

cal experts. . . . I decline to give effect to the contention, holding that the section applies to the calling and examination of witnesses at a trial. . . .

While, on the weight of testimony before me, and even on the character of the testimony as a whole, it would be impossible for me, on this application, to make an order as asked by the applicant, that Michael Fraser is of unsound mind, there is, nevertheless, the absolute contradiction of witnesses, other than the medical men, on the material facts in question, and the direct contradiction of the medical men themselves, as to his sanity or insanity. It seems to me, therefore, necessary that an inquiry should be directed. . . .

[Reference to *Howell v. Lewis*, 4 O. W. R. 88, and *Fry v. Fry*, referred to in that case; also *Lee v. Ryder*, 6 Madd. 294; *Tatham v. Wright*, 2 R. & My. 1; *Harrod v. Harrod*, 18 Jur. 853; *Palmer v. Walesby*, L. R. 3 Ch. 732.]

Counsel for Michael Fraser contends that *Fry v. Fry* is authority for the proposition that, where there is a bona fide and substantial dispute as to the insanity of the person, an application such as the one with which I am dealing must be dismissed. As I view that case, however, such an argument is only relevant here on the question of a decision under sec. 6 of the Lunacy Act. . . . Upon the disputed facts as to the sanity or insanity of Michael Fraser, I have come to the conclusion . . . that I cannot properly make an order that he is a lunatic, under that section. Indeed . . . the weight of evidence appears to me to be the other way. . . .

As one of the next of kin has applied for an inquisition, or, as it is put in our Act, sec. 7, sub-sec. 1, . . . "the Court may direct an issue to try the alleged lunacy," such an issue should be directed.

An order will, therefore, go directing the trial of an issue whether or not Michael Fraser is, at the time of such inquiry, of unsound mind and incapable of managing himself or his affairs; and that such issue be tried by Britton, J., at the approaching sittings of the High Court for the trial of actions with a jury to be held at Barrie commencing on the 26th September, 1910. I think the issue can be better tried without a jury, and, under sub-sec. 2 of sec. 7 of the Lunacy Act, . . . I so direct, unless the presiding Judge at the trial shall see fit to order otherwise, and also unless, under sec. 8 of the Act, the alleged lunatic shall demand a jury in the manner therein mentioned. I think the trial Judge should also dispose of the costs of this application.