Medico-Legal Notes.

Harnett *v.* Bond and Another.

The appeal in this case, as foreshadowed in our last number, was duly heard before Lord Justice Bankes, Lord Justice Warrington and Lord Justice Scrutton. Their lordships' considered judgments were delivered on Friday, May 16, 1924.

The appellants, Dr. Charles Hubert Bond, a Commissioner in Lunacy, and Dr. George Henry Adam, manager of a house for the reception of lunatics at Malling Place, Kent, asked for judgment or a new trial of an action tried by Mr. Justice Lush and a special jury last February. The respondent was Mr. William Smart Harnett, a farmer of Sittingbourne, the plaintiff in the action, who recovered £25,000 damages from the doctors for alleged wrongful detention as a lunatic.

The Attorney-General (Sir Patrick Hastings, K.C.), Mr. Harold Morris, K.C., Mr. Bowstead and Mr. H. L. Murphy appeared for Dr. Bond; Sir Douglas Hogg, K.C., Mr. A. Neilson, K.C., and Mr. Carthew appeared for Dr. Adam; and Sir John Simon, K.C., Mr. J. B. Matthews, K.C., Mr. Davey and Mr. Cope Morgan for the plaintiff; Mr. Cremlyn and Mr. W. H. Gattie held watching briefs for interested parties; and Mr. T. Simpson Pedler held a watching brief for the British Medical Association.

Judgment.

Lord Justice Bankes, in his judgment, said: The verdict and judgment in this case have given rise to a wide-spread feeling of anxiety and apprehension. A jury by their verdict have found that a sane man has been detained in asylums and institutions for the insane for over eight years in spite of all his endeavours to obtain his release. A learned judge by his judgment has decided that it is possible for a person who, in the opinion of the jury, acted without sufficient care in taking action which resulted in some other person's being detained under the lunacy laws as a person of unsound mind, to be held responsible in damages because the person whose duty it was to secure the patient's discharge, if he was in fact sane, failed to realize that he was sane, and continued to detain him, and this even though the person held to be responsible acted in good faith and in the honest discharge of what he conceived to be his duty. Against this verdict and judgment both defendants appeal. Their grounds of appeal include contentions that the verdict was against the weight of the evidence, that the damages were excessive, and that there had been misdirection by the learned Judge both on the fact and on the law.

For the purposes of this appeal the material facts can be shortly stated. In October, 1912, the plaintiff was seriously ill, suffering from delirium produced, as he believed, by the injection of excessive quantities of some substance, possibly tuberculin, by an unqualified person. According to his evidence at the trial, though he was still weak as the result of his illness, he was perfectly sane by October 31. This view was not shared by his relatives, and, after examination by two medical men on November 10, 1912, an order was made by a justice appointed under the Lunacy Act, 1890, for the reception of the plaintiff as a person of unsound mind in the licensed house kept by the defendant, Dr. Adam, at Malling, known as Malling Place. Attached to the certificate of one of the medical men

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was a copy of a letter sent by the plaintiff on November 8 to the post-office officials at the local post-office. It was in these terms:

"Dear Post Official,—Jesus has touched my eyes. If I have done wrong I am willing to make things right. I love you. If you love Jesus and love me you will come and see me and make me happy.—Yours sincerely, W. S. Harnett. A sinful man."

The plaintiff explained that he wrote the letter because he regretted having made complaint about some non-delivery of letters. He also said that the copy was inaccurate, as the original was addressed to the officials in the plural. Attached as it was to one of the certificates, this copy letter was presumably included among the documents forming the file relating to the plaintiff's case, and was therefore no doubt constantly referred to whenever any question was raised about the plaintiff's condition of mind. Whatever anyone else may have thought of the letter, the plaintiff himself did not regard it as any indication that the writer was not in his right mind when he wrote it. He was asked at the trial what he thought the recipients of the letter would think on that point, and his answer was:

They seemed very pleased with it when I saw them on Sunday. They shook hands with me. They are deeply religious people. They were such deeply religious people that I did not mind writing like that. The father, the mother, and the daughter were religious people; they were the principal people there. When I went to see them the old man said: "Lord bless you and keep you to the end." They were very pleased with the letter. It was written on November 8.

There is, and can be, no complaint against the defendant Dr. Adam of having received the plaintiff into his house under the reception order. After he had been there about a month his condition had, in Dr. Adam's opinion, so improved that on December 12 a leave of absence order for 28 days was sanctioned by the proper authority on Dr. Adam's advice. The order was in the following form:

We, the undersigned, being two of the visiting Justices of Private Aslyums for Kent, hereby sanction leave of absence from Malling Place of [then the plaintiff's name was inserted] on probation for the period of [then 28 days was inserted] but this sanction is revocable by us at any time during that period; provided that the Medical Officer shall at any time before the expiration of the said period have power to take back the said patient into the licensed house if his mental condition requires it. Dated this [blank for the date to be filled in].

