

had any jurisdiction to entertain the action at all. But the institution of such an action by one person as the next friend of another, can only be justified where that other person is by law regarded as a person who is not *sui juris*, but no adjudication had been obtained declaring that the plaintiff was not *sui juris*; the action being based on the assumption that the plaintiff was a lunatic, before any judicial finding that he was in fact a lunatic had been obtained; it was like putting the cart before the horse. For aught that appeared to the contrary, the plaintiff was *compos*, and therefore an action "by his next friend" was wholly incompetent. This difficulty appears to have been appreciated in the early stages of the action, so in order to get the horse into his proper position before the cart, collateral proceedings in lunacy were instituted, in which an issue was ordered to be held to determine whether or not the plaintiff in the original action was sane, but to this issue, the wife, who was most vitally concerned was no party, and consequently as we judge would not be bound by the finding even if it were adverse to the sanity of her alleged husband. The trial of the issue before Britton, J., resulted in a finding of sanity, from which an appeal was had by the promoter of the proceedings to the Divisional Court. That Court instead of disposing of the appeal on the evidence adduced before Britton, J., proceeded *mero motu* to re-try the issue, and on the further evidence adduced on the re-trial, allowed the appeal, and adjudicated Mr. Fraser a lunatic and incompetent to manage himself or his estate. From this decision an appeal was had on behalf of Fraser to the Court of Appeal; and that Court, while holding that the Divisional Court, in re-trying the issue, had exceeded its powers, nevertheless, instead of disposing of the appeal on the evidence adduced before Britton, J., affirmed the Divisional Court so far as it set aside the judgment of Britton, J., and, on the strength of the evidence adduced at the re-trial which it held to be improper, granted a new trial of the issue. The result is curious, and we think unprecedented.

Whether the unfortunate Mr. Fraser will have to pay for all