ROSE, J., in a written judgment, said that a physician is authorised by sec. 51 to give a prescription for intoxicating liquor, if he deems it necessary for the health of his patient; "but no such prescription shall be given except in cases of actual need, and when in the judgment of such physician the use of liquor is necessary." What was alleged by the complainant was that, whether or not the physician believed that the use of the prescribed liquor was necessary, as he swore he did, there was, in fact, no actual need of it; and, therefore, an offence was committed.

There was no evidence that it was not a case of actual need; and, therefore, the conviction must be quashed. There should be an order for the protection of the magistrate.

KELLY, J., IN CHAMBERS. SEPTEMBER 21ST, 1918.

PEPPIATT v. REEDER.

Payment into Court—Money Found Due to Plaintiff by Defendant—Finding not Subject to Appeal—Appeal Pending in Regard to other Matters—Order for Payment into Court—Application for Payment out of Court.

Motion by the plaintiff for an order for payment of money out of Court and for leave to issue execution.

Edward Meek, K C., for the plaintiff.
J. J. Gray, for the defendant.

KELLY, J., in a written judgment, said that the plaintiff had, finally and beyond the right of further appeal, established his right to payment by the defendant of $1,000 and interest thereon at 3 per cent. from the 28th July, 1914, and $724.98 and interest thereon at 5 per cent. from the 13th March, 1915. In respect of other matters in this litigation he had a further finding in his favour, against which, however, an appeal to the Appellate Division was pending.

He now moved: (1) for a fiat or order for the payment to him out of Court of $369.71 (and accrued interest) paid into Court by him on the 10th February, 1915, under an order of the 6th February, 1915; and (2) for an order allowing him to issue execution against the defendant for the two sums of $1,000 and $724.98 and interest.

No order should now be made for payment out; but there was ample material to warrant the making of an order that the de-