

What the Divisional Court has power to do in the one case it may do in the other, neither more nor less.

This seems to be quite clear from a perusal of the statute, 9 Edw. VII., ch. 37, which was the statute in force when the application was made.

By sec. 6 the Court, which by the interpretation clause (c) means the High Court, may if satisfied that the evidence establishes the lunacy beyond reasonable doubt, make the necessary order, or if not so satisfied, may under sec. 7 direct an issue to be tried, with or without a jury, as the Court or the Judge presiding at the trial directs. Sub-sec. 4 directs that upon the trial of the issue the alleged lunatic, if within the jurisdiction of the Court, shall be produced, and shall be examined at such time and in such manner, either in open Court or privately . . . as the presiding Judge may direct . . .

By sub-sec. 6, it is declared that the practice and procedure as to 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 a Judge.

By sub-sec. 7, a right of appeal is given such as may be exercised by a party to an action in the High Court from a judgment rendered at or after a trial, including the right of appeal, without leave, from the Divisional Court to this Court, and the Court hearing any such motion or appeal shall have the same powers as upon a motion against a verdict or an appeal from a judgment entered at or after the trial of an action.

From these very definite provisions it is, I think, abundantly clear that the jurisdiction conferred upon the Divisional Court, is appellate only, and in no way includes the powers which the statute expressly confers upon the trial Judge. It does not, and cannot, sit in such a matter merely as a Court of first instance. As an appellate Court it has by virtue of Consolidated Rule 498, upon the application of either party, upon a proper case being made for the indulgence, power to receive further evidence, a power very jealously guarded, as the numerous cases on the subject shew, and if improperly exercised, a proper subject of review on appeal to this Court. See *Trimble v. Horton*, 22 A. R. 51, where an order to admit further evidence was set aside.

The Court has, apparently, no power of its own motion and without the consent of both parties, to direct further