This was signed by "two of the Visiting Justices for Kent."

Two Letters of the Plaintiff.

Unfortunately some misunderstanding appears to have occurred, and the plaintiff was under the impression that he was being placed under his brother's care. He strongly objected to this, and as a result he wrote two letters on December 11 to which I must refer. The first was written to Dr. Adam about 11 a.m. It was in these terms: "Dear Dr. Adam,—When I am set free I demand to be handed over to the police. I am prepared to give guarantees if required." The other was written about 6.30 p.m. to the Commissioners in Lunacy. It was in these terms:

Gentlemen,—I am still under control. Dr. Adam informs me that my younger brother is coming to-morrow afternoon and that I am to go home under his care. He, I believe, petitioned to have me put there. I suppose he must come here to-morrow. I object to being sent home under his care. I have demanded to be handed over to the care of the police when I am set free. I can give guarantees if required. If my demand is a legal one will you kindly wire or telephone to Dr. Adam instructing him to accede to my wishes.

I merely read these letters as leading up to and explaining the plaintiff's visit to the offices of the Lunacy Commissioners on the day but one after he left Malling Place. The plaintiff's explanation why he went there was that he wished to ask the Commissioners to send a man home to live with him in his house for the 28 days, during which, according to the plaintiff's statement, his brother had told him that he was to be under his care in order that the man might see that he had fair play, and was not, as he expressed it, "thrown away" a second time when he was sane.

The account of Dr. Bond, one of the Commissioners in Lunacy, and of the Secretary of the Commission, both of whom interviewed the plaintiff on his calling, was that he was in such a condition as to be manifestly unfit to take care of himself, or to be allowed out any longer on probation, and that they accordingly communi-

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cated with Dr. Adam by telephone informing him of that fact. Dr. Adam thereupon sent a motor with two attendants to fetch the plaintiff, who was given to understand that he must remain at the office until the motor-car arrived. He did so remain for some hours. On the arrival of the motor-car the plaintiff was taken back to Malling Place, where he remained until February 22, 1913.

The Plaintiff's Cause of Action.

It was this detention at the Commissioner's Office and the subsequent confinement at Malling Place which constituted the plaintiff's cause of action. His contention was that both defendants were responsible, either jointly or severally, and that their action was an imprisonment and was entirely unauthorized and illegal. For the purpose of establishing his cause of action the question whether the plaintiff was or was not of unsound mind was wholly immaterial except as to damages, because his contention was that even if he was of unsound mind neither defendant had the right to do what he did. It is necessary at this point to refer to the course of the proceedings at the trial, as otherwise it is difficult to realize how 15 days were occupied before the evidence was completed. The plaintiff's counsel was naturally anxious to excite as much sympathy with his client as possible, and he was desirous, therefore, of going into the whole story of the plaintiff's detention and into his state of mind from the date of the reception order in November, 1912, down to October, 1921. He claimed the right to give evidence of the state of the plaintiff's mind over the whole period on the ground that the evidence had some bearing on the state of his mind on December 14, 1912. The Attorney-General, who appeared for Dr. Bond, did not contest the admissibility of the evidence on this point, but he protested against the evidence being used on any question of damages for any detention after that date. At a later stage the Attorney-General intimated that although it was no part of the defendant's case to contend that the plaintiff was still of unsound mind after he left Malling Place, if the plaintiff's counsel desired it to secure a fair trial for his client, he would call witnesses from the asylum and institutions in which the plaintiff had been detained while still maintaining his contention in reference to any claim for damages in respect of this period.

The plaintiff's counsel not unnaturally welcomed this opportunity and took full advantage of it, and the trial ultimately partook more of the nature of an inquiry into the administration of the lunacy law, as applied to the plaintiff's case, than of a trial of the issues in the action. The prolonged inquiry, the long-drawn-out story of the plaintiff's captivity, the skilful use by the plaintiff's counsel of the opportunities given to him of appealing to the sympathies of the jury, all combined to produce an atmosphere in which the sufferings of the plaintiff monopolized attention.

The Jury's Findings.

The view of the jury was ascertained by a series of questions. On the question whether the plaintiff was of sound mind on December 14, 1912, and was fit to be at large, and not dangerous to himself, the jury found in the plaintiff's favour. It is a curious fact that the jury were not asked any question about the plaintiff's mental condition at any date after December 14, and it is a little hard to see how the damages awarded could possibly be justified in the absence of a finding in the plaintiff's favour covering the whole period from December 14, 1912, to October, 1921. I assume, but without coming to any decision on the point, that the jury must have considered that the plaintiff was not of unsound mind at any time during that period.

