(11) Walker, "A Case of Pyloric Carcinoma, with Internal Illusions," *Amer. Journ. of Insanity*, 1897.
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(1) I am indebted to Dr. C. Hubert Bond for permission to publish Cases 1 and 2, and to Dr. J. Shaw Bolton for Case 3.

Recent Medico-Legal Cases.

REPORTED BY DR. MERCIER.

[The Editors request that members will oblige by sending full newspaper reports of all cases of interest as published by the local press at the time of the assizes.]

THE PROTECTIVE SECTION OF THE LUNACY ACT, 1890.

A VERY important decision on this section of the Act of 1890 was delivered by the Court of Appeal on January 12th. The facts were that Dr. W. L. Griffiths sued his father, Dr. T. D. Griffiths, in respect of the presentation of a petition for reception order; and Dr. T. D. Griffiths had applied to a judge in chambers (Mr. Justice Lush) to stay the action, on the ground authorised by Section 330, that there was no reasonable ground for alleging want of good faith or reasonable care. Mr. Justice Lush declined to make the order, and from his refusal Dr. T. D. Griffiths appealed to the Court of Appeal, which gave judgment in his favour in the following terms:

Judgment.

Lord Justice Fletcher Moulton: In deciding the question before the court, the most important thing in the first place is to get a clear idea of the question we have to decide. It is common ground

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that it matters not whether the plaintiff was or was not insane at the time he was sent to the asylum, but it is suggested that what we have to decide is whether or not there would have been a case to leave to the jury if there had been a trial, and the evidence which had been given at that trial was that which we have before us in the affidavits. In my opinion the learned judge at chambers practically acted on that view, and I think that that view is erroneous. Section 330 of the Act commences by an enactment which on the best construction I think can be given to its language, makes it a defence to persons who have signed or carried out or done any act, "with a view to sign or carry out an order purporting to be a reception order, or any report or certificate purporting to be a report or certificate under this Act, or does anything in pursuance of this Act, shall not be liable to any civil or criminal proceedings whether on the ground of want of jurisdiction or on any other ground if such person has acted in good faith and with reasonable care." That provision was obviously to protect persons who were doing the very thankless task of taking steps to put persons, whom they thought would be a danger to themselves and to the public, under proper restraint. It is always a very disagreeable thing to do. It is a thing so obvious in proper cases for the benefit of the public and for the benefit of the patient himself that it becomes a duty to do it in proper cases, and this Act was deliberately passed by the Legislature to protect persons who, acting under such a sense of duty, had to take the necessary steps required by law. The Legislature, very properly to my mind, realised, although they had made it a defence if the person had acted in good faith and with reasonable care, that that would not be adequate to prevent them being persecuted by legal proceedings which might be very costly and very trying, and that it would be a very insufficient protection if all that the Act provided for was success in an action brought against them or in criminal proceedings brought against them. Consequently it gave to the court not only a power, but, to my mind, a duty to entertain a summary application asking that the proceedings should be stayed, and that the persons attacked should not be obliged to go through the whole course of an action up to trial. Then the section says this: "Such proceedings may, upon summary application to the High Court or judge thereof, be stayed upon such terms as to costs and otherwise as the court or judge may think fit, if the court or judge is satisfied that there is no reasonable ground for alleging want of good faith or reasonable care."

This is an application under those provisions, and if we are satisfied that there is no reasonable ground for alleging want of good faith or reasonable care, we may, and I think that means in all the circumstances that we ought, to stay the proceedings. This being a summary application, it is quite obvious the evidence must be brought before us in a different way to that in which evidence is brought before a court where there is a trial by judge and jury. It almost necessarily has to be brought before the court by affidavits upon which there may or may not be cross-examination, but it is clear that the Act contemplates we should decide whether or not we are satisfied that there is no reasonable ground for alleging want of good faith or reasonable care upon evidence brought before us in the way in which evidence in summary pro-

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ceedings usually is brought before the court. Therefore it is not for us to say that because this is a case which could not be withdrawn from the jury, therefore we will not act; we have to take this evidence put before us as a tribunal appointed to decide this issue, and if the evidence is sufficient to satisfy us, we must decide it.

Now, I do not conceive for myself that the whole of the evidence before us can be truth. No doubt a court which has to decide affidavit evidence in which there is a conflict of evidence is often put into a position of difficulty, but that is not sufficient, to my mind, to justify us in saying that we will not examine the evidence and see whether there is sufficient to satisfy us on this issue. Although I do not pretend to be able to reconcile all the evidence, and although I am not going to state with regard to particular witnesses whether or not I accept or do not accept their evidence, I think there is abundance of evidence here to justify the court in coming to the conclusions that there is no reasonable ground for alleging want of good faith or reasonable care.

