

deal with the matter as best it could upon the evidence adduced. But the enquiry before the Court was not a piece of litigation between adverse parties, but a solemn enquiry by the Court for the purpose of ascertaining if the old man is at the time of the enquiry capable of managing his affairs, or is "as suggested, in the feebleness of his old age, the victim of a designing woman and her family, who are attempting to deprive him of his property—her marriage being a mere incident of the larger scheme. Upon such an enquiry the Court is not shut up to the evidence which the parties chose to tender, but has the right to demand the fullest information. The suggestion that it is the duty of the Court in a case of this kind to grope blindly in the dark when light may be had for the asking, belongs to the days of long ago, and meets no response in my mind. We felt that any enquiry could be better conducted before us than upon a new trial, because much evidence had been taken and much argument had been heard, and this would be thrown away by directing a new trial, but far more important than this was the question of delay."

Upon the argument in this Court, counsel for Michael Fraser renewed the objections which had been taken to the course adopted in the Divisional Court in directing further evidence to be given, and in examining the alleged lunatic, and contended that the order of Britton, J., dismissing the application, should be restored. The first question, therefore, to be determined on this appeal is as to the procedure in the Divisional Court in respect of the further evidence, and the further examination, under the circumstances which I have stated.

It is practically conceded that what was done was a departure from the ordinary procedure, but it is justified, or attempted to be, upon the ground that the issue in question arising in a lunacy matter the Court had some special duty or special power by virtue of which it might ignore the trial which had been had before Britton, J., and try the matter *de novo*.

I have not been able to find any justification for such a contention. On the contrary it appears to me that the procedure in lunacy matters, however it may have been originally, is now definitely settled by statute; and that, in a word, an issue in lunacy must be tried and afterwards dealt with exactly as if it was the more familiar interpleader issue.