Both defendants in their notices of appeal ask to have the findings of the jury as to the plaintiff's mental condition set aside on the ground that the verdict was against the weight of the evidence. No argument was addressed to the Court on the point, and I therefore express no opinion on it. The appeal must be decided on the footing that the findings of the jury on this question were justified by the evidence. On the assumption that both defendants were jointly responsible for the detention of the plaintiff at the Lunacy Commissioner's Office on December 14, and for his subsequent removal to and detention at Malling Place, the jury awarded the plaintiff £25,000 damages. A question which affects both defendants is whether that verdict can possibly stand. The sum must have been arrived at on the assumption that the detention of the plaintiff from December 14, 1912, down to his escape in October, 1921, was a direct consequence of the defendants' wrongful acts committed on December 14.

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The Allegation of Misdirection.

On this part of the case the defendants complain of misdirection by the learned Judge both on the facts and on the law. I will take the learned Judge's view as expressed in his own words in his direction to the jury, and in his subsequent judgment on the application to enter judgment. In his direction to the jury on the question of damages the learned Judge said this :

Members of the jury, now it remains for me to ask you what damages you ought to award the plaintiff. I am going to ask you to deal with both defendants and to treat it as a joint claim against them both, so that whatever verdict you give will be a verdict against them both jointly. Do you follow what I mean ? The question has been raised by the Attorney-General—and a very serious question it is—namely, whether in law it is possible for you in awarding damages to compensate the plaintiff for his detention during the whole of the 8½ years. The Attorney-General contends that I ought to direct you that in law you are not able to take the whole period into your consideration. He contends that I ought to direct you that you can only give to Mr. Harnett damages based upon the footing that he was imprisoned unlawfully, but that you ought to shut out of your mind the fact in considering the amount of damages you give him that he did suffer this wrong detention. I do not agree with the view of the Attorney-General. In my opinion it is within your province, if you think fit, not otherwise—I do not tell you that you must—and within your power to compensate Mr. Harnett upon the footing that the direct consequence of what the defendants did was that he should be detained during the whole period until he escaped from the home at Aylsham. The Attorney-General has said, you know, that there has been what is called a break in the continuity of the chain. He says, if that is so, you cannot treat the whole period of his detention as following from, or flowing from, the wrongful acts of the defendants. I have said that I do not agree with him, and I will tell you why, and I will explain to you why.

The learned Judge then called the attention of the jury to the facts in the case of Isitt *v.* The Railway Passengers' Assurance Company (22 Q.B.D., 504). He then said :

If you think that the detention for these nine years was the direct consequence of his illegal imprisonment, and that there was no intervention of third persons at all, but that it follows straight away from the first wrongful act, you can take the whole of that nine years into your consideration. You can take all of it into your consideration. It is so obvious, you know, if Dr. Bond, as you have said he did, caused this man to be detained in an asylum, Dr. Bond would know, as anybody else would know, that he might in the ordinary course have gone on being visited by one Visitor and one Commissioner after another, and he might never get out. It was not that anybody intervened and did an act like knocking him down. It was unfortunately that they had omitted to discover that he was of sound mind. That is what happened. That is quite a different thing from doing something to him and causing a fresh injury. Therefore I tell you that you may take, if you think it is right to do it, the whole period into your consideration.

As the jury were on the point of retiring the foreman asked the learned Judge this question : " There is just the question of the period of time. Is it exactly 8½ years that we have to take into account ? " Mr. Justice Lush : " He was sent back on December 14, 1912, and he escaped from Aylsham on October 15, 1921."

After the jury had given their verdict and the learned Judge had heard arguments how judgment should be entered, he dealt with the question of remoteness of damage. I must read some of the material parts of the judgment. He says :

One of the obvious risks that a person is exposed to if he is a patient in a lunatic asylum is that he may still be thought insane when in fact he is sane. That risk, the risk of such a consequence following, is directly caused by his being placed in an asylum, and the peril was especially great in the plaintiff's case for the reasons that I have mentioned. Each fresh medical superintendent, when he received the plaintiff into his home, would know the reports by the doctors at the previous places at which he had been detained and would know their views and observations with regard to him, and would necessarily take into account, in considering his mental condition, what his previous history had been. I cannot regard the decisions arrived at by the different doctors, commissioners and visitors at the various homes and the decisions arrived at by the medical superintendent in the same home from time to time as a fresh intervention which would break the chain of causation. It was nothing of the kind.

