

IN THE PRIVY COUNCIL

nNo.25 of 1979

O N A P P E A L

FROM THE COURT OF APPEAL OF JAMAICA

B E T W E E N :

CHARLES WOODROW WRIGHT Appellant
(Plaintiff)

- and -

THE GLEANER COMPANY LIMITED Respondent
(Defendant)

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CASE FOR THE APPELLANT

RECORD

1. This is an Appeal from a Judgment of the Court of Appeal of Jamaica (Henry, Melville and Carberry, JJ.A.) dated the 12th day of July 1978 setting aside the verdict and Judgment of the Supreme Court dated the 21st day of May 1975.

p.42

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2. The action was brought by the Appellant as Plaintiff in 1973 to recover damages for a libel published in the "STAR" Newspaper of which the Respondent are the Proprietors. The libel complained of appeared in the issue of the said newspaper under the heading "CRUEL HUBBY CAUSED WIFE TO HAVE MANY MISCARRIAGES". The impugned passage in the article reads as follows :-

pp.63-65

p.65,
11.22-30

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"Petitioner said that respondent became ill in December, 1971 and was admitted to Bellevue Hospital as a patient of Dr. KENNETH ROYES. He left the hospital before he was discharged and accused her of conniving with the doctor to keep him there.

Petitioner told the court that because of her husband's behaviour, she herself

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had to consult Dr. Royes."

In paragraph 4 of the Statement of Claim, the Appellant pleaded with respect to the impugned passage in the article, as follows :-

p.2, 11.11-27

"By the said words the Defendant meant and was understood to mean that the Plaintiff was mentally ill and was hospitalised in a mental institution.

PARTICULARS PURSUANT TO SECTION 170
(2) of CAP. 177

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- (a) The Plaintiff was the Respondent in Divorce proceedings in respect of which the aforementioned words were published
- (b) The only Bellevue Hospital in Jamaica is a Mental Asylum. Dr. Kenneth Royes was at all material times a Psychiatrist and Senior Medical Officer (acting) attached to the Bellevue Hospital."

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3. Sections 2, 3, 9, 10, 11-17 and 29 of the MENTAL HOSPITAL ACT of Jamaica (copies of which are annexed to this case) provide for the detention of lunatics and otherwise insane persons likely to be a danger to the public in the Bellevue Hospital which is the only mental institution in Jamaica.

4. The principal questions involved in the appeal are :-

p.50, 11.29-43

- (1) whether or not, in the absence of a transcript of the Judge's summing up to the jury, and the absence of a note of the Judge's recollection of his summing up, the Court of Appeal was entitled to draw inferences of misdirection and non-direction, from the notes made by the Judge for his summing up.
- (2) Whether or not, the complaint of the Respondent, to wit, "that the learned Trial Judge misdirected the Jury on the issue of justification", (contained in ground 2 of their Notice

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of Appeal), was one which the Court of Appeal could properly entertain in the light of (1) above.

- 10 (3) Whether or not, the Court of Appeal should have ordered a new trial on the ground of non-direction and/or insufficient direction in the absence of evidence of any request by counsel for the Respondent to the Judge to give the direction allegedly omitted; also in the absence of any evidence of any attempt by Respondent's counsel to draw the Judge's attention to the alleged insufficiency of a direction. The question here is related to the plea of justification.
- 20 (4) Furthermore, whether or not, it was open to the Respondent to allege inadequacy of the questions put to the jury by the Judge, having regard to the fact that such questions had been agreed by counsel for both parties before they were so put.
- 30 (5) Whether or not, the Court of Appeal adequately considered the sting of the libel, that is, that the Appellant had been hospitalised in a mental institution, that is, Bellevue Hospital. If so, whether or not, the Court of Appeal was right in setting aside a verdict of the jury, assuming that there was evidence on the record that there was an insufficient direction by the Judge, upon the plea of justification.
- 40 5. The action was heard by Mr. Justice Wilkie and a special jury on the 19th, 20th and 21st of May, 1975.
6. The facts which emerged from the evidence at the trial were summarised by Carberry J.A. in the judgment of the Court of Appeal as follows :-

p.46,11.18-22

p.3,11.35-41
p.52,11.34-end
pp.54-58
p.58,11.1-26

p.52,11.2-11

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On Monday January 29, 1973, the Appellants published in their "Star" newspaper an account of the undefended divorce petition brought by the Respondent's wife against him and heard before Mr. Justice Rowe on Friday the 26th January, 1973. The Report was published under the caption: "Cruel hubby caused wife to have many miscarriages." The divorce was on the ground of cruelty, and after a preliminary paragraph purporting to sum up the story, it consisted of report of the wife's evidence which broadly speaking occupies two pages of foolscap, and a short paragraph setting out the evidence of her supporting witness Dr. Kenneth Royes as to her condition as a result of the Respondent's treatment. The case was a distressingly average type of case, and no exception was taken to the headline or content, save as to a short paragraph taken from the account of the wife's evidence. It reads :-

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p.47,11.1-24

"Petitioner said that Respondent became ill in December, 1971, and was admitted to Bellevue Hospital as a patient of Dr. Kenneth Royes. He left the hospital before he was discharged and accused her of conniving with the doctor to keep him there."

