

Mathers, C.J.]

[Dec. 9, 1911.]

IN RE ALICIA BURGER.

Lunatic—Declaration of lunacy—Personal service on lunatic—Service out of jurisdiction—Order—No presumption against supposed lunatic from fact of confinement in a lunatic asylum.

Before a declaration of lunacy will be made on a summary inquiry under s. 11 of the Lunacy Act, R.S.M., 1902, c. 103, the following rules must be strictly complied with. (1) The petition must be indorsed as required by rule 772 of the King's Bench Act, and should be signed by the petitioner. (2) It must be personally served upon the supposed lunatic: *Re Miller*, 1 Ch. Ch. 215, unless service has been dispensed with. (3) Personal service will only be dispensed with when it would be dangerous to the lunatic to serve him and, to prove that, the affidavit of the medical superintendent of the asylum in which the party is confined is not sufficient without corroboration: *Re Newman*, 2 Ch. Ch. 390; *Re Mein*, 2 Ch. Ch. 429. (4) The petition should be presented by the nearest relative and, where the petitioner is out of the jurisdiction, some person within the jurisdiction should be joined as co-petitioner: *Heywood & Massey's Lunacy Practice*, 20. (5) It should be supported by the affidavits of at least two medical men: *Re Patton*, 1 Ch. Ch. 192, and such affidavits must shew all the facts evidencing the lunacy from which the court may judge for itself whether or not the prisoner is of unsound mind: *McIntyre v. Kingsley*, 1 Ch. Ch. 281; *Ex parte Persse*, 1 Moll. 219. (6) There should also be affidavits from members of the family of the alleged lunatic and other persons who know him, not merely giving their opinions, but stating with particularity the material facts pointing to unsoundness of mind and incapacity to manage himself and his affairs: *Renton on Lunacy*, 259.

Nothing can be inferred against the supposed lunatic from the fact that he is confined in a lunatic asylum. He may be there improperly. If, however, proper evidence is produced that the person has been found a lunatic by a foreign tribunal having jurisdiction to so find, the court would generally act upon such finding, though not binding upon it.

It is doubtful whether there is any power to serve the petition out of the jurisdiction. Leave to do so was given in *Re Webb*, 12 O.L.R. 194, but that was under the Ontario rules, which are not the same as those in force here.

David, for petitioner.