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Moreover, what each doctor did was not some act which would injure the plaintiff, but was to omit to discover that he had recovered. It was the failure to do something, not the doing of some independent act, that caused the plaintiff's further detention. Each doctor, each Commissioner, each Visitor was not an actor at all for the purpose under discussion. This case differs entirely from cases where there is a novus actus interveniens. *If the plaintiff had been injured, for example, when being taken out for exercise by an attendant by the wrongful act of some independent person, the chain of causation would be broken, and the original wrongdoer could not be made responsible for the consequences of that injury. But that kind of case bears no resemblance to such a case as this. I think that the true view to take of the matter here is that the detention during the whole nine years was the direct consequence, following in an unbroken chain, of the wrongful sending of the plaintiff back by Dr. Bond, and the wrongful assistance given by Dr. Adam in accomplishing that purpose, and that there was no intervention of an independent person which would break the chain of cause and effect. It was wholly immaterial that no doctor or other official discovered, as he should have done, that the plaintiff was not insane. I ought, I think, specially to refer to the certification on November 10, 1913. In my view, this does not constitute an "intervention." What is done is mere machinery for the purpose of avoiding the necessity of having a new reception order drawn up. The report of the medical superintendent is in no way different from his ordinary reports except that it brings about this consequence.*

Whether the learned Judge's direction to the jury and whether his view of the law as applied to the facts of this case are correct is a vital point. With all respect to the learned Judge I am unable to take the same view as he did, either on the facts or on the law. I cannot draw the distinction which the learned Judge draws between acts of commission and acts of omission. I cannot look on the serious act of certification as mere machinery. I find the chain of causation broken at innumerable points, and I cannot hold that it was permissible for the jury to take the whole period of the plaintiff's captivity into their consideration in assessing damages. If this view is right it follows that the verdict and judgment against the defendants as joint tort feasors must be set aside.

The Question of Damages.

It is not material in my view of the case to discuss at any length the attempts which were made to assess the appropriate amount of damages assuming that the defendants are liable only for part of the period of the plaintiff's detention, or for separate torts instead of a joint tort, because all the attempts were based on a process of splitting up or cutting down a figure which had been arrived at on what I consider to be an entirely inadmissible estimate of the defendants' responsibility. In order to explain why I differ from the learned Judge on the question of remoteness of damage, it is necessary to refer to the Lunacy Acts of 1890 and 1891, and to the scheme of the legislation contained in those statutes. In dealing with the Lunatic Asylums Act, 1853, that wise and learned Judge the late Lord Lindley, in Regina *v.* Whitfield (15 Q.B.D., 122, at p. 150), speaks of that statute as one which had given justices of the peace and medical men large powers, and said that the statute was based upon the theory that they could be trusted; that statement is, in my opinion, equally true of the Lunacy Acts of 1890 and 1891. In an examination of the provisions of those statutes, as applicable to the present case, one can start with the reception order dated November 10, 1912. That order authorized Dr. Adam to receive and detain the plaintiff in his registered house at Malling. The order does not in terms refer to any detention, but the whole scheme of the statute, and in particular the provisions of section 35, indicate that a reception order, if it satisfies the requirements of the statute, is of itself a sufficient justification for the detention of the person named in it, and if the person escapes, he may, under section 85 of the Act of 1890, without any fresh order and certificate or certificates be retaken at any time within 14 days after his escape by the manager of the institution for lunatics in which he was detained, or by anyone authorized in writing by the manager.

By section 7 of the Act of 1891, a reception order remains in force in the first instance for a year, and thereafter for two years, and thereafter for three years, and after that for five years, provided that not more than one month, nor less than seven days, before the expiration of the period at the end of which the order would expire a special report of the medical officer of the institution as to the mental and

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bodily condition of the patient, with a certificate under his hand certifying that the patient is still of unsound mind and a proper person to be detained under care and treatment, is sent to the Commissioners. In framing any provisions for dealing with persons of unsound mind, or with persons alleged to be of unsound mind, the Legislature is faced with a difficult and a delicate task. To borrow Lord Denman's language in the case of *In re* Shuttleworth (9 Q.B. 657, at p. 658), the double protection has to be afforded against improper confinement on the one hand, and against danger from a lunatic's being unrestrained on the other.

Legislative Safeguards.