In the first instance, let us consider what is common ground between the parties. I think, in the first instance, it is common ground between the parties that the plaintiff had at various times in his life been addicted to the cocaine habit to an extent which made him at times not responsible for his actions. I think that the proper conclusion to be drawn from it is that at times he behaved in a way which was not compatible with sanity, and that it reduced him to a condition in which he was a danger to himself, and might well be a danger to other persons I have no doubt. It is also common ground that the acute symptoms which follow from an indulgence in cocaine are temporary in their character, that they may pass away, and that there may be an interval of comparative self-control, but that comparative self-control does not in any way indicate that the influence of the habit has passed away, or that because a man has self-control he will be able to prevent himself from indulging in cocaine to such an extent that the fits come back. Now that is common ground between the parties, and I think we can go, without going into controversial matters, much further. I confess I attach very considerable weight to what is said in an affidavit of a medical man put in by the plaintiff himself. I refer to the third paragraph of Dr. Stoddart's affidavit, in which he says he saw the plaintiff in November, 1910. Then he says: "The said William Layard Griffiths informed me that from August 1909, to February 1910, he had been in the habit of using cocaine. He also told me that he had used cocaine on previous occasions." Now, I conclude from that, and it seems to me also to be common ground between the parties, that from and after the time the plaintiff was put in the asylum he ceased to use cocaine; at all events, there is no evidence that he used cocaine after, and therefore I am not surprised to find, considering his age, that he is found to be in good health in November. But here is an admission by him that from August, 1909, to February, 1910, he was in the habit of using it, which exactly fits in with the evidence of the father with regard to his behavour. Next, I find no reason for doubting that the entries made in the books of the asylum were otherwise than *bonâ fide*—both sides seem to refer to them—and I am quite satisfied that I am doing right in attaching weight to them. What do I find there? I

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find that the day after he was brought there the entry is this: "Had a quiet time and slept well, was drowsy soon after admission, and slept on the sofa most of the evening, said he had disagreeable nightmare during the night and saw all kinds of things. He admits to having taken over 40 grains of cocaine in twenty-four hours." So that it is clear he took very large doses immediately before he was brought to the asylum. Now the next thing which impresses me in the matter which is not in controversy is the evidence of Dr. Brook with regard to the interview which he had when he went to the plaintiff's bedroom. He and the father had come to see the plaintiff and found that the plaintiff was upstairs in bed. The father remained downstairs, and Dr. Brook went upstairs, and he describes the man lying with his face to the wall He spoke to him about his habit. The language was extremely forcible. He urged him to make an attempt to consent to be put in an inebriates' home or in a nursing asylum in order that he might receive proper treatment against the drug. Getting no reply he asked the plaintiff what he was going to do. He said, "I am going to lie here until I have energy enough to get up and buy some more cocaine." Now here is a man, a medical man, to whom a friend had come to remonstrate with him as to the danger of over-indulgence in this drug. The answer he gets is that which I have stated and that is admitted, practically admitted, by the plaintiff, and all he said was he did it out of petulance. In my opinion, weighing all these things, I cannot help coming to the conclusion that the man indulged to a dangerous extent in this drug, and at the time he was in a state in which at any moment he might be a danger to himself and a danger to others, and he had no self-control to prevent himself from continuing the practice Starting with that, if I may say so, as the atmosphere through which we must look at the statements in the affidavits, I turn to the father's account, and I ask myself, not only what does he say, but what do the affidavits show his behaviour was in relation to his son during the long period when the son indulged in this habit of taking cocaine? I cannot help thinking that to my mind it is preposterous to say that in the ordinary sense of the word there is the slightest reasonable ground, or any reasonable ground, for suggesting bad faith on the part of the father. It appears to me that for a course of years he had been borne down with anxiety in regard to his son's conduct, and full of fears as to his safety, and as to the safety of those around him, by reason of his determined indulgence in this drug. Well, it is quite true that mere want of good faith in the ordinary sense of the word, perhaps, does not coincide with the legal issue of want of good faith. It is possible you may act, although with the best of intentions, in a way in which legally you would be held to be guilty of want of good faith, but I will not enter into that question, because, when I come to the time far back when the father acted, I can see nothing but anxiety with regard to his son, leading him to act in the way in which, as a medical man of great experience, he thought he was bound to act. In this respect I find that he had the opinion of four medical men, all of whom knew the plaintiff well, and all of whom say that they were prepared to certify him as an insane man at the time. Two of them actually did certify him, and two were perfectly ready to certify him, only they thought

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as the person to be put in the asylum was a medical man perhaps they were rather more cautious, and, as they were certifying that one of their own profession was unfit to be at liberty, they thought there ought to be four certificates. The father thought it was not wise to depart from the statutory obligation of two, but they were all prepared to do this. The matters which led them to that conclusion appear in the affidavits. I cannot help thinking that they were adequate, but, whether they were adequate or not, I am perfectly satisfied that all those four medical men, thinking carefully of it, came to the conclusion that with their knowledge and skill it was a case in which they could certify the person as insane. The father had a more intimate knowledge of his son's state probably than they had, but the evidence convinces me that the more intimate his knowledge the more hopeless he must have felt the case and the more dangerous, because he must have known all that had happened in the past in South Africa, and he had had the experience of what had happened very shortly before when his son came home.

