PART IV.—MEDICO-LEGAL CASES.

Hall v. Semple.

THE trial of Hall *v.* Semple, which occupied the Queen's Bench during four entire days of last month, may have received, before these remarks appear, a still further development in a Court of Error; the case is one of great public interest, and although, as being still undecided, we cannot write so freely upon it as we might otherwise do, there are many points bearing upon the law of lunacy, and its practical working, which it involves, and which it has presented in an aspect entirely at variance with our own views and experience.

The main facts of the case may be shortly stated. Mr. and Mrs. Hall, dealers in china, in the Tottenham Court Road, have led for thirty years a married life of perpetual disagreement. Mrs. Hall states on oath that she believed her husband to be mad soon after their marriage, and thinks him so still; a certain Mr. Lintot and Mr. Guy appear to have held a similar opinion, and the latter, years ago, gave a certificate to that effect, which was then not acted upon. In July last Mrs. Hall called upon Dr. Semple, the defendant, with whom she had no previous personal acquaintance, and requested him to examine her husband, with a view to determine the state of his mind; this Dr. Semple did on the same day, but feeling that in a short interview he was hardly able to arrive at any definite conclusion, and evidently unwilling to take the unsupported statements of Mrs. Hall, he proceeded to make inquiries of Mr. Guy, to whom he was referred, and of others in his own household and in the neighbourhood. As the result of these inquiries, and such observations as he had made, Dr. Semple wrote a certificate. Omitting the preamble, which was correctly written, the following were the reasons upon which he came to the conclusion that Mr. Hall was a person of unsound mind:

"1. Facts indicating insanity observed by myself:

"He had a wild and staring look, with restless eyes, and nervous, agitated manner. He represented to me that his wife was ruining himself and business, and he intimated that she was improperly associating with other men; he is evidently labouring under delusions, and he acts upon those delusions.

"2. Other facts (if any) indicating insanity communicated to me by others:

"He is guilty of repeated acts of violence; he constantly threatens his wife, and often assaults her; he sleeps with a drawn sword by his bedside, and declares he will murder any one who approaches him, and he has often threatened to stab his wife.

"ROBERT H. SEMPLE,
"8, Torrington Square, London.

"*Dated this 29th day of July*, 1862."

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Upon this certificate, and another from the before-mentioned Mr. Guy, and on the authority of an order from the wife, Mr. Hall was carried off to Mr. Elliot's asylum, Munster House, Fulham. On his release, two days after, he brought an action against Dr. Semple, the declaration containing the following three counts :—The first was under the common form of trespass for false imprisonment; secondly, that the defendant had wilfully and maliciously signed a certificate under the statute; thirdly, that he had maliciously induced Mr. Guy to do the same. The jury found for the defendant upon the first and third counts, but upon the second, while they entirely acquitted the defendant of malice, they gave it as their verdict that he had signed the certificate without due and proper inquiry, and had acted *negligently in not ascertaining the sanity* of the plaintiff, which they affirmed. They assessed the damages at £150. The costs on both sides, of course, fell upon Dr. Semple, and these together amount to nearly £600.

The learned judge, Mr. Justice Crompton, who tried the case, although in the early part of the trial he had expressed an opinion that the question for the jury was simply whether Dr. Semple had acted with *bona fides* in signing the certificate, in his summing up, which was most elaborate and careful, directed them that an action would lie supposing that negligence alone had been in their opinion proved. To this ruling Sergeant Pigott, the counsel for the defendant, tendered a bill of exceptions, contending that the defendant, if acting in good faith, was protected by the statute of lunacy; and that if the second count were amended by the substitution of *negligently* for *maliciously*, the jury should be instructed as to what omission on the part of the defendant constituted culpable negligence. These exceptions were admitted, and it remains to be seen whether they can be successfully argued upon a writ of error.

Assuming that Mr. Hall were sane, it is satisfactory to find that the wrong done him was not malicious, and was soon redressed; at the same time we cannot consider it a light thing that a sane man should be confined even for a moment in a lunatic asylum. It is hardly two years ago since Lord Shaftesbury told the Committee of the House of Commons that he had never known an instance of the kind; the indignation excited in the public mind by this case was therefore not unnatural, and it was heightened by several circumstances that appeared in evidence, which, though really not affecting the issue, had probably great influence upon the decision of the jury, and certainly much increased the public exasperation. In the first place, the plaintiff himself appeared in court, and gave his evidence clearly and well; secondly, it was shown that Dr. Semple, the defendant, had written some letters after the admission of Mr. Hall into the asylum, which, to say the least, were most uncalled for and unwise; then, the plaintiff had been carried off from his own door

by main force, in a cab, by two men, whose conduct very plainly evinced their entire unfitness for the office of attendants upon the insane. Lastly, the plaintiff, upon his arrival at the asylum, was turned into a corridor with a number of insane patients, and left unvisited till the next evening; he was also—and the fact seemed to very much impress the jury—intrusted the next morning with a razor, although stated in the order for his admission to be a "dangerous lunatic."

