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.]

In these days of eugenics, the following case is of interest.

NULLITY OF MARRIAGE.

BODMAN *v.* BODMAN, OTHERWISE PERRY.

This was a summons by way of appeal to the President from an order of the Registrar striking out a paragraph in a petition for nullity.

Mr. Croom-Johnson appeared for the petitioner, and Mr. Bayford for the respondent.

Argument for the Petitioner.

Mr. Croom-Johnson said that the petitioner, George Bodman, was married to the respondent in 1889, and there were two children of the marriage.

The material paragraph in the petition, which prayed for a declaration of nullity of the marriage, was paragraph 5, which set out "that the performance of the said ceremony of marriage was procured by the fraud and contrivance of the respondent. That the petitioner was induced to consent to the said ceremony of marriage by a false and fraudulent representation made to him by the respondent that, with the exception of her uncle, John Osmond, an inmate of the Earlswood Asylum for Idiots, all the known members of her family were and always had been of sound mind, and that no member of her family was or ever had been afflicted with mental disease. The petitioner believed in and relied upon the said representation. In truth and in fact, as has since come to his knowledge and as the respondent then well knew, idiocy and insanity had existed and were prevailing in her said family to an extensive degree."

On February 9th the Registrar made an order that that paragraph should be struck out from the petition, and it was against that order that the petitioner appealed on the present summons. The suggestion in the paragraph was that a marriage contract was a contract subject to the ordinary rules of contract law.

The Authorities.

Counsel wished to show that the petitioner had an arguable case on that point, and he would not seek to show further that he was neces-

sarily entitled to the relief claimed. The point was not entirely a new one, and up to the decision in Moss *v.* Moss (1897, p. 263) there was no authority which dealt with it. In so far as it had been decided in Moss *v.* Moss (*supra*) it was law, but it had only been decided in that case by a Judge of first instance, and his client wished to test that decision by taking his case to a tribunal that was not bound by it.

Counsel cited Scott *v.* Sebright (1886, 12 P.D., 21) in support of his argument, and observed that though the passage he relied on in the judgment in that case was undoubtedly *obiter dictum*, it apparently stated the law as the petitioner in the present case wished it to be. He was bound to say that Moss *v.* Moss (*supra*) was contrary to that dictum. Further, there was no authority contrary to Scott and Sebright (*supra*) that was not a decision of a Judge of first instance. In the course of the arguments in Moss *v.* Moss (*supra*) there were three cases cited which had come before the House of Lords when that House had jurisdiction in Marriage Bills. In Turner's Marriage Annulling Bill (1826, *House of Lords Journals*, vol. lix, 270) the marriage had been brought about by conditions into which fraud entered largely; but there were no threats or duress proved, though the latter had been pleaded.

In that case the lady, who was very young, had been persuaded to leave school by a forged letter, and was told by the respondent that her father was on the point of financial collapse, which could only be averted by her marrying the respondent, who would satisfy the creditors. All that was in fact untrue, but Miss Turner went through a ceremony of marriage, though it did not appear that she realised what was being done at the time. Counsel also cited and distinguished Field's Marriage Annulling Bill (2 H. L. Cas., 48) and Wharton's Marriage Annulling Bill (14 *House of Lords Journals*, 583), and said that in the latter case the lady was abducted, and it was clear from the evidence she knew what she was doing at the time and consented to it, and that there was no violence or duress. In Knight's Marriage Annulment Bill (16 *House of Lords Journals*) the lady had petitioned the House not to annul the marriage as she was fond of the respondent. The House, however, did so on the ground of fraud.

The decisions in all those cases had, he submitted, left the point open to him, notwithstanding the later decision in Moss *v.* Moss (*supra*). He asked the Court to say that the petitioner had such an arguable case that it could exercise its jurisdiction and allow the paragraph in the petition to stand.

The Argument for the Respondent.