I must say that in this case, coming to the conclusion as I do that the son almost confessedly had during this period habitually indulged in cocaine, I think we are bound to take the father's account of what passed in the interview when his son came to his house in preference to what the son says, because it is well known that indulgence in cocaine leads both to hallucinations and to inaccuracy.

Under these circumstances I come to the conclusion that I am satisfied that there is no reasonable ground for alleging want of good faith or reasonable care in the father in presenting this petition, and I think we should be shirking the duty which is put upon us by the statute if we were to hesitate to allow this appeal to stay the proceedings in this action.

Lord Justice Buckley: I agree with all that has been said by the Lord Justice.

The cardinal fact in this case is not in any way in dispute between the parties—I mean the fact that the plaintiff had for many years been addicted to the cocaine habit; that he had taken large and excessive doses of cocaine, and I think that the effect of the evidence is that such an indulgence in that habit is one which leads to insanity, short, no doubt, in its duration, but a state of things under which for a time a man is not responsible for his actions, and he may well be a danger to himself and others. Now the issue which we have to try is not whether on February 10th the plaintiff was in that condition or not; the question we have to try is whether this defendant—this father—was acting upon the footing that he was in that condition not responsible for his actions. We are satisfied that there is no reasonable ground for alleging want of good faith or reasonable care.

I am not going to travel through the facts again. I am abundantly satisfied by the evidence in the case that the action of the father was taken in perfectly good faith. This evidently has been a matter of great family trouble for a great number of years. The question what was to be done with this unfortunate man and the habit which he had acquired was no doubt one of great anxiety to his father. Under these circumstances he put himself into communication with medical gentlemen, who signed a certificate, with the result that the plaintiff was

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removed to the asylum. I am satisfied that there is no reasonable ground for alleging want of good faith or reasonable care on his part. That is the only issue which we have to try, and arriving at that conclusion, I think, differing in that matter from the learned judge below, this appeal must be allowed.

I am not even sure that the learned judge put the proper question to himself. At the beginning of his judgment he made it rather a question of the investigation of sanity or insanity. I do not think he meant to rest upon that. He said that only disposed of that question, and then he went on to deal with the other. What he said was, "It is a question whether I ought to be satisfied that there is reasonable ground that the defendant was acting with due care." He has stated it rather the wrong way round. The question is whether we are satisfied there is no reasonable ground for alleging want of good faith. Well, I think there is no reasonable ground, and I think the appeal must be allowed.

Mr. Neilson: The appeal will be allowed and the action stayed as against the defendant Griffiths, and the costs, I submit, will be paid here and below by the plaintiff.

Lord Justice Fletcher Moulton: Yes.

Mr. Neilson: If your Lordship pleases.

Ever since this clause in the Act of 1889, from which it was incorporated into the Act of 1890, has been in operation, medical practitioners practising in lunacy have complained that its force was so whittled away by the practice of judges in chambers, as to deprive it of much of its protective character. In the first case in which a judge in chambers was asked to stay an action under the authority of Section 330, he decided that the onus of showing a *primâ facie* case of want of reasonable care or want of good faith did not lie on the plaintiff in the main action. The defendant, who sought to have the action stayed, became, with respect to the application for a stay, in the position of a plaintiff, and must prove his case. It is for him, now that he is in the position of plaintiff, to prove, negatively, that there is no reasonable ground for alleging want of good faith or of reasonable care, not for the plaintiff in the main action to show, affirmatively, that there is reasonable ground for such an allegation. This has been felt to be somewhat of a hardship on the defendant in the main action. It would seem to be a greater protection to the defendant if the plaintiff were compelled to establish his case, that there was a reasonable ground for the allegation. The rule rests, however, in a settled principle of law, which is not likely to be altered because in a particular case it is felt to produce hardship; and whatever hardship may have been produced by it

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in the past, will certainly be much mitigated by the judgment of the Court of Appeal set forth at length above. The rule as to onus of proof was stated by the Court in emphatic terms, and it is noteworthy that it is on the very ground that the judge in chambers had wrongly apportioned the burden of proof, that Lord Justice Buckley agreed that the decision adverse to the defendant ought to be reversed. The question put to himself by Mr. Justice Lush in chambers was "whether I ought to be satisfied that there is reasonable ground that the defendant was acting with due care." This, said Lord Justice Buckley, was stating it the wrong way round. "The question is whether we are satisfied there is no reasonable ground for alleging want of good faith." The fact, as shown by this appeal, that the existing law gives a better protection than the law as we should have liked it to be, should make us doubtful of our competence as amateur legislators, or reformers of the law.