One other mistaken impression tended to fan the public indignation. Mr. Hall was discharged from the asylum upon the second day of his arrest by two of the Commissioners of Lunacy. It was popularly assumed that he was so discharged because the Commissioners thought him not to be of unsound mind; it is, however, not the least important incident in this singular case that he (Mr. Hall) was really discharged, not because he was sane, but because his certificates were informal; the Commissioners gave no opinion as to his sanity. The proprietor of the asylum—not, let it be observed, a medical man—although in his evidence he stated that he thought Mr. Hall of sound mind, had, in fact, detained him upon a certificate of Dr. Semple, which is very weak, and in point of law is informal, and upon the certificate of Mr. Guy, which, as he must have known, was absolutely invalid. While the public journals, in leader after leader, are dilating upon this painful case, heightening to intensity the popular dread of lunatic asylums, and clamouring for new lunacy laws, with penal clauses still more severe, it is well to call attention to the fact that in this case, redress followed rapidly upon the wrong, the interposition of the Lunacy Commissioners was speedy and effective, and that the law of lunacy could not be said to have failed in its object of affording protection against improper arrest, because in this instance it was simply set at naught, under circumstances which will, doubtless, receive the attention of their Board. We may say here that, although the Commissioners were attacked by the plaintiff's counsel, their conduct throughout received the commendation of the court, and the public must feel that they exercised a wise discretion in refraining from an expression of opinion, which must have had the effect of prejudging a case which was certain to appear subsequently either before their own or some other tribunal.

It is with no spirit of bitterness or sarcasm that we would mark this painful case as one which illustrates the danger the public must incur, if the administration of the Lunacy Law is left solely to medical men, who, however well meaning, are without sufficient experience to decide a doubtful case, and are, through ignorance of technical forms, liable to involve themselves and others in serious legal difficulties. It is but a few months ago that physicians engaged specially in the study of insanity were exclaimed against as theorists, their evidence was to be excluded from courts of justice,

it was recommended that their asylums should be handed over to intelligent laymen, and it was gravely asserted that men of common sense and knowledge of the world were equally competent with them to decide as to the existence or non-existence of insanity.

With certainly no amicable feeling towards 'mad doctors,' an amendment of the Lunacy Act passes through the legislature, and, by a sort of poetical justice, the first trial that occurs after this becomes law presents us with the spectacle of an apparently sane man who, upon the informal certificates of two gentlemen who are not 'mad doctors,' is dragged off in the most barbarous manner to an asylum, whose proprietor, again, is not a 'mad doctor,' but who nevertheless keeps the patient, whose sanity he says he recognised, till his discharge by the Commissioners in Lunacy on account of the hopeless invalidity of his certificate. In all these proceedings, from first to last, no 'mad doctor' appears upon the scene, and we are surely justified in expressing an opinion that, if the advice of a physician experienced in cases of insanity and accustomed to weigh evidence, had been sought, a grievous wrong might have been avoided and a great public scandal prevented. But this does not seem the view of the public, who, although the lunacy law was in this case broken, and cannot, therefore, be said to have failed—although the Commissioners in Lunacy promptly redressed the wrong that had been committed, for which no 'mad doctor' was responsible—renew their clamour against our profession, and ask angrily for new laws and for vindictive punishments.

Although it must remain impossible that under any system that can be devised all wrong or error shall be prevented, the case of Mr. Hall was one well calculated to raise to an extreme degree the alarm of the public. The imprisonment of a sane man, even for an hour—the assault upon a citizen at his own door, and his being carried off late at night, suddenly and illegally, to an asylum, might warrant still greater indignation than has been expressed. It was tersely said that the fact of no malice being proved made the matter worse, as it is far easier to guard against knavery than against ignorance and folly. The result of the case, however, goes to prove that prompt redress must follow errors such as those committed in the course of this extraordinary case; we should, however, think the verdict of the jury more satisfactory if Dr. Semple had not been, as it were, made the scapegoat in the matter, while the principle involved in the question is left uncertain. We have no desire to defend Dr. Semple; honorable and conscientious though he is deservedly considered, there can be no doubt that in this case he was first careless, and afterwards too zealous; his letters to the asylum were indefensible, inasmuch as, if Mr. Hall were a dangerous lunatic, he must have been so for the last twenty years past, and there had been no recen- symptoms to warrant Dr. Semple's opinion, even if he had not ext

