and according to the same rules of law and procedure as any other trial.

5. Power to examine an alleged lunatic is conferred by subsec. (4), of sec. 7 of the Lunacy Act, 9 Edw. VII. (Ont.) c. 37, only upon the judge presiding at the trial of the issue as to his soundness of mind, and cannot be exercised by an appellate court. Re Fraser, 24 O.L.R. 222, reversed on appeal.

6. The powers, jurisdiction and authority conferred upon the court by section 3 of the Lunacy Act, 9 Edw. VII. (Ont.) c. 37, or its inherent jurisdiction, as representing the king, over the persons and estates of lunatics or persons of unsound mind, can be exercised only after a declaration, upon due inquiry,

that the person in question is of unsound mind.

7. In an issue as to lunacy a Divisional Court has no power, either under the Lunacy Act, 9 Edw. VII. (Ont.), c. 37, or under the Ontario Con. Rules, or otherwise, of its own motion and against the protest of one of the parties to the issue, to re-open the case and to call for and hear a large amount of fresh evidence, and to determine the issue upon the original evidence and the fresh evidence thus obtained, not as upon an appeal but as in the first instance. In re Enoch and Zaretsky Rock and Co.'s Arbitration, [1910] 1 K.B. 327, and Kessowji Issur v. Great Indian Peninsula R. Co., 96 L.T.N.B. 859, specially referred to; Re Fraser, 24 O.L.R. 222, reversed on appeal.

8. Where an appellate court is not satisfied upon the argument of the appeal that the case has been so fully developed as to enable a proper decision to be given, it should direct a new

trial.

9. Where, in an issue as to lunacy under s. 7 of the Lunacy Act, 9 Edw. VII. (Ont.), c. 37, a Divisional Court has, of its own motion and against the protest of one of the parties to the issue, improperly called for and heard fresh evidence, and itself examined the alleged lunatic, and, upon the original evidence and the further facts thus ascertained, has determined the issue and reversed the decision of the trial Judge, and it appears that much of the fresh evidence so obtained may be important, the proper course is, not to determine the issue upon the record as it stood when the appeal came before the Divisional Court, but to direct a new trial. Re Fraser, 24 O.L.R. 222, considered.

Appeal allowed and a new trial ordered.

Watson, K.C., John King, K.C., and F. W. Grant, for appellant. Creswicke, K.C., and A. McLean Macdonell, K.C., for respondent.