The judgment is a very favourable one to the defence of such actions, and is favourable in several different respects.

In the first place, it establishes, as has just been shown, that the placing of the burden of proof on the defence in the proceedings in chambers, is no disadvantage to the defence, but rather the contrary.

In the second place, it establishes that, as in so many other statutes, the word "may" in the section is to be interpreted to mean "shall." It gives to the Court, in Lord Justice Fletcher Moulton's opinion, not only a power, but a duty, to stay these actions if the conditions justifying the stay are fulfilled.

In the third place, it was suggested that what the judge in chambers had to decide, was whether or not there would have been a case to leave to the jury if there had been a trial. This view was held to be erroneous. The protection afforded by the clause was decided to be more ample than this. "It is not for me to say that because this is a case that could not have been withdrawn from a jury, therefore we will not act; we have to take the evidence put before us as a tribunal appointed to decide this issue; and, if the evidence is sufficient to satisfy us, we must decide it."

In the fourth place, the judgment establishes in law a doctrine that is not always admitted even by alienist physi-

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cians, in spite of the humble, if strenuous, attempts that I have made for many years to insist on its acceptance—the doctrine that insanity is insanity, even if it is due to an assignable cause, and even if it is temporary in duration. The insanity of the plaintiff was due to the cocaine habit; it fluctuated with this habit, and recovered when the habit was discontinued; but as long as the plaintiff was under the influence of cocaine, he was insane, and a proper person to be detained, etc. Now what is true of cocaine, is true of any and every other insanity-producing agent. It is true of alcohol for instance. Everyone admits that the insanity produced by long-continued drunkenness is insanity; but I have been met with amazement and protest when I have contended that the drunken man, as long and as far as he is drunk, is so long and so far insane. Still more incredulity has been expressed at the doctrine that the delirium of fever is insanity. Whether this last position would be good in law I do not know, but in the face of this judgment it can scarcely be contested that the insanity of drunkenness, of morphia taking, and of other drugs, is insanity in the eye of the law, and justifies, in appropriate cases, proceedings in lunacy. It is a very important pronouncement, and one that should be laid to heart and acted on. Nothing is more frequent than for medical men to refuse to certify as insane, persons who act insanely when drunk, but who have intervals of sobriety in which they are sane. The plea that a lunatic cannot be certified if he is "only drunk" will no longer avail. A lunatic is a lunatic, whatever his lunacy is due to.

In the fifth respect, in which the judgment is an advance on current notions, it is perhaps less satisfactory. It does not go far enough. But this was a matter in which the *dictum* was *obiter* merely, and the matter was scarcely formally before the court. The court found that the plaintiff was a danger to himself and a danger to others, and seemed to infer, though it did not directly state, that it was on these grounds justifiable to certify him as a lunatic. The point was not directly before the court, which had not to determine whether the certificate was proper and justified, but only that there was no reasonable ground for saying that it was done negligently or in bad faith. But from the *obiter dictum* it may be gathered that the Court of Appeal sanctions the view, that a person may be placed under control because he is a danger to himself, and because "he had

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no self-control to prevent himself from continuing the practice" of taking cocaine habitually. It seems clear from this that a person who has not the self-control to prevent himself from continuing the practice of drinking alcohol may, on that ground, be certified as a lunatic. The Lord Justice, in delivering this dictum, was referring only to a part of the case and to the facts before him. Though it is extremely satisfactory as far as it goes, and shows that the detention, as lunatics, of persons who have rendered themselves temporarily insane by taking drugs —under which alcohol must be included—is justifiable in law, it would be very unsafe to conclude that it is necessary for a person to be a danger to himself or a danger to others in order that he may be certifiable.

This judgment is, to alienist physicians, the most important that has been delivered since the Act of 1890 was passed, and its importance justifies the space here devoted to it.

Occasional Notes.

The Reduced Rate of Accumulation of the Insane in Asylums.

The Reports of the Lunacy officials for the three Kingdoms for 1910 are unanimous in drawing attention to the reduced rate of accumulation of the officially recognised insane.

In England, the increase is 628 below the average of the decennium; in Scotland, it is stated that the increase is the smallest recorded in any year since the institution of the Board; and in Ireland the increase was 150 less than the average of the last ten years.

The admissions yield even more striking results: thus in England the first admissions of all classes were 4·99 per 10,000 as compared with the highest rate, 5·72, in 1902, and is only slightly in excess of 4·92, the rate which obtained in 1898.

In Scotland, it is recorded that the first admissions of paupers have been 4·6 per 10,000 during the last five years as compared with 5·0 in the previous quinquennium. In Ireland, there is also a reduction in first admissions in the last five years as compared with the preceding period.

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