ceeded his duty in giving it. Moreover, in the defence of the action he seemed to allow judgment to go by default; and as he did not attempt to justify his views, he must therefore be taken to have written a certificate which was untrue or erroneous, or else of having expressed opinions founded upon facts which were insufficient or on theories not susceptible of either explanation or defence. The argument set up by Dr. Semple's counsel, and most ably and successfully pleaded, went to this:—the defendant had acted in good faith, and there was no such culpable negligence shown as could justify damages; and even if there were, he was protected by the statute. We believe that upon the last point Dr. Semple will ultimately succeed, and that the verdict will not stand. In this we must not be misunderstood; we do not say that sane men are to be assaulted and carried off to lunatic asylums, and that the pleas of a good intention and *bona fides* should bar their right to damages; we do not say that any of those directly or indirectly concerned in such a supposed transaction ought to escape punishment; but we do maintain *that it is contrary to the statute in lunacy,* and that it will prove highly detrimental to the best interests of the public, if medical men, proved to have given a certificate in lunacy in good faith, and under an Act which they consider to authorise their proceedings, should be held liable to an action in the form of that taken by the plaintiff in the case of Hall *v.* Semple. The result must be that in many cases of lunacy no certificate will ever be obtained; it will not be easy to find a physician willing to take the risk of heavy damages being given against him, upon the opinion of a jury being contrary to his own. Again, the medical man called into a case of alleged lunacy will find himself in this dilemma: should he certify to the patient's insanity, if he is mistaken he is exposed to the danger of an action from the patient; on the other hand, should he not certify, and disastrous consequences follow, he is clearly liable to a charge of negligence, which the public will itself punish, even if it does not meet the tender mercies of a jury.

The question really of interest is—supposing a patient consigned in error to an asylum, and detained there, either culpably or otherwise, does an action lie against the physician or physicians who, in good faith, signed the certificates; and if so, what form should that action take? To understand the exact bearing of this question, we must recal to remembrance the exact wording of the present certificates in lunacy.

Formerly the physician signing certificates declared it as his opinion that the alleged lunatic was a proper person to be confined, but the physician, according to the recent forms, expresses only an opinion that the patient is of unsound mind, and fit to be detained under care and treatment; this certificate is in the same terms whether the patient be sent to an asylum or to a lodging, or kept under

restraint in a private house; the physician signing need not know which of these three is the result of his signature, and frequently certificates of this description are given, with the addition that the case is not one for which an asylum is necessary. Under these circumstances, then, it is absurd to hold the physician responsible for an assault upon the patient or for his being carried off to an asylum. With this he has nothing to do; his function begins and ends with the expression of his medical opinion. Before any proceedings can be taken upon this opinion, that of another independent medical man must be obtained, and accompanied by an order from some relative, which specifies the place to which the patient is to be sent. These documents being complete, the proprietor of the asylum or private house who receives the patient can produce them in bar of any proceedings against him for the reception of the patient. But the legal forms by no means end here; the certificates must be copied and transmitted within twenty-four hours to the Commissioners in Lunacy, who jealously scrutinise their wording, and make searching inquiry in case of any irregularity in their form; then, at the end of two days, the proprietor of the asylum makes a statement as to the mental condition of the patient, and from that moment assumes the responsibility of his detention.

In the case of Hall *v.* Semple an infraction of the law took place. Mr. Hall was seized without proper authority, was received into the asylum without proper authority, and detained there without any authority at all; for this the proprietor of the asylum must answer. It is clear, and the jury specially so decided, that Dr. Semple had nothing to do with these proceedings, and therefore, we submit, that he was not liable for damages. Another point in this case is curious, as involving a legal doubt, that will probably receive its solution in a court of appeal. In point of law, Dr. Semple never signed a certificate at all; the paper he wrote was informal, and was never amended. How could he, therefore, be liable for proceedings taken upon it which were not even within his cognizance, and which it did not authorise?

But in the consideration of this question we will dismiss for the moment the plaintiff and defendant in this case; we will assume a certificate to have been perfected, and a sane man legally incarcerated till discharged by the proprietor of the asylum. In such a case is there any, and what, remedy? We are happy to say that such a case has never yet been recorded. Should it, however, occur, the mode of redress is obvious, and consonant with our ideas and right and justice. The proprietor of the asylum pleading the authority of the certificates, the alleged lunatic properly takes his action against the medical men signing them; he does not encumber the record with pleas of falsehood or malice, but simply proceeds as in an action for libel. Supposing Mr. Hall to be sane, it is obvious that Dr. Semple

libelled him in certifying that he was of unsound mind, and for that he is liable for damages, the amount of which a jury would probably estimate, supposing any charge of *mala fides* abandoned, not alone upon the time that the physician had given to the case, but also to the amount of previous study he had brought to bear upon the subject before he judged himself qualified to declare a fellow-citizen legally dead.

