the evening of May 10, the defendant took a young woman, with whom he had only a recent and casual acquaintance, in his motor-car from London. He stopped in a wood near Maidstone, ordered her to undress, tied her hands behind her, she having nothing on save her shoes and stockings, and then blackened her with some kind of polish.

Precise particulars of the mentality of a man who perpetrated such a curious sadistic outrage would be of great interest. The defendant had been allowed bail at the preliminary magisterial inquiry, and no mental investigation had been made. At the trial he pleaded "guilty," and counsel addressed the court on his behalf. Information was given to the effect that the defendant, while on war service, had contracted trench fever, and that, since then, the slightest quantity of alcohol had a very pronounced effect upon him. Some suggestion was made to the effect that he had committed peculiar actions upon previous occasions, but no particulars were given. It was stated that he had been drinking heavily on the days preceding the offence. It would appear that he was sufficiently sober to drive the car from London.

It was urged by counsel that the defendant should be placed in some institution, under medical supervision. Mr. Justice Rowlatt, however, imposed a sentence of six months' imprisonment in the second division. Assuming the facts to be as stated, it would seem unfortunate that the defendant's medical advisers had not been able to induce him to place himself voluntarily under restraint and treatment before such a disaster had occurred. But the difficulty of persuading patients to adopt this course is well known. Failing this, it would seem to be a case in which the power, given by the Inebriates Act, 1898, to sentence a person convicted of such a crime to a period of detention in an inebriate reformatory might have been used with advantage. Such detention may be in addition to, or in substitution for, a sentence of imprisonment or penal servitude.

De Freville *v.* Dill.

Mr. Justice McCardie, sitting in the King's Bench Division of the High Court of Justice on July 1, delivered a reserved judgment in favour of the claimant, Mrs. May de Freville, wife of Mr. G. P. H. de Freville, for the sum of £50—the amount of damages which had been awarded by a jury—against Dr. A. V. Dill, of Brinscombe, Stroud, for alleged negligence in certifying her to be a lunatic on June 9, 1926.

A stay of execution was granted, Mr. Singleton, K.C., who appeared for Dr. Dill, stating that his client considered it important in

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the interests of the medical profession that the case should be taken further.

Reports of the case have appeared in the *British Medical Journal* on April 9, April 23, June 4, and July 9, 1927.

Judgment.

Mr. Justice McCardie said the jury were the tribunal on questions of fact, and their verdict must be taken to indicate their opinion that the plaintiff was not in such a state of mental or nervous disorder on June 9, 1926, as to require her detention in a mental hospital. The defendant, Dr. Dill, was never employed by Mrs. de Freville, who never contracted with him, nor did she consent that he should act as her medical adviser. Dr. Dill, in examining her and forming his opinion, acted on behalf of her husband, or her father-in-law, the Rev. Frederick de Freville, and not on her behalf. The first contention on behalf of Dr. Dill was that he owed no duty of care to Mrs. de Freville. The point had often been discussed in well-known litigation during the past seven years. Many exhaustive judgments had been given which touched directly or indirectly on the point. The question was one of great importance, because it stood on the threshold of such actions as the present. It was, therefore, singular that it had not received express and clear decision from the final appellate tribunal. It would have been desirable long ago to pronounce the exact cause of action in such cases. He inferred from the many dicta in the opinions delivered in the House of Lords in Harnett *v.* Fisher, and also from the decision itself, that such an action as the present was to be regarded as an action on the case for negligence in certification, causing damage through detention in a mental hospital without just cause. If the cause of action were of that nature and if there were no contract between Dr. Dill and Mrs. de Freville, did he owe her the duty of care with respect to certification and to the matters that preceded and surrounded it? It was plain that a surgeon who operated negligently on the body of a patient was liable in damages although there was no contract between the patient and himself. So, too, was a physician who administered medicine to the body of a patient. But Dr. Dill performed no operation nor did he administer any medicine to Mrs. de Freville. He only expressed in a certificate his honest view that she was a "person of unsound mind and a proper person to be taken charge of and detained under care and treatment." If he owed her the duty of care with respect to certification it was curious if he would not be liable for negligence in not certifying her if she had been of unsound mind and had inflicted injury on herself. He (his lordship) feared, however, that he was not free to express an independent opinion in view of the law already laid down in the early case of Hall *v.* Semple and the recent cases of Everitt *v.* Griffiths, Harnett *v.* Bond and Adam, and Harnett *v.* Fisher. He must, therefore, hold that Dr. Dill owed to Mrs. de Freville the duty of reasonable care.