Mr. Bayford submitted that the allegations set out in the paragraph, even if true, could not constitute such fraud as in law would vitiate the marriage. According to the argument for the petitioner, any misrepresentation would avail to set aside a marriage. If any man or woman said, "I have £300" when in fact they only had £250, on the petitioner's argument the marriage ought to be annulled on the ground that the consent of the other party had been fraudulently obtained. The whole question as to that class of fraud had been considered and

determined in Moss *v.* Moss (*supra*). There was no authority for the suggestion that the point was an arguable one.

The President: The paragraph mentions mental trouble in the wife's family. What line is to be drawn between sanity and insanity?

Mr. Bayford: Is anyone sane? I say there is no ground for a plea unarguable in law on the authorities. I ask your Lordship to uphold the decision of the learned Registrar.

The President: These parties were married twenty-two years ago, and their sons are nearly of age. The petitioner hopes for a declaration that that marriage is null and void on the ground of some representation made at the time as to the mental condition of some of the wife's family. Moss *v.* Moss (*supra*) was decided fifteen years ago, and has never been appealed against. It is quite enough for me that the petitioner's counsel admits that his case is governed by Moss *v.* Moss (*supra*), and I will not disturb the Registrar's decision. The summons will be dismissed with costs.

Mr. Croom-Johnson: I ask for leave to appeal.

The President: I shall not give it you. You can take a preliminary canter in the Court of Appeal and tell them there what your point is.

Solicitors: Last, Sons, and Fitton; George Bodman.

The case of the petitioner was prejudiced by the long delay in presenting his petition. It may be that the facts on which the petition was based—that idiocy and insanity had existed and were prevailing in the respondent's family to an extensive degree—had only recently come to the knowledge of the petitioner; but although this would be no bar to his success if marriage were generally voidable on the ground of fraud, it would clearly be a bar to nullifying, on the ground of public eugenic policy, a marriage that had been in existence for twenty-two years, and that had already produced all the offspring likely to result from it. The learned President expressly based (according to the report) his judgment on this ground, and presumably if proceedings had been taken at an earlier stage, say within a few weeks or months of the marriage, the decision might have been different. Any subsequent case in which proceedings may be taken at an early date after the marriage will be prejudiced by this decision, and can scarcely succeed; but if it is eugenically undesirable that such marriages should take place, such a petition, if the facts are established, ought, on the ground of public policy, to succeed. Mr. Bayford's contention is a complete answer to the argument for nullifying a marriage on the general plea of fraud, for it cannot be contended that a marriage should be set aside on account of an

ante-nuptial misrepresentation of fortune by either party; but it is no answer to this particular case of fraud, which goes to the root of the reasons for marriage as set forth in the Book of Common Prayer, as interpreted in the light of eugenics.

The President's question—What line is to be drawn between sanity and insanity?—seems very inappropriate. Surely, in law, a person found lunatic by inquisition is insane without a doubt; and for the purpose of the trial of such an issue as this, evidence that a person has been detained under the Lunacy Acts or under the Idiots Acts is sufficient to establish *primâ facie* insanity. As to other persons, not lunatics so found, and not detained under care, the Court over which the learned President presides determines every week the line that is to be drawn in particular cases between sanity and insanity.

I am not an enthusiast for the prohibition of marriage of members of families in which lunacy prevails, even extensively. No one with much experience can have failed to have seen instances in which the offspring of such marriages have been exceptionally able and useful members of society. But it is a pity that such a case as this was not tried on its merits, and without the disqualification of the petitioner's case that resulted from the long delay in bringing the action. On the other hand, this very delay may have furnished a conclusive argument on one side or the other. If the offspring are, in fact, not affected as to their sanity, the petitioner's case from an eugenic point of view falls to the ground. If they are, in fact, defective, then he has the additional grievance against his wife of presumably saddling him with defective offspring. I say presumably, for it would still be an arguable point, and a point by no means easy to decide, whether the defect of the offspring were, in fact, due to inheritance through the mother or to some other cause. Those who belong to families in which insanity prevails extensively are no more exempt than other persons from the causes which produce sporadically defect of sanity in the children of those other persons.