It must not be thought that in this view of the case we have any desire, by a legal quibble, to lessen the responsibility of medical men signing certificates of lunacy; we would only define exactly what their legal responsibilities are. In the event of a practitioner maliciously and falsely certifying a man to be insane, no punishment could be too great, whether that man was or was not carried off to an asylum; but his doing the same thing in good faith, and for the protection of the patient and the public, should be liable only to the ordinary proceedings all professional men are subject to for errors in judgment.

It may be said that in the case of Hall *v.* Semple the verdict of the jury would have been the same whether the action had been entered for libel or in the form it was. This may be so, but the length and cost of the proceedings would have been lessened, and, moreover, a precedent would not have been put upon the books which must virtually take the examination of doubtful cases of lunacy out of the hands of independent medical men; and no one will venture to sign a certificate of lunacy, however convinced he may feel that the patient is insane, because he cannot feel sure that the patient may not be dragged off the same night to an asylum, whose proprietor may, nevertheless, differ in opinion from the medical man, and so render him liable to an action, and throw upon him all the odium attending the assault that has been committed. Until the case of Hall *v.* Semple is finally decided we would advise medical men who know nothing of lunacy, or have only that dangerous knowledge of it that is still more mischievous, to abstain from signing certificates of lunacy in doubtful cases, unless their opinion is fortified by some physician who may be supposed to really know something of the subject; and we would counsel that section of the public who were clamouring last year to deprive themselves of the advantage of the experience and knowledge of "mad doctors" in courts of law, and in the signature of certificates, whether any case could have been worse managed than that of Hall *v.* Semple, in which not one mad doctor was engaged.

We would touch very gently upon one other feature in this remarkable trial. Now that the eloquent tones of the talented counsel for the plaintiff cease to vibrate upon the ears of the jury, are they still so certain that Mr. Hall is as injured as they supposed? The learned Master in Lunacy, in the case of Mr. Windham, properly dwelt

upon the fact that the existence or non-existence of insanity is one of "evidence and degree." We do not believe that Mr. Hall is a dangerous lunatic; but we are by no means inclined to imitate the example of the jury, and declare him positively of sound mind, while he continues to "intimate" that his wife is an adultress. It is true that jealousy is no proof of lunacy, but a medical practitioner may be forgiven if he should be doubtful as to the perfect sanity of any man who is said to insinuate that his wife has been guilty of adultery, although no shadow of suspicion has ever rested upon her reputation, and he himself cannot apparently offer any reasonable grounds for his opinion. In the case of Mrs. Hall it should be remembered that such suspicions would seem more than absurd, if the medical man were cognizant of the facts that the wife was of fair character, of advanced age, the mother—indeed, the grandmother—of many children, and living at that moment under her husband's roof.

But whether Mr. Hall was or was not of sound mind on the 29th of July, 1862, there can be no doubt that, even if insane, he suffered a grievous wrong in being dragged with brutal violence to an asylum, in contravention of the usual forms of law; if sane, the wrong was still greater; in either case, the safeguards against error or malice that, as we maintain, the law of lunacy amply provides were, in his instance, flagrantly set at nought.

We do not say that Dr. Semple was altogether blameless in this sad affair; we have pointed out where we think he erred; it may be also that he was mistaken in his opinion that Mr. Hall was of unsound mind, as he was in the idea that he was a dangerous lunatic; for such an error in judgment, if proved against him, he would be clearly liable to an action for libel; but we assert that, neither legally nor morally, is Dr. Semple responsible for the proceedings connected with his seizure, for which Mr. Elliot, the proprietor of the asylum, should alone answer.

A very slight examination of the question will, we think, render it obvious, not only that this is really the law of the case, but that it is for the best interests of the public that the law should be so laid down. The proprietors of asylums are bound to be well acquainted with the symptoms of insanity, and perfectly familiar with all the legal formalities bearing upon its treatment. If they are once allowed to evade this responsibility, the result will be most disastrous, inasmuch as their superior knowledge will cease to be necessarily trusted to detect the error or prevent the wrong for which it properly renders them liable. The public, through the press, loudly proclaims its fear that under the present law termagant wives or unscrupulous relatives, aided by inconsiderate medical practitioners, may legally incarcerate sane men in lunatic asylums; but surely Mr. Hall's case does not warrant this alarm. It is true that he was captured and imprisoned, but so he might have been "burked" or "garotted;" one proceeding

was as little warranted by the law of lunacy as the other. The jury were as incorrect in fining Dr. Semple for proceedings which his isolated and incomplete certificate did not justify, as they would have been had they brought *him* in as guilty of murder supposing that the keepers sent to seize Mr. Hall had killed him in the struggle.