During the past seven years a number of medical men who had acted in perfect good faith had been exposed to the most prolonged, harassing and costly litigation on the allegation that they had acted without reasonable care in a matter which was the most difficult, delicate and indefinite in the whole range of medical practice. It might well be that, as the result of past litigation, many doctors had refused, and would refuse, to take any part whatever in the work of certification, because of the perils and anxieties of litigation which might follow. Perhaps some further protective legislation was needed. The second contention of Dr. Dill was that his certificate was not the cause of Mrs. de Freville's detention. If he (his lordship) had been freed from authority, he would have thought that the effective cause of the detention was the order of the justice of the peace, and not the certificate of Dr. Dill. The decision under Section 16 of the Lunacy Act, 1890, lay with the justice of the peace, and not with the doctor. The justice of the peace could decide as he pleased whatever the certificate stated. He was possessed of judicial authority and discretion, and his adjudication was a decision *pro tempore* on the matter before him. The doctor's certificate, although an essential requirement, was a mere opinion which possessed of itself no operative force. The balance of opinion in Everitt *v.* Griffiths in the House of Lords and in the Court of Appeal favoured the view that Dr. Dill's certificate must be taken to be the cause of Mrs. de Freville's detention, and that balance was substantially increased by the recent

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decision of Mr. Justice Horridge in Harnett *v.* Fisher, where he held that the negligent giving of the doctor's certificate was the direct cause of the magistrate's order and of the consequent detention of the plaintiff. There were also dicta on the point in the House of Lords, and, on the balance of authority, he held that Dr. Dill's certificate was the cause of Mrs. de Freville's detention in the mental hospital. He hoped that before long the House of Lords would give a clear and final decision both on the question of the duty of care, and also on the question whether the doctor's certificate was the "cause of the detention." Each was a matter of grave importance, both from a legal and a practical point of view. It was regrettable that so great a difference of opinion should exist, and that a trial judge should be beset with difficulty and doubt. He also hoped that, when the question of the certificate as a cause of detention was finally considered, the case of Harnett *v.* Bond and Adam would receive a full measure of attention. He doubted whether the importance of that case in respect of causation and the nature of *novus actus interveniens* had been fully realized.

The third contention on behalf of Dr. Dill was that the procedure set up by Section 16 of the Lunacy Act, 1890, had not been followed, and that Dr. Dill was entitled to assume (*a*) that his certificate was a mere and unessential preliminary; and (*b*) that the justice of the peace would, when the matter was brought before him, call in another and independent doctor for the purposes of certification. That point was never raised before the jury, and it was not open to the defence to raise it now. Even if it were, Dr. Dill had himself said in evidence that he did not contemplate that another doctor would be called in by the magistrate, and that he expressly stated to the relieving officer that no second doctor was necessary; Dr. Dill plainly assumed that the magistrate, if he made the order, would act on his (Dr. Dill's) certificate.

THE LUNATIC AT LARGE.

The case of "de Freville against Dill," in which Mr. Justice McCardie delivered his considered judgment at the end of last week, deserves more attention than the excitements of the last few days have allowed it. It is, in fact, the latest of many warnings of the disquieting state of our lunacy laws. Full comment upon the evidence, which occupied a special jury for seven days in May, is precluded by the verdict and by the notice given that it is intended to carry the proceedings further. It is enough to say that Mrs. de Freville was detained in an asylum on the night of June 9, 1926, after Dr. Dill had certified that she was of unsound mind, and a Justice had issued a reception order, and that next morning she was discharged as of sound mind by the asylum authorities; that she brought her action for negligence in signing the certificate and on certain subsidiary points; and that the jury awarded her £50 damages. In giving judgment for these damages and costs, Mr. Justice McCardie said that it was not for him to review the evidence or to weigh the verdict, and he confined himself to the legal arguments laid before him. The points discussed are far from being new; they have been considered again and again in a number of cases by the Courts of first instance, by the Court of Appeal, and by the House of Lords during the last seven years; yet Mr. Justice McCardie declares that the two principal contentions advanced by the defence still await clear and final decision from the House of Lords. He observed, indeed, that the difference of opinion concerning them is still so great that they leave a Judge who has to act upon what he conceives to be the balance of authority beset with difficulty and doubt. The evils caused by this uncertainty are manifest and grave. Many medical men who have acted in good faith, as it is admitted that Dr. Dill acted in the present case, have been subjected to "the most prolonged, harassing and costly litigation on the allegation that they had acted without reasonable care in a matter which is the most difficult, delicate and indefinite in the whole range of medical practice." Mr. Justice McCardie suggests that as the result of past litigation many medical men may have refused, and will refuse, to have anything to do with certification because of the perils and troubles which may follow. Hesitation on such grounds to certify exposes patients to the danger of being left at large when detention is indispensable to their welfare, exposes their families to the danger and the intolerable anxiety of looking after them, and exposes the public to the danger inseparable from the freedom in their midst of persons who are insane or who stand on the shadowy and shifting border of insanity. "Perhaps," Mr. Justice McCardie observed, "some further protective

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