of Winwick Mental Hospital, for permission to publish these notes, and for his kindly supervision and guidance.

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Medico-Legal Notes.

HOUSE OF LORDS.

HARNETT *v.* BOND AND ANOTHER.

On May 15, 1925, a further stage in this case was concluded when the Lord Chancellor and Lords Dunedin, Atkinson, Sumners and Buckmaster delivered their considered judgment on the appeal from an Order of the Court of Appeal reversing the judgment arrived at when the action was originally tried before Mr. Justice Lush as reported in these columns.

The appeal was dismissed, and the position again is that judgment remains in favour of Dr. Adam, and Dr. Bond has to undergo the ordeal of a new trial.

JUDGMENT.(1)

The Lord Chancellor in his judgment, after a close analysis of the facts of the case and the proceedings both at the original trial and before the Court of Appeal, continued as follows:

As regards Dr. Bond, he (the Lord Chancellor) felt no doubt whatever that the Court of Appeal was right in ordering a new trial. It was not disputed that, on the assumption that the findings of the jury as to the appellant's mental condition on December 14, 1912, were correct, Dr. Bond had no right to cause the appellant to be detained at the office pending the arrival of Dr. Adam's car, and was liable for damages for that illegal detention. But those damages must, on the authorities, be confined to such as were the direct consequence of the wrong committed; and to hold that the detention of the appellant at the offices for a few hours was the direct cause, not only of his being retaken and conveyed to Malling Place, but also of his being confined in that and other houses until October, 1921, appeared to him to be impossible. Dr. Bond could not and did not direct or authorize Dr. Adam to retake the appellant or to confine him at Malling Place; the retaking and confinement were the independent acts of Dr. Adam, and each of them was a *novus actus interveniens* sufficient to break the chain of causation. Further, the confinement of the appellant could not have continued during nine years without repeated examination and re-certification by the proper authorities; and for the consequences of those events Dr. Bond could not on any intelligible priniciple be held to be responsible. Whether the direct consequences of Dr. Bond's action in detaining the appellant at the office ceased when the appellant was handed over to the two attendants and entered the car, or on his arrival at Malling Place, or

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later on his being examined by Dr. Adam, it was not necessary now to say. That might be a question to be determined at the new trial. But in any case it appeared to him that those consequences could not on any just view of the matter be deemed to have extended beyond 7 o'clock on the evening of December 14, 1912. It was argued that even on this view of the matter the appellant was entitled to judgment against Dr. Bond for £5,000, as the damages assessed by the jury for detention at the offices; but this finding was obviously coloured by the directions given by the learned trial judge on the question of damages, and by the addition to the question of the words "taking into consideration the whole purpose for which he was so detained," and it appeared to him that the whole matter ought to receive fresh consideration at the hands of a jury.

With regard to Dr. Adam, it was remarkable that, whereas he was charged in the pleadings with conspiracy and false imprisonment, no direct question was put to the jury as to either of those charges. The charge of conspiracy was apparently abandoned during the trial, and in any case it was plainly negatived by the findings of the jury in answer to the 13th and 14th questions. The charge of complicity in the false imprisonment at the Commissioners' offices was negatived by the answer to the 17th question, and there was no finding of false imprisonment by Dr. Adam at Malling Place. Why, then, was Dr. Adam held liable in damages at all? It must have been on the ground of the answer of the jury to the 15th question, namely, that Dr. Adam in acting as he did—in sending a car and taking the appellant back to Malling Place—did not take reasonable care; and yet want of reasonable care was not charged against Dr. Adam in the pleadings, and the issue only arose on his defensive plea founded on section 330 of the Act. It appeared to him that on this ground alone—namely, the total failure of the plaintiff to establish either of the charges made by him against Dr. Adam, the latter would be entitled to judgment. But in a case of this kind it was undesirable to base a decision on any narrow ground; and he proposed to consider shortly whether, either on the findings of the jury or on the evidence, there was any ground for the judgment entered against Dr. Adam.

