

So far as the matter is governed by statute it is quite clear that the first preliminary to the assumption by the Court of the powers, jurisdiction and authority specified in sec. 3 of the Lunacy Act, is a finding and adjudication in some form, and a declaration by the Court that the person in regard to whom application is made is a lunatic. Under sec. 6 that declaration may in some cases be made without the trial of an issue. But when under sec. 7 the Court directs an issue to try the alleged lunacy, the directions as to the mode of trial and the practice and procedure to be observed are specific. It is expressly declared that the practice and procedure as to the preparation, entry for trial and trial of the issue and all the proceedings incidental thereto shall be the same as in the case of any other issue directed by the Court or Judge (sub-sec. 6). By sub-sec. 7, the same (no higher or different) right of appeal may be exercised by any party to the issue as may be exercised by a party to an action in the High Court, and the Court hearing the appeal has the same (and no higher or different) powers as upon an appeal from a judgment entered at or after the trial.

It is plain that the statute confers upon the Court no power of dealing with an issue either at the trial or upon an appeal beyond that which it possesses in the case of an ordinary action.

Nor is there any ground for the contention that special power or authority outside the statute is vested in the Court so as to enable it to conduct the trial of an issue or an appeal from the order made otherwise than according to the rules of law, procedure and practice governing trials of ordinary actions. As has been pointed out the benevolent and paternal jurisdiction and authority over the persons and estates of lunatics or persons of unsound mind, only arises or attaches after a finding and adjudication resulting in a declaration of lunacy or unsoundness of mind. Until that result has been reached the alleged lunatic is entitled to all the rights and privileges to which any litigant may lay claim. There is no presumption to be made against him and the proof upon which the trial is to proceed is to be governed by exactly the same rules as in other cases. And he has the right to require and insist that the enquiry and the subsequent proceedings be conducted against him on no different principles. The contention that because if the finding be adverse to him the Court will be concerned in seeing to the care and protection of his person and estate, it is, therefore,