It has never yet happened—in the case of Mr. Hall it certainly did not happen—and we believe under the existing law it never can happen, that a sane man should be dragged to an asylum, under two certificates of lunacy and an order from a relative, except as the result of wicked and useless conspiracy, which would, in asylums under the supervision of the Commissioners in Lunacy, meet instant discovery and punishment. That such a wrong may be perpetrated through error or ignorance on the part of two medical men is a new ground of alarm, which, as we have seen, Mr. Hall's case does not justify; for we contend that the greatest safeguard against this existed in the fact that, till this verdict, the proprietors of asylums were deemed primarily responsible for any wrongful detention of a patient, inasmuch as their position should presume their competency to discover any error, and their means of observation should render such discovery easy and certain.

But, we repeat, it would be a great mistake to imagine we advocate the monstrous doctrine, that a man who is a registered surgeon or apothecary, is therefore chartered to issue with impunity certificates of lunacy against any one whom, in his ignorance or haste, he may choose to consider insane; the common law of England provides a remedy against such an abuse, and it is essential for practitioners to remember, when called upon to sign certificates of lunacy, that, however *bonâ fide* their opinion may be, it renders them liable to an action for libel, whether their certificate is or is not followed by the committal of the patient to an asylum. We do not object to this severity in the law; the liberty of the subject cannot be too zealously guarded; and so far from believing that the grievous wrong suffered by Mr. Hall should go unpunished, we avow our conviction that he would have been justified, both in law and in equity, in proceeding against the servants of Mr. Elliot for a brutal assault, and also against Mr. Elliot, the proprietor of the asylum, who illegally received and restrained him. But this trial of Hall *v.* Semple, if the verdict of the jury stand, goes a step beyond, and raises a new point, which we think has pressed hardly upon Dr. Semple, and will be found eventually mischievous to the public, as deterring practitioners from signing certificates of lunacy, although the safety of the patient or his friends require they should do so.

Law-breakers cease to fear the law when the penalties attending its violation become uncertain; law becomes a terror to the good when it is uncertain in its definition of what is or is not unlawful

Mr. Hall did not choose to proceed against Mr. Elliot; he does not think it right to enter an action for libel against Dr. Semple; was it because he feared that such a course would produce but scanty damages? He, however, files a declaration, upon every count of which he is defeated, and at last wins his cause by the judge amending the word malice, and leaving the question to the jury—whether they found Dr. Semple guilty of culpable negligence?

If the verdict against Dr. Semple stand, the signing of certificates of lunacy will for the future be fraught with peril. How is negligence to be defined? How long should physicians examine personally, and perhaps exasperate, alleged dangerous lunatics, with arms in their houses? How many and what inquiries are they to make before they may safely express their conviction that a man is insane, whom they believe to be so, without a dread of damages for negligence, in addition to an action for libel? Some physicians can detect the signs of lunacy, not its imitation: are they liable for damages if, in a case of feigned insanity, they unsuspiciously sign a certificate? Again, are physicians who, by placing patients under restraint who have attempted or threaten suicide, liable to the accusation of negligence for not seeing that such patients were only suicidal, not insane?

The question of culpable negligence in declaring a man insane cannot be left to a jury, unless they try also the issue as to whether the man was sane at the time of such declaration, as they must do if the action were one for libel. The learned judge in the case of Mr. Hall expressly warned the jury that they were not to try the sanity or insanity of the plaintiff (report in the 'Times'); it is singular, therefore, to find that the jury declare Mr. Hall to be sane, which they were told not to consider, and which is clearly irrelevant, and finding Dr. Semple negligent in thinking him insane five months before, although they had most imperfect evidence before them to prove he was otherwise, the only independent practitioner called for that purpose having signalised himself by declaring, in cross-examination, that delusions did not prove insanity. We will only conclude by addressing to Dr. Semple the pertinent question of Montague Chambers:—"Why, sir, did you not consult in this case some of those gentlemen who make insanity their study?" and by recalling to the memory of the jury and the public the solemn words of the Judge—it "would be dreadful if a medical man were to be visited, in cases of this kind, for consequences arising from mere error in judgment or mistake in fact."

T. Harrington Tuke.