

in the office of the Master of Titles, the judgment must be got rid of in some way. A certificate of the judgment was registered by Mr. Roche (who had been the solicitor for the Inspector in the proceedings) on the 10th March, 1910, being dated the 5th March, 1910. The Inspector had by this time resigned his position (1st June, 1907), and been appointed Assistant Provincial Secretary, and the concurrence of the Attorney-General was not obtained.

A motion was made before me for an order perpetually staying the action and judgment. Counsel for the defendant agreed that this might be done, but Mr. Roche objected, asserting that the whole object of the motion was to deprive him of his costs. He was offered an order referring his costs for taxation by the Master, and declaring his right to receive them out of the plaintiff's property, but he was not content, saying that a charge of improper conduct had been made against the former Inspector. I can find none, unless it be such a charge to say that he wholly misconceived his rights—but I must dispose of the present motion upon the strict legal rights of the parties.

The statute R.S.O. 1897 ch. 317, sec. 53, makes the Inspector, ex officio and by his name of office, committee of lunatics in a public asylum who have no other committee; and consequently the Inspector became and was committee of the plaintiff. He has, by sec. 48 of the Act, the power, in certain cases, to take possession of the property, real and personal, of the lunatic, and to lease or sell, etc., the same in the name of the lunatic, with the concurrence of the Attorney-General.

There is no warrant for the assumption by the Inspector of any right to bring an action beyond any right any committee would have. The rule is that before an action is brought by a committee the sanction of a Judge is first obtained; and, if this be omitted, the committee proceeds at his own risk: Pope on Lunacy, 2nd ed., p. 269, and cases cited in notes (l) and (m).

Section 56 of the Act enables the Inspector, where he considers it necessary in order to secure, in the manner least burdensome to the estate of the insane person, moneys for his maintenance, to institute proceedings in respect of his estate. And, with much hesitation and doubt, I decide that this suffices to justify the Inspector in taking proceedings by way of partition. But his position (except where the statute makes provision to the contrary) does not differ from that of any other committee; and I am unable to see how this action stands in any other position than if it had been brought by another committee, in respect of its condition upon the plaintiff recovering her sanity. The