Court or a judge thereof, be stayed . . . if the Court or judge is satisfied that there is no reasonable ground for alleging want of faith or reasonable care." We do not know whether any application under this sub-section was made by Mr. Dods, but it seems most likely that if such an application had come before either of the judges who formed the Court of Appeal that decided in Mr. Dods' favour, they would have stayed the action. It is unfortunate that the first case in which such an application was made was unsuccessful, although all the circumstances appeared to be in its favour; and this experience has probably deterred counsel from advising that such a course should be taken in subsequent cases. But it would seem well worth while to test it again in cases such as Dowling *v.* Dods.

The Prosecution of Dr. Hutton.

On August 16th, Dr. Hutton, of Harringay Gardens, Tottenham, appeared before Sir F. Lushington to answer five summonses, charging him with ill-treating and neglecting, etc., a lunatic.

The facts of the case, as laid before the magistrate by Mr. Bodkin, were shortly as follows:—The lunatic was the defendant's own brother, and thirty-six years of age. He was a congenital idiot incapable of speech. In 1892, by order of a Master in Lunacy, his property was invested, and the income of between £80 and £90 was paid to the patient's mother for his benefit. She, being unwilling that her son should go to an institution, handed him and his income over to her other son, the defendant. Until six months ago the patient lived in the house with his brother, but then, on account of his habits, the following change took place. The defendant's coachman was sent to lodgings, and a bedroom for the patient was made out of the harness room. Between the latter and the party fence of the garden, a space of six feet by four feet was partitioned off, and in this space the patient was confined from morning till evening. The door was fastened on the outside, and there was a seat at one end partially covered from the rain. There was no other protection from the heat or rain. The police having heard of this state of affairs made inquiries, just at the

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time that an anonymous letter reached the Commissioners in Lunacy. Immediate action was taken, and on August 9th the patient was removed to Earlswood, where, four days later, he died.

The facts having been proved, the magistrate gave his decision. From his personal inspection of the bedroom, he did not think that it could be fairly described as a harness room. Most of those in court had slept in a room no better without a sense of hardship. With regard to the enclosure, after all the evidence given there that day, it was impossible to doubt that the patient was not confined there against his will, but was free to do very much as he liked. In respect to the charge of active cruelty, if it were true, as stated by witness after witness, that the split cane produced was the only one ever used, the patient might well have been struck so as to cause a noise without the least pain being inflicted. It was certainly desirable that no cane or stick should be permitted to be used in an asylum; indeed, such a provision would be necessary to guard the patients against cruelty from irresponsible warders. He had no doubt that Dr. Hutton had acted throughout in the best interests of his brother. The whole of his conduct to the unfortunate man was characterised throughout by extreme kindness. The charge would therefore be dismissed.

At Bow Street police court, September 14th, before Sir F. Lushington, Dr. John Hutton appeared to three summonses charging him with keeping a lunatic in an unlicensed house for payment. Mr. Bodkin, with Mr. Frayling, of the Treasury, appeared for the Director of Public Prosecutions; Mr. R. D. Muir defended; Sub-divisional Inspector Peckover represented the police.

On the last occasion it had been suggested by Mr. Bodkin that the charge, being one of an indictable offence, not subject to the Vexatious Prosecutions Act, should be transferred from this Court and preferred before the grand jury. This proposal, however, was not accepted, and Mr. Bodkin now asked that the charge should be dealt with summarily, commenting on the obscurity of the wording of the Lunacy Act, 1890. However that might be, the defendant was now charged with having, for payment, taken charge of this lunatic contrary to the provisions of the Act; with having, for payment, received him

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to board and lodge; and with having, for payment, detained him in an unlicensed house. He submitted that the question whether a profit was made on the keep of the lunatic did not arise in this case.

Mr. Muir, in cross-examining Mr. Oakeshott, the gentleman who attended from the office of the Masters in Lunacy, put to him a copy of an affidavit dated January 22nd, 1892, sworn in the proceedings by which Mrs. Hutton obtained the administration of the lunatic's estate, in which it was stated that the lunatic was residing with his brother, and which was endorsed by Master Maclean, "I approve of this arrangement." Mr. Muir urged that the offence which Dr. Hutton had committed, if any, was purely technical, and in no way reflected on his character, and he submitted, as a point of fact, that there was no taking charge "for payment."

Dr. Hutton was called, and denied that he received or maintained his brother for payment. In fact, his keep cost over £100 a year, at a rough average.

Mr. Bodkin, in reply to Mr. Muir, reaffirmed his former statements, contending that the taking and boarding of this lunatic were continuing offences under the Act.

Sir F. Lushington said that while he must hold that the defendant received his brother for payment within the meaning of the Act, the offences named in the first two summonses were committed more than six months ago, and therefore could not come within his jurisdiction, though, had the prosecution asked that the defendant should be committed for misdemeanour, he should have been bound to commit him accordingly. In the case of the third summons, he was bound to hold that a technical offence had been committed, as, though it seemed that the defendant was in communication with the Master in Lunacy, he was not with the Lunacy Commissioners; but he could not help thinking that, after his remarks on the previous charge against the doctor, it was rather a pity that these summonses had not been dropped. In the circumstances, he should therefore impose only the nominal penalty of 5*s*.

