

I am for these reasons, with deference, of the opinion that the Divisional Court in calling further evidence and in personally examining the alleged lunatic acted in excess of its jurisdiction, and that the appellant's objections to the course pursued are well founded.

Upon the merits, not much need be said, as in my opinion the proper remedy under all the circumstances is to direct a new trial of the issue. This may be had if the parties, or either of them, desire, before a jury.

If the matter stood as it did when it left the hands of Britton, J., I would not have been inclined to disturb his conclusion.

But I cannot shut my eyes to the fact that further evidence, of more or less importance, was, although irregularly, produced before the Divisional Court which it is desirable, in the best interests of the alleged lunatic himself, should be submitted to the proper tribunal.

Nor do I feel as much impressed by a consideration of the necessary delay involved in such a course, as was Middleton, J. Delay is, of course, undesirable when it can be properly avoided; but it is also highly desirable, even at the expense of some delay, that an order practically depriving an old man, whom several respectable witnesses, and at least one learned Judge, consider sane, of his liberty and the control of his property, and inflicting upon him the stigma of being a lunatic, should only be made after due and even strict compliance with the established course of legal procedure applicable in such cases.

The costs including those of this appeal should I think be reserved to be disposed of by the Judge upon the new trial.

In any event of this appeal, paragraph 6 of the formal judgment should be so amended as to omit all reflections upon the conduct of Mrs. Fraser, who is in no way a party to this record, although doubtless the real cause of this application, for one may, I think, safely say that if there had been no marriage there would have been no application.

HON. MR. JUSTICE MACLAREN:—I agree.

HON. MR. JUSTICE MEREDITH (*dissenting*):—This case has been presented, throughout, by the persons whose interests really are being advocated in it, from an entirely wrong standpoint; a thing which, no doubt, is natural enough, but none the less entirely wrong; these proceedings, rightly, can-