

RIDDELL, J., IN CHAMBERS.

MAY 28TH, 1910.

FRASER v. ROBERTSON.

Lunatic—Action Brought in Name of, by Next Friend—Motion to Dismiss Action—Stay of Proceedings—Undertaking by Next Friend to Proceed for Declaration of Lunacy.

Motion on behalf of the plaintiff to vary the terms of the order proposed, ante 800.

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

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

RIDDELL, J.:—Mr. King is not satisfied with the order proposed, but Mr. Macdonell is. Mr. King insists that an order should be made now dismissing the action as frivo'ous, &c., and an abuse of the process of the Court. This order I refuse to make. In view of such cases as *Lawless v. Chamberlain*, 18 O. R. 296, and *Burns v. Anderson*, before Proudfoot, J., 10th November, 1883, it would seem that the main action will lie. And certainly the action could not be dismissed upon such an application as the present.

In my view, any person (and certainly a relative so near as the present next friend) may bring an action in the name of one alleged to be of unsound mind. *Vano v. Canadian Coloured Cotton Mills Co.*, ante 763, contains some account of the position of a next friend. I decline to decide that any person, and a fortiori any relative, is acting improperly in bringing before the Court a case like the present, if the plaintiff is in fact of unsound mind.

And the question of the sanity of the plaintiff must now come up in some way for trial. I was under the impression (wrong, as one of the counsel now informs me) that both parties would be satisfied if the issues to be determined should be tried before myself in the week of the 6th June. But, as this course does not recommend itse'f to both, I shall make the order made in a very similar case, *Palmer v. Walesby* (1868), L. R. 3 Ch. 732, and stay all proceedings until further order, on an undertaking by the next friend to take proceedings to declare the plaintiff a person of unsound mind. The urgency of such proceedings, in view of the advanced age of the plaintiff, need not be emphasised.

Costs will be reserved until further order.