Some of the safeguards provided by the present legislation consist of the provisions contained in Parts VI and VII of the Act of 1890 for periodical visits by specially appointed persons, whether Commissioners, Visitors, or members of visiting committees, and in the powers given to such persons under sections 75, 77 and 78 of the statute to make orders for the discharge of patients, and in the provisions contained in section 83, for the steps which the manager of a hospital or licensed house has to take for the release of a patient who has recovered; these and many other provisions could be referred to as indications of the truth of Lord Lindley's statement that the whole scheme of the legislature is based upon the trust which it has placed in the medical men and in the specially appointed officials whose duty it is to carry out the provisions of the law. I approach the consideration of the Lunacy Acts from an entirely different point of view from that taken by the learned Judge. He considers that deliberate decision by a responsible person directly affecting the liberty of the subject may, for the purpose of considering whether it constitutes a *novus actus interveniens*, be treated as mere machinery which can be ignored. I cannot so regard any certificate given under section 38 of the Act of 1890. I go further, as I consider that the Act casts upon every medical man in whose care a patient is placed under the Lunacy Acts a daily and hourly duty of being satisfied, and of taking the necessary steps to satisfy himself, that the patient's condition is such as not only to justify, but to require confinement. I look on every decision deliberately come to in the exercise of that duty, whether by a medical man, by a Commissioner, by a Visitor, or by a member of a visiting committee, as of itself amounting to a *novus actus interveniens*. In the present case it is not suggested that the persons whose duty it was to form opinions on the plaintiff's mental condition did not form them. Such of the case-books produced contain numbers of decisions deliberately formed and duly recorded. The complaint is not that they did not form the opinions, but that the opinions were wrong; for the present purpose this is not a material consideration. I am unable also to accept the view of the learned Judge that because the persons whose duty it was to come to decisions on the plaintiff's mental condition omitted to diagnose his case correctly, their actions can be treated as acts of omission, and therefore ignored.

Here, again, so much depends on the point of view from which you regard the Act. A medical man who diagnoses a case of measles as a case of scarlet fever may be said to have omitted to make a correct diagnosis; he may equally well be said to have made an incorrect diagnosis. In my opinion, the decisions come to over this long period of years by all the persons whose duty it was to come to a decision on the plaintiff's mental condition, even assuming they were incorrect and in one sense omissions, are yet quite clearly also acts of commission, each of which operates as a *novus actus interveniens*, breaking the chain of causation between the acts of the defendants which are complained of, and the subsequent detention of the plaintiff.

I need not refer in detail to the occasions on which the chain must, in my opinion, have been broken. They must have been of almost daily occurrence; I may, perhaps, note some of the more important. There were three occasions when certificates were given under section 38; there were special visits of Sir James Crichton-Browne on more than one occasion; visits were paid by a Commissioner or a Lord Chancellor's Visitor in June and July, 1913, August, 1916, May, August, and October, 1917, February and April, 1918, March, April and October, 1920, and February and June, 1921; there may have been others which I have not noticed.

It is not necessary to go further back than the recent case of Weld-Blundell *v.* Stephens (36 *The Times* L.R., 640; [1920] A.C., 956), and to the speeches of Lords

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Dunedin and Sumner in that case, for an authoritative statement of the law applicable to this part of this case. To adopt Lord Dunedin's language, the question for decision is whether the damage complained of by the plaintiff was the natural consequence of the alleged wrongful acts of the defendants, or whether it was the result of some *novus actus interveniens*. Lord Sumner prefers the description "direct" to "natural," as applied to consequence. Both learned Lords apply a test whether the damage complained of in that case was either natural or direct, which test, though differing in form, is the same in substance. Lord Dunedin says: "It was the repetition of the words by Hurst to Lowe and Comins, which was the voluntary act of a free agent, over whom the defendant had no control, and for whose acts he is not answerable, that was the immediate cause of the plaintiff's damage." Lord Sumner says: "In general (apart from special contracts and relations and the maxim *respondeat superior*), even though A. is in fault, he is not responsible for injury to C. which B., a stranger to him, deliberately chooses to do. Though A. may have given the occasion for B.'s mischievous activity, B. then becomes a new and independent cause." Applying these tests to the present case, my opinion is that directly the plaintiff passed out of the care of Dr. Adam into the care of others whose statutory duty it was to form, and who did form, independent opinions as to the plaintiff's state of mind, then, if the plaintiff continued to be detained as a result of those opinions, the defendant cannot be held responsible for such detention. That the continued detention of the plaintiff was the result of those opinions cannot, I think, be disputed. Whatever the view of the court may be upon the other points in the appeal, the view which I have just expressed would render a new trial in the case of both defendants necessary.

The Case of Dr. Adam.

The case of Dr. Adam, however, demands separate inquiry; the question in his case is whether he has been guilty of any actionable wrong, and that question depends on a consideration of the plaintiff's position under the Lunacy Acts while he was on leave of absence and on Dr. Adam's rights, arising out of the reception order, of compelling the plaintiff to return, and on the question whether Dr. Adam is entitled to the protection of section 330 of the Act of 1890. The two questions are quite distinct, and must be dealt with separately. The argument for the plaintiff seems to treat the leave of absence order as a grant of complete liberty for the full period of 28 days. In my opinion it is nothing of the kind; it is nothing more than an intimation by the medical officer to the patient, sanctioned by two of the Visitors, and consented to by the person on whose petition the reception order was made, that he, the medical officer, will not, during the period named in the order, put in force the powers conferred upon him by the reception order unless in the exercise of his discretion he considers it necessary to do so.

