

assured. He held, however, that if the deceased committed suicide whilst sane, plaintiff was precluded at common law from recovery, and, as the question of the sanity of the deceased when he committed suicide, as apparently it was not disputed he had done, had not been tried, it was directed that the case must go down for trial upon that issue, unless the parties should agree as to the fact, or failing an agreement should consent to an issue being directed to try that question.

The judgment as drawn up contains an adjudication that plaintiff is entitled to recover the \$3,000 sued for, unless, upon the trial of the issue which is directed, it shall be determined that the deceased was sane at the time he committed suicide ; directs that the parties proceed to the trial of an issue, and that the question to be tried shall be whether the deceased was insane at the time he committed suicide ; and further consideration of the action and all questions of costs are reserved until after the determination of the issue.

The present appeal is from that judgment.

Experience has shewn that seldom, if ever, is any advantage gained by trying some of the issues before the trial of the others is entered upon, and certainly in this case the result of adopting that course is most unsatisfactory.

If the result of the preliminary trial in his case, whichever way it had resulted, would have put an end to the controversy, or if the trial Judge had reserved to himself the further trial of the action in case a further trial should be necessary, it would have been different.

The result of the course which has been taken is that the parties may continue their appeals until one or other of them is exhausted or the final court of appeal is reached, and then, if the judgment which had been pronounced is sustained, it will be necessary to try the issue as to the sanity of the deceased when he committed suicide, and it may be that defendants will succeed upon that issue, and in that event all the costs of the appeal, as well as any additional costs occasioned by the double trial, will have been thrown away.

It is far better, I think, that the erroneous steps which have been taken should be retraced, and that the case should go down to trial again, when all the questions of law and fact will be tried at the same time, and one judgment pronounced on the whole case.

This course is the more desirable, as some matters of fact which may have a bearing on the question which was dealt with at the last trial, do not appear to have been fully investigated. I refer to the indorsement on the policy by which the member agrees to be bound by the provisions of