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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legislation is needed." There is no "perhaps" about it. The need of legislation is clear and urgent.

On the two main contentions in law advanced for the defendant, as on the issues of fact referred to the jury, the Judge held that he was not free to express an independent opinion. On them he felt bound by the weight of authority, as on the questions of fact he was bound by the verdict. The first of these contentions was that the defendent owed no duty of care to the plaintiff. To the uninformed lay mind that seems a surprising, not to say, a startling proposition. There is no doubt whatever that a surgeon who operates negligently, or a physician who prescribes negligently, does owe this duty to a patient even in the absence of a contract between them. It is "*mala praxis*," which has been "a great misdemeanour and offence at common law" since the days of Lord Raymond, and for which "the universal remedy" of "trespass on the case," dating back to Edward I and the Statute of Westminster, provides redress. But it is by no means so clear, as appears from the divergent opinions of high authority cited by Mr. Justice Horridge in "Harnett and Fisher" and from the judgment in the present case, that this doctrine applies to a medical man who, in the absence of contract, signs a certificate of lunacy. It is indeed singular, as Mr. Justice McCardie remarked, that a question which "stands upon the threshold" of actions such as that before him "has not received express and clear decision from the final appellate tribunal." The "exact cause of action" in these cases remains, in his opinion, undefined, and he was driven to form his decision upon inferences drawn from the *dicta* delivered in other judgments. There was no pretence of contract between the plaintiff and the defendant, but by this process and "in view of the weight of opinion" he felt that "he must hold that Dr. Dill owed Mrs. de Freville the duty of reasonable care." A more perplexing problem seems to be indicated by the Judge's suggestion that, while a doctor might owe such a patient care about certification, he might not be liable to the patient for negligence if he refused to certify a person actually of unsound mind who afterwards injured himself. The second contention of the defence borders on the province of metaphysics, and has been discussed with much subtlety and with dissenting judgments in "Everett and Griffiths" among other cases. It was that the defendant's certificate was not "the cause" of the plaintiff's detention— a view which leads us back to the doctrine of the "*novus actus interveniens*" in "Harnett against Adam and Bond." Mr. Justice McCardie states right out that, had he been free from authority, he would have considered that "the effective cause" was not the certificate, but the reception order. In his personal opinion the certificate was an essential requirement, but also it was no more than "a mere opinion," devoid in itself of operative force. The decision under the Lunacy Acts rests with the Justice, who can make it whatever the certificate may state. But on this point also the Judge deemed it his duty to yield to authority. He felt constrained to hold that the defendant's certificate was the cause of the plaintiff's detention.

The public will certainly share the hope which Mr. Justice McCardie expressed that the House of Lords will soon decide both these questions in a manner to end further ambiguities and uncertainties, and that, when the doctrine of causation is considered, the bearing of "Harnett against Adam and Bond" and the nature of "*novus actus interveniens*" will be fully examined. The whole subject of the detention and release of alleged lunatics unquestionably demands fresh investigation in view of modern progress in mental medicine and of certain recent disclosures. Abuses are extremely rare, but the possibility of abuse exists, and mistakes made in good faith do occasionally occur. To commit a person who is really sane to detention for an indefinite period in the company of lunatics, or to keep in such detention a patient who has become sane, is to inflict upon an innocent sufferer a doom of almost unimaginable horror. Detention, on the other hand, commonly gives real lunatics their best chance, and often their only chance, of recovery, and it is indispensable to the safety of others. But detention is usually ordered upon certificate, and whether a certificate is the "*causa causans*" of a detention, or is merely a "*causa sine quâ non*," it almost always, and rightly, has great weight with the Justice in making the order. It is therefore of the utmost importance that medical men should not be deterred from giving certificates in proper cases and with a proper degree of care. Generally diagnosis of mental illness is simple and certain; but the ablest and the most experienced of experts in mental diseases are themselves the first to acknowledge the extreme difficulty of

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decision where patients are hovering on the dim and wavering line which divides mental unsoundness from eccentricity. The great majority of certificates are necessarily signed by country practitioners and not by specialists. They have to judge by such knowledge as they possess and by their common sense, and sometimes the decision must be prompt. It is a significant fact that neither the Lunacy Acts, nor the Courts nor the medical text-books give any definition of unsoundness of mind or of insanity, nor do mental specialists, as witnesses, seem able to do so. The plain sense and justice of the matter seems to be that in all cases of certification, contract or no contract, medical men should be held strictly responsible for reasonable care as well as for good faith, but that the present remedy for alleged negligence or misfeasance is open to abuse and cries for immediate reform.

[Extract from the *Times*, July 8, 1927.]

Occasional Notes.

The Evolution of the Reception Orders for Mental Patients in England and Wales: A Historical Survey.

Introduction.

The foundation of English lunacy law, *i.e.*, statute law apart from the Prerogative of the Crown and lunacy regulation, was laid in 1774, when Parliament passed an Act for "the Regulation of Madhouses" (14 Geo. III, c. 49). This Act laid the groundwork for a central lunacy authority, the licensing of all mental institutions and their visitation, and the necessity for an admission order supported by medical certificates and other evidences of the patient's insanity.

The Act was designed for the protection of the upper and middle-class insane accommodated in licensed houses. Prior to this such patients had often been shamelessly exploited, neglected or cruelly treated. It also aimed at deterring relatives and others from confining sane persons in mental institutions to further criminal or other nefarious purposes.

It did not apply to pauper patients, who continued to be admitted to licensed houses merely on the order of the overseers of the Poor—no medical certification of insanity being required. Dangerous lunatics were classified with " rogues, vagabonds and other idle and disorderly Persons," and arrested. Criminal lunatics were confined in prisons. For the most part the poor insane were either at large or in workhouses, jails, houses of correction, etc. Their treatment, wherever they were housed, was a disgrace to a Christian nation.

Many years went by before rich and poor stood anything like equal before the lunacy law, nor has complete equality yet been reached.

The first legislation for the protection of the pauper and criminal insane occurred in 1808 when Parliament passed Mr. Wynn's Bill (48 Geo. III, c. 96), which authorized magistrates, if they were so

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