The prosecution of Dr. Hutton is important in many ways and raises many questions, though it decides none. We say it decides none, for the decision that a cane may be used in the private care of a lunatic, though it may not be used in an asylum, is never likely to be followed. Dr. Hutton was

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charged, however, not only with ill-treating his brother, but with divers other offences under the Lunacy Act, 1890. Section 315 provides that—

(1) "Every person who, except under the provision of this Act, receives or detains a lunatic or alleged lunatic in an institution for lunatics, or for payment takes charge of, receives to board or lodge, or detains a lunatic or alleged lunatic in an unlicensed house, shall be guilty of a misdemeanour and in the latter case shall also be liable to a penalty not exceeding fifty pounds."

The offences charged against Dr. Hutton were: (1) with having for payment taken charge of his brother contrary to the provisions of the Act; (2) with having for payment received him to board and lodge; and (3) with having for payment detained him in an unlicensed house.

The charge of ill-treatment was dismissed by the magistrate, as appears from the report. With respect to the other summonses, Sir F. Lushington said, "that as the offences named in the first two—for payment taking charge of his brother, and receiving him to board and lodge—were committed more than six months ago, they could not come under his jurisdiction; though had he been asked to commit the defendant for misdemeanour he should have been bound to do so." It was, therefore, only the third summons, of having for payment detained the patient, that he had to decide. It appeared that in the proceeding before the Master in Lunacy, by which the administration of the lunatic's estate was settled, it was stated that the patient was residing with his brother, and the order was endorsed by Master Maclean, "I approve of this arrangement," so that there was nothing whatever clandestine about the proceeding; but Dr. Hutton, in omitting to have a reception order made with regard to his brother, had committed a technical offence, which the magistrate was of opinion could be atoned for by a fine of five shillings, and his worship added that it was rather a pity that these summonses had not been dropped.

It was proved in the course of the proceedings, and the point is important, that Dr. Hutton received his brother's income, and applied not only that income, but more also out of his own pocket, for the maintenance of the patient. This did not exempt him from the provisions of the Act;

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which is indifferent to the question whether or no a profit is made, but applies whenever payment is received.

When this clause is critically examined, its mesh is found to be very fine, and to bring within its penal scope the most varied description of persons. As was pointed out by Dr. Savage at the last meeting of the Association, in a paper which will be presented to our readers, it is a common practice to send persons who are suffering from mental disorder of moderate degree to travel, under the supervision of a companion, medical or lay. It seems clear that any such companion might under this clause be prosecuted for "for payment taking charge of" the patient, even though, as often happens, the patient himself makes the payment! And further, it appears that the proprietor of any hotel in which the couple might elect to stay, would be liable to prosecution for "for payment receiving to board or lodge" the patient. Be it said that this is improbable, since a patient well enough to travel would probably be too well to be certifiable; the reply is that the Act provides for this case also; for it applies not only to lunatics, but to alleged lunatics also. Query whether in case, in a dispute between two persons staying at the Hôtel Métropole, one were to say to the other "Why, man, you must be mad!" this allegation would render the Directors of the Gordon Hotels Company liable to prosecution? The person addressed would be an "alleged lunatic," and the Directors would be "for payment receiving him to board and lodge." Again, supposing that the person so addressed were to bilk the hotel, and to depart therefrom without paying his bill, would this exempt the Directors from their liability to prosecution? Such suppositions are absurd, no doubt, but we must remember the unimpeachable dictum of Mr. Bumble with regard to the law, which we may paraphrase by saying that the judicial is not always the judicious.

The writer was acquainted with an eminent mathematician, a F.R.S., whose conduct was most eccentric, and who was considered by all his very large acquaintance to be of very unsound mind in many respects. This gentleman lived in lodgings, discharging his own liabilities, and administering his own income; but it is clear that if his most respectable landlady had had an enemy, she might have been prosecuted and committed for trial for the offence of "for payment receiving to

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board and lodge" an alleged lunatic. Sir F. Lushington, it will be noted, declared that if he had been asked to commit Dr. Hutton for trial he would have had no alternative but to do so.

The vast majority of cases in which such questions have arisen in the past, and will probably arise in the future, are cases in which the certifiability of the patient is in doubt. There are at the present moment hundreds of persons more or less unsound in mind, who are for payment taken charge of and received to board and lodge in unlicensed houses all over England, and in the great majority of these cases opinion as to the certifiability of the patient would be pretty equally divided among half a dozen competent experts. But the law does not need that the patient should be certifiably insane. If he is an *alleged* lunatic, that is enough; and the very serious questions that have to be faced are: "What constitutes an allegation? and Who are the persons whose allegations are to be attended to for the purpose of the Act? It seems clear that a wife who temporarily detains in his own house her husband, who suffers from some mental disorder, would, unless she had an independent income, and defrayed the whole expenses of the house out of her own pocket, be liable to prosecution under this clause of the Lunacy Act, 1890. The *British Medical Journal*, which puts the case, truly says that "the position is an intolerable one. It will not ease mind or conscience to reflect that as long as things go well no trouble will arise. Few people care to continue under a knowledge that they are breaking the law, even if they feel that they are acting under the most natural and righteous circumstances."

The Slough Accident.

In this recent railway accident it will be remembered that the driver of an express train ignored two sets of signals that were against him, and ran into another train which was drawn up at a station. An inquiry has been held by Colonel Yorke, the Board of Trade inspector, with the result that the driver of the express "took upon himself the whole responsibility;" but at the same time it does not appear that he offered any

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