First, then, was there any ground for charging Dr. Adam with conspiring with Dr. Bond to cause the plaintiff to be detained and removed to Malling Place? Plainly not. There was no evidence to support such a charge, and it was negatived by the findings of the jury. He therefore dismissed that charge as wholly untenable. Secondly, was there ground for charging Dr. Adam with false imprisonment —*i.e.*, with retaking or detaining the plaintiff without lawful authority? As to this, it was argued that under the terms of the leave of absence order set out above, Dr. Adam could only take back the appellant if the mental condition of the latter required it, and that, as the jury had found the appellant to have been sane on December 14, 1912, that condition was not fulfilled. In his opinion there was no foundation for that argument. The provision in the leave of absence order empowering the medical officer to take back the patient "if his mental condition requires it" could not mean that the medical officer was to take back the patient (if at all) at the risk of having it found by a jury many years afterwards that the patient's mental condition was consistent with his remaining at large. Some person must be the judge of the patient's mental condition at the time when the question arose, and that person could only be the medical officer in whom the power to retake him was vested. Nor was there any substance in the suggestion made by counsel for the appellant that the power to retake the patient reserved by the order could not be exercised by retaking him outside the licensed house; he thought it clear that it was capable of being exercised wherever the patient might be found. When once the patient was retaken, the leave of absence order came to an end, and he could be detained under the existing reception order.

But thirdly, stress was laid on the finding of the jury as to want of reasonable care, and it was said that a medical officer could not retake a patient out on trial unless he acted with reasonable care in so doing, that the onus was on him to prove reasonable care, and that if he failed to do so the retaking was void. That argument appeared to him to be fallacious. The leave of absence order authorized the medical officer to retake the patient if the patient's mental condition required it. If this power was exercised negligently, it might be that there was a remedy, but the negligence did not make the retaking unlawful, and the remedy (if any) was by action for negligence and not by action for false imprisonment. But apart from this observation, he agreed with the Court of Appeal in holding that in the

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present case there was no evidence on which the jury could properly find Dr. Adam to have failed to exercise reasonable care. It was suggested that he should have gone up to London himself or should have sent his assistant. But it was proved that the assistant was entitled to be absent from Malling Place on that afternoon, and that Dr. Adam could not leave the house without a medical officer; and in these circumstances he was entitled to rely on the information given him by Dr. Bond on the telephone, coupled with his own previous knowledge of the case, as sufficient ground for bringing the patient back, subject, of course, to the duty (which he performed) of personally examining him on his return. He agreed that there was no evidence of negligence and that Dr. Adam was entitled to judgment.

He desired to make one further observation. The fact that the appellant, whom the jury found to be sane in December, 1912, and whom they doubtless considered to be quite sane at the time when the action was heard, had been confined as a lunatic during the greater part of the interval between those dates, had naturally given rise to anxiety. It was not proved at the trial or found by the jury that during that interval the appellant was of sound mind; but it was not impossible that the jury took that view, and desired to compensate the appellant for his long detention by giving a verdict for heavy damages against the two defendants. If the defendants had been really responsible for an unjustifiable detention of the appellant during all those years, the sum awarded might not have been excessive; but the full investigation of the case both by the Court of Appeal and by this House had led to the conclusion that no such responsibility could be justly laid on Dr. Bond or on Dr. Adam. The Lunacy Acts provided for the protection of the public against the risk of unjustified detention by forbidding the detention of any person as insane except on a proper certificate and in a place duly certified for that purpose, and by requiring that every patient so confined should be personally seen and examined at regular intervals both by the Commissioners in Lunacy and by the visiting justices, and should be free to make complaint (in letters which must be forwarded unopened) to the Lord Chancellor or the Judge in Lunacy, to the Secretary of State or to the Commissioners, or to the persons (generally his relations) on whose petition he had been confined. It might be—he did not say that it was—the fact that all these precautions were insufficient, and that the lunacy laws required to be further strengthened in the interests of the persons whom they might affect. But even if that was so, that was no reason for visiting with vindictive penalties persons who had acted in good faith, and who were not responsible for any defect in the law.

In his opinion the Court of Appeal came to the right decision, and he moved their lordships that the appeal be dismissed, with costs.

Lord Dunedin and Lord Buckmaster gave judgment to the same effect.

Lord Atkinson and Lord Sumner concurred.

Solicitors: Messrs. Rooper and Whately; the Solicitor, Ministry of Health; Mr. W. E. Hempson.

(1) Extract from the *Times* report, May 16, 1925.

Rex *v.* Hubert Sterry.

This case was tried at Gloucester Assizes, June 8, 1925, before Mr. Commissioner Vachell. The prisoner was charged with unlawful carnal knowledge of a girl of 8 years of age. The prisoner is an epileptic. And a somewhat novel line of defence was suggested by his counsel, who urged that the offence had been committed during a condition of epilepsy. Counsel did not, however, ask for a verdict of "guilty but insane," but suggested that as there was no voluntary act on the prisoner's part he was entitled to an acquittal. The judge refused to entertain this view, saying that there could be no half-way house. Either the prisoner was responsible, or, if he had committed the offence during an epileptic

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