

LOGIE, J., IN CHAMBERS.

SEPTEMBER 27TH, 1919.

RE HOWELL.

Lunatic—Application by Son for Declaration of Father's Incompetence—Evidence—Conflicting Affidavits—Disposition of Property of Supposed Incompetent—Apprehension as to—Care and Custody—Dismissal of Application.

Application by Andrew Howell the younger for an order declaring his father, Andrew Howell the elder, to be a person incapable of managing his own affairs.

H. S. White, for the applicant.

Peter White, K.C., and B.H.L. Symmes, for Andrew Howell the elder.

LOGIE, J., in a written judgment, said that from the material it appeared that Andrew Howell the elder and his wife were married in 1871, there being issue nine children, seven sons and two daughters. Two of the sons, now men of mature years, William and John, never married and lived at home with their parents.

The application was made by another son, a married man who had been away from the parental home for 18 years.

None of the other sons or daughters joined in the application. William, John, and a daughter, Margaret, opposed it strenuously.

The learned Judge was of opinion that any disturbance of the routine of the father's life or habits after nearly half a century's life with a faithful and devoted wife would at his age be highly detrimental. His interest was the determining factor upon this application.

On the argument the learned Judge was inclined to hold, having had the advantage of the opinion of Dr. C. K. Clarke, that the father was incompetent; but on a careful perusal of all the material he found himself unable to say, beyond reasonable doubt, that this was so.

Seven practising physicians certified to the father's competency—three to his incompetency.

While testes ponderantur non numerantur, these physicians had not been cross-examined; and, where there is a real contest as to the issue of competency or incompetency, the forum is a trial in open Court. This was not a case where an issue should be directed.

The learned Judge made no finding as to the competency or incompetency of Andrew Howell the elder.