What are those powers? They include the power of physical restraint so long as the patient is in a place where he can be controlled by the medical officer, or by those whom he appoints to represent him. If the patient is absent on leave of absence and is required by the medical officer to return and he refuses, he becomes, in my opinion, an escaped person, and liable to be retaken under section 85 of the Act, just as much as if he had run away from an attendant while out on a walk with him. The case of the patient who outstays his leave of absence, and does not send a medical certificate, is specially dealt with in subsection 8 of section 55. He can be retaken as an escaped person, even though he had not been ordered or requested to return. If, therefore, Dr. Adam had telephoned to the plaintiff instead of to Dr. Bond, and had ordered him to return and the plaintiff had refused to do so, Dr. Adam would have been justified in treating the plaintiff as an escaped person, and in sending for him as he did, provided the attendants were properly authorized in writing. It was not, however, necessary to treat the case as one of an escape.

The form of the absence order merely suspends the medical officer's power under the reception order until such time as he considers it necessary to "take back" the patient. From this point of view the patient is not an escaped person who requires to be retaken. The taking back is merely the putting into operation of the suspended powers under the reception order. I cannot accept a construction of the order which substitutes "receive" back for "take" back, as no authority was needed to receive the patient so long as the reception order was in force; nor can I adopt the construction of the statute contended for by the plaintiff's

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counsel, that the proper procedure in the circumstances, if Dr. Bond considered the plaintiff unfit to be at large, was to treat him as a lunatic wandering at large under section 15 of the Act of 1890. Apart from the fact that this section comes in the part of the Act dealing with cases where there is no reception order in existence, and, therefore, has no application to this case, I should hesitate long before accepting a construction of the statute which required the arrest by a constable as a necessary step to terminate a patient's leave of absence, for these reasons: I think that Dr. Adam was entitled to terminate the plaintiff's leave of absence, and to do it in the way in which it was done.

The second contention made on Dr. Adam's behalf was that in any event he is entitled to the protection of section 330 on the ground that in what he did he acted in good faith and with reasonable care. The jury found in Dr. Adam's favour that when he received the telephone message on December 14 and sent the car he honestly believed that the plaintiff was of unsound mind and unfit to be at large, and that it was in his interest that he should be taken back to Malling Place, but they found that Dr. Adam did not take reasonable care in acting as he did.

A considerable amount of argument was directed to the question of the onus of proof, and whether it rested upon the defendants to prove that reasonable care was used, or on the plaintiff to prove the absence of it. In the present case it does not seem necessary to decide that point, because if the onus was on the defendants Dr. Adam discharged it; if it was on the plaintiff, I consider that there was no evidence to support the finding of the jury. The only suggestion of want of care is that Dr. Adam did not go himself in the motor-car instead of sending two attendants. If the question had to be looked at from the point of view of the plaintiff's position, it seems curious that the suggestion should have been made. The plaintiff's case was that he was a sane man, and that Dr. Adam was a person who was incapable of forming an accurate judgment on his mental condition; why, then, should it be considered necessary that Dr. Adam should himself have gone to take back the plaintiff?

The question, however, must be considered from the point of view of Dr. Adam's position. What was that? The plaintiff was no stranger to him; the message he received was not one indicating that any doubt existed which needed clearing up; the message was received from a source which was certainly authoritative; Dr. Adam believed it. I cannot see that prudence or consideration for the patient required anything except what Dr. Adam did—namely, taking the necessary steps to secure the plaintiff's return as speedily as possible. A great deal was made of Dr. Adam's statement that he could have gone himself but for the fact that it was the day on which his partner would naturally be off duty in the afternoon. The test of what amounts to reasonable care in a particular case is not necessarily what a person would do in ordinary circumstances; the circumstances in the present case were exceptional. In the particular circumstances of this case I cannot see any evidence of want of care on Dr. Adam's part, and I think that the importance attached to the fact that he did not go himself to fetch the plaintiff is only one of many instances in which, during the trial, comparatively unimportant incidents received more consideration than they really deserved.

In my opinion judgment should have been entered for Dr. Adam, and the appeal in his case will, therefore, be allowed, and the judgment for the plaintiff will be set aside and entered for this defendant, with the costs of the action and of the appeal.

The Case of Dr. Bond.

The case of the defendant Dr. Bond stands on an entirely different footing. The Attorney-General, appearing for him, admits that, however well-intentioned he may have been, he had no legal justification for his action. The verdict and judgment entered cannot be allowed to stand, as, apart from any other considerations, the damages awarded have been assessed on a wrong basis, as I have already pointed out. As a new trial must be had on this ground, I say nothing on the other points of which complaint is made. The damages on the new trial must be confined to damages for an imprisonment up to, but not beyond, the time when Dr. Adam had the opportunity, and exercised it, of forming an independent judgment on the plaintiff's mental condition and whether it was necessary to continue to detain him under the reception order.

