be confined to the question whether or not the person who is the subject of the inquiry is at the time of the inquiry of unsound mind and incapable of managing himself or his affairs, and the presiding Judge shall make an order in accordance with the result of the inquiry.”

The alleged lunatic was a retired farmer, 80 years old. On the 13th January, 1910, he was married to one Hannah M. O. Robertson, then about 30 years old.

Subsequent to the marriage, an action was commenced, in the name of Michael Fraser, by Catherine McCormick as next friend, against Hannah M. O. Robertson (otherwise Hannah M. O. Fraser)