

the month being without such symptoms, that it was right not to certify the patient.

Gynecologists gave evidence to the effect that they would not certify, or advise to be certified, such cases, and many other consulting physicians at once said that if this were enforced they should be bound to try and evade it. It was said with some truth that the function of the Commissioners was not to force everyone who is mentally aberrant into asylums, but to look after those who are there, and who are already certified.

I know the difficulty of the Commissioners, and I would not for a moment suggest that they did not perform what they considered to be a painful duty in prosecuting Dr. Sherrard, but I do think that sooner or later some provision will have to be made for cases which are distinctly on the borderline, and who at times are beyond the frontier, but who are so only for short periods.

The former action of agitating against private asylums has had the effect of spreading the care of lunacy in single homes to a most alarming extent, and I believe that a too strict reading of the Act will lead to hiding away and neglect of patients who otherwise might be well treated in doctors' homes.

The question is a difficult one, and I think the time has come when some further legislation is needed.

The Zierenberg Case.

(Further Notice.)

The acquittal of the Zierenbergs on the charge of perjury in connection with their unsuccessful action against Mr. Labouchere has naturally occasioned some surprise in non-legal circles. And yet the explanation is not so remote as might be imagined. In the first place, the issue in the perjury prosecution was much narrower than that in the libel action. In the latter, the whole conduct of the St. James's Home was impugned. In the former, the gravamen of the charge was Mrs. Zierenberg's statements, repeated impliedly by her husband, concerning their affairs in Germany and the arbitration in England in regard to the burning of their property. In the second place, a jury may in a civil case disbelieve evidence on which they

would, in a criminal case, hesitate to convict for perjury. Again, in the criminal case of *Reg. v. Zierenberg*, Mrs. Zierenberg's evidence was not available against her husband. Lastly, the general feeling was that the Zierenbergs had already been sufficiently punished by the result of the civil action. It is, in our judgment, extremely doubtful whether the prosecution ought to have been undertaken.

Sir James Stephen.

In the excellent biographical notices of the late Sir James Stephen that have appeared in the contemporary press, little, if any, prominence has been assigned to his services in the cause of medico-legal science, and yet not the least brilliant and original part of his splendid record of work was done in this direction. It was he who first suggested, in a paper which was read before the Juridical Society, and which excited at the time in legal circles almost as much commotion as the famous tract in which Dr. Newman "tested the elasticity" of the articles produced at Oxford, a liberal interpretation of the words "nature and quality" in the rules in *Macnaghten's case*, and this view he subsequently enlarged and defended in his "*History of the Criminal Law in England*." Nor did Sir James Stephen's judicial practice fall short of his theoretical opinions. He was, unless we are mistaken, the first, as he was certainly the greatest, of the English judges who have endeavoured to manipulate the rules so as to bring them into harmony with scientific knowledge and common sense. Thus, in *Reg. v. Davies* ("*Western Mail*," March 15th, 1888, and "*Dictionary of Psychological Medicine*," Article "*Criminal Responsibility*," Vol. I., at p. 315) his Lordship said to the jury: "It is said that, according to the law, a man is responsible for his acts when he knows that the act is wrong, and that is true. Now medical men frequently say that many persons who are really mad do know that the act is wrong. But if you will exercise your judgment in the matter you will probably see that, knowing the act is wrong, means nothing more or less than the power of thinking about it, the same as a sane man would think about it; the power of attaining to a full con-