

thing that is to be done by the trial Judge at or before the conclusion of the trial before him. Section 7 (4) is explicit upon the subject and there is nowhere any expansion of the right or duty enabling the appellate tribunal to substitute itself for the trial Judge in the conduct of such an examination. The judgment of the Judicial Committee in the case of *Kessowji Issur v. Great Indian Peninsular Rw.*, 96 L. T. R. 859, though dealing with a differently expressed statute bears upon both these questions and supports, I think, the views here expressed.

If these conclusions be correct it follows that much of the record now before this Court is not properly before it. The question then is whether this Court should deal with the case upon the record as it was when the appeal came before the Divisional Court.

After giving the case the best consideration in my power I think we should not do so but that we should do what the Divisional Court might have done under the circumstances, and direct a new trial.

I greatly regret that this result has the effect of putting aside that which was done by the Divisional Court with an evident desire to fully elicit facts and circumstances that may prove very material and important in arriving at a just conclusion upon the issue directed.

But in the view I hold with regard to the powers and authority of the Court I am unable to perceive any alternative.

I would set aside the order of the Divisional Court and direct a new trial, the costs of the former trial and of the proceedings before the Divisional Court and of this appeal to be disposed of by the Judge presiding at the new trial.

HON. MR. JUSTICE GARROW:—Appeal by Michael Fraser from an order of a Divisional Court declaring him to be a lunatic and appointing committees of his person and of his estate.

The application was heard before Sutherland, J., in Chambers, who by an order, dated the 23rd day of July, 1910, directed an issue to be tried before Britton, J., or the Judge assigned to preside at the Barrie assizes.

The issue was accordingly prepared and settled, and was set down for trial at the Barrie assizes, Britton, J., presiding, who after hearing evidence, and an examination at his home of the alleged lunatic, dismissed the application. The