In the case of Dr. Bond the order of the Court is that the verdict and judgment are set aside and a new trial ordered, Dr. Bond to have the costs of the appeal.

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As the costs of the first trial were greatly increased by the form and extent of the plaintiff's claim against Dr. Bond, we think there should be a special order as to the costs of the first trial; those costs will abide the result of the new trial, but in the event of the plaintiff's succeeding on the new trial the costs of the first trial must be confined to such costs as the Taxing Master considers reasonable had the first trial been confined to an action against Dr. Bond alone, and to damages in respect of a period which terminated on Dr. Adam deciding after the plaintiff's return to Malling Place that he should continue to be detained under the reception order. The plaintiff must repay and replace the moneys paid to him under the order of the Judge. The order for a new trial is conditional on this repayment. If payment is not made within one month there will be liberty to apply.

Lord Justice Warrington read a judgment to the same effect.

Lord Justice Scrutton, in a concurring judgment, said that the case had naturally and deservedly attracted much public attention. Indeed, it had attracted so much attention that there was a danger of the real issues in dispute being confused. It was not an inquiry into the whole working of the Lunacy Laws with regard to the plaintiff, with a power to the tribunal to award him compensation for any injuries which he had suffered from the operation of those laws. It was not a Royal Commission to consider in what respects the Lunacy Laws should be amended to avoid the occurrence in future of any errors which had been made in Mr. Harnett's case. It was the trial of a complaint that two named persons over 11 years ago, between December 14, 1912, and February 22, 1913, committed, either in combination or independently, specified wrongful acts for the direct consequences of which, if they were found to have acted wrongfully, those two persons must pay damages. If the inquiry were one into the whole working of the Lunacy Laws as to Mr. Harnett, there was considerable ground for thinking that he had been detained as a lunatic for much longer than he ought to have been. If it were a Royal Commission, this case showed that serious consideration should be given to the question whether the judicial inquiry preceding the making of a reception order should be more precise in its procedure by informing the alleged lunatic of the nature of the charges against him and hearing his defence.

Another question also requires much thought: Whether the existing system of constant visiting and reports afforded sufficient safeguards against undue prolongation of detention. When these questions were considered, it might be difficult to provide any more practical safeguards than were at present provided, and they must certainly be approached from the point of view of protection of the community as well as that of liberty of the individual. In the present case the results were sufficiently startling to call for a careful consideration of the legal questions involved.

His Lordship, having dealt at length with the questions raised in the case, concluded: I think the earnest—almost overwhelming—desire of Judge and jury to make proper compensation to the plaintiff for wrongs which they think, probably rightly, he has suffered has prevented them from giving sufficient consideration to their equally strong obligation to do justice to the particular defendants whom the plaintiff is seeking to make liable and who are not necessarily the persons responsible for every, or any, wrong the plaintiff has suffered.

Solicitors: The Solicitor to the Ministry of Health; Messrs. Le Brasseur and Oakley; Messrs. Rooper and Whately; Mr. Harry Coulson; Mr. W. R. Hempson. —[Abstract from *The Times*' Report, May 17, 1924.]

Belgium, like other countries, has found difficulty in deciding on the proper manner of dealing with mentally abnormal persons who commit crimes. The present Belgian law enacts "qu'il n'y a pas d'infraction, lorsque l'accusé ou le prévenu était en état de démence au moment du fait." Up to the present time it would appear that only cases of definite psychosis (la démence complète) have been recognized as coming within the scope of this law. But it is now felt that there are other, and equally important mental abnormalities, which often lead to the commission of offences.

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And a proposed new statute (ably explained in an accompanying memorandum), which would include all kinds of mental abnormality, is now under consideration. Those who drafted this law have, most wisely, refrained from attempting to give precise definitions of the mental conditions with which it would deal, simply describing them as "les déments, les insuffisants mentaux et les déséquilibrés." The terms are wide, but are not wider than may be safely dealt with by a competent court, assisted by proper expert medical advisers. But the memorandum points out that the recognition of many of these mental conditions involves a medical problem of extreme difficulty. And the new law provides that when there is reason to suspect the existence of any of these conditions in an accused person, or when the existence of such a condition is put forward as a defence, the court shall have power to remit the accused person for observation to "une annexe psychiâtrique" attached to a prison, which annexe will be, we may presume, adequately staffed. The period of such remand, as we should call it, will be for a term of three months, which term may be extended if the psychological examination has not been completed. This period seems lengthy to us, although it would not be too long for the due estimation of many cases. But the preliminary proceedings in a Belgian criminal case are much more prolonged, and are, in other respects, very dissimilar to those in force in this country. If the court decides, upon the psychological report presented to it, that such a condition of mind exists, it may order the accused (assuming that his material guilt of the offence has been proved) to be detained in a special establishment provided by the government for such cases, thus obviating their commixture with non-criminal defectives. And a sentence of detention in such an establishment would be obligatory on the court when the accused person had been found guilty, on some previous occasion, of a grave offence. At an assize court the jury will be asked to say (1) whether the accused has committed the crime with which he is charged, and (2) whether the accused is suffering from one of the mental conditions already mentioned. There is provision for an appeal, on the part of the accused, against such a sentence of detention, and in the case of such an appeal the "dossier" of the accused would be placed for forty-eight hours at the service of his counsel. It would also be open to the accused person to be examined by a physician of his own choice. It is not easy to see how the liberty of the individual subject could be better guarded. It is explained that the object of the law is not vengeance, but the due and humane defence of society—an object which is, at present, not adequately attained.

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The explanatory memorandum fully recognizes that indeterminate detention of such cases is the really logical measure. But it has been felt that Belgian public opinion, like ours, is not yet ready for the adoption of that course. And it is provided that the detention shall be for a term of five, ten, or fifteen years, the length depending upon the gravity of the offence which has been committed. Power is given to a commission, composed of a judge, a member of the provincial council, and the chief physician of the psychiatric annexe, to decide whether any detained person is fit for earlier release on the ground that he is no longer a danger to the public. This commission would have power to call in the aid of an extern physician, should it deem that course to be desirable.

The proposed new law also contains provisions for the better treatment of habitual offenders and of young offenders.

THE report of a very curious case has reached us from South Africa. A man named Chigango was the " chief " of a very isolated district in Rhodesia. The natives in this district had suffered severely from a prolonged drought. It was felt that this drought was due to some offence which had been committed against the "rain goddess"—a local divinity who was incarnated in the person of a woman. Various measures of propitiation were tried, but without success. Finally it was decided that a human sacrifice was required. Manduza, Chigango's son, was selected as the victim. The idea that a criminal is one who has incurred the wrath of the tribal god, which wrath is supposed to fall upon the tribe, is a very ancient view, and was reflected, until comparatively recent times, in the terms of our criminal indictments. The report does not make it clear whether Manduza was selected as representing the tribe, or whether it was felt that he had personally committed the offence against the goddess. There was evidence during the trial that having sexual relations with the goddess was regarded as a very heinous crime. However this may have been, Manduza was sacrificed by being burnt to death with the ceremonies appropriate to such a case. It is a curious coincidence that rain fell almost immediately after the execution. This doubtless confirmed the natives in their belief as to the efficacy of their sacrifice.

The British Government then appears to have heard of the occurrence. Chigango and six others were arrested and put on their trial for murder. One was acquitted, and the others were found guilty and sentenced to death. The death penalty was not, however, inflicted. And the sentences were commuted to terms

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of imprisonment, varying in length from three years to ten years in the case of Chigango.

It is obvious that the case raises very interesting questions. It was admitted during the trial that native religion and custom had necessarily to bow to the supremacy of British law. The natives were informed of new statutes. But no systematic attempt was made to instruct them in common law, or to inform them how far their customs were illegal. The judge, indeed, remarked at the trial that the natives usually learnt what British laws were only when they had broken one of them. Bibles were circulated among the natives. And it was mentioned, as a curious fact, that these Bibles contained a picture of Abraham about to sacrifice Isaac in obedience to Divine command.

A civilized government is not only justified in preventing, but is bound to prevent human sacrifices from being carried out in its territory. But it must be remembered that many local customs exist which run counter to British ideas of law and of morality. We may instance polygamy, which is permitted, so far as natives are concerned, in large parts of the British Empire.

It may be urged that ideas such as we have described concerning the rain goddess should be regarded as coming within the boundary of insane delusions. Such was, in fact, the line of defence taken by counsel for certain of the prisoners. It might be possible to obtain a verdict of "Guilty but Insane" in the case of a man in this country who claimed to have killed his son by Divine command. There are, in fact, cases in which such a verdict has been obtained. But it is difficult to regard a man as insane for holding and acting upon the beliefs of his nation, which beliefs he has been brought up to receive.

Chigango himself was defended on the grounds of his conscientious motives. It was urged that he had no other motive for the sacrifice of his son than that of the desire to do what was best for his tribe according to his religious beliefs. We are bound to prevent such beliefs from being carried to their logical conclusions. But it becomes us to walk humbly in this matter, and not to exalt ourselves unduly as compared with those whom we often stigmatize as ignorant savages. It is not so very long since we dealt with witches in a way not far removed from the murder of Manduza in this case. And, even now, it is not easy to justify some of our penal methods (for example our treatment of those who attempt suicide) on other than "religious" grounds.

Rex *v.* Herbert Clifford Gosnell.

This case was tried at the Central Criminal Court on March 27, before Judge Atherley-Jones, K.C. The defendant was a solicitor,

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