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The Respondent's Statement of Claim alleged:-

"4. By the said words the Defendant meant and was understood to mean that the Plaintiff was mentally ill and was hospitalised in a mental institution.

Particulars pursuant to Section 170(2) of Cap.177

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(a) The Plaintiff was the Respondent in the Divorce proceedings in respect of which the aforementioned words were published.

(b) The only Bellevue Hospital in

Jamaica is a mental asylum.

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(c) Dr. Kenneth Royes was at all material times a Psychiatrist and Senior Medical Officer (acting) attached to the Bellevue Hospital".

p.48,11.40-end

10 At the Trial the Plaintiff/Respondent was the principal witness. He claimed that the particular paragraph complained of had caused him great embarrassment at his work place and elsewhere. He is an engineer by profession and claimed that his workmen or some of them possibly workmen in the plant not under his supervision wrote up rude paint and chalk marks on the wall calling him the "Bellevue man", "mad baby killer" and so forth. He denied on oath that he was ever a patient of Dr. Royes, or had ever been treated by

20 him. He having been a patient of Dr. Mendez in August 1972 and that he was admitted to St. Joseph, but claimed that it was for the treatment of shingles only. Dr. Royes was a foremost psychiatrist attached to Bellevue Asylum and he would consult him only for mental illness. While at St. Joseph's he was fully aware of what happened there and was 'collective'. He denied having been seen or treated by

30 Dr. Royes, and denied receiving injections or drugs from him or on his orders. He had been in St. Joseph's for about two weeks and had left in his pyjamas and dressing gown. He discharged himself from the Hospital. He equated treatment by Dr. Royes and Bellevue, and his complaint was that the offending passage meant that he had lost the chance of a favourable business deal because of it. He knew

40 that Dr. Mendez was off the island, and that Dr. Royes was dead.

The note taken by Mr. Justice Rowe of the undefended divorce case was put in evidence by consent. It occupies some three and a half pages of foolscap. The jury had the chance to compare it with the Defendant/Appellant's version in the "Star" newspaper.

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Rose, J.'s note of the wife's evidence corresponding to the passage complained of reads thus :

p.78,11.31-43
p.49,11.28-41

"In July 1972, husband was ill in hospital. I arranged for him to see Dr. Royes as Respondent was very depressed. Respondent agreed to see Dr. Royes. After a few occasions he ceased. After a while, Respondent wanted to go home. He wanted his clothes and his keys. He came out of Hospital in dressing gown and when he reached home he kicked down door and locked up telephone. My colleague was terrified; I felt embarrassed. I began to feel that I had reached physical and mental end of road.....".

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p.49,11.42-end

The longhand note taken by a trial judge hearing an undefended divorce is at best of times short and condensed. It does not purport to be a verbatim note of the evidence given. The note made by Rowe J. does not mention the name of the hospital. If the name of the hospital was not mentioned but the name of Dr. Royes was, it is easy to see how a reporter could have assumed that the hospital was Bellevue, with which Dr. Royes had become identified. Neither the reporter nor the wife was called to give evidence. It is clear however that Bellevue was wrong: the hospital was St. Joseph's. The date was also wrong, it was July 1972, (Plaintiff/Respondent says 5th to 18th August), not December, 1971. So the newspaper report was incorrect on both these points.

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p.50,11.1-23

The trial took a rather remarkable course. At the close of the case for the Plaintiff counsel for the Defence showed to counsel for the Plaintiff the medical record of the Plaintiff. It is not clear whether these were the records from St. Joseph's Hospital, or Dr. Mendez, probably the former. On the strength of this, Plaintiff's counsel formally admitted that Plaintiff had been admitted to St. Joseph's Hospital for shingles and paranoid depression, that he was referred to Dr. Royes, who came into the hospital and himself administered one injection. It appears that he visited the Plaintiff whose counsel admitted that Plaintiff was seen by Dr. Royes, but added that

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"it doesn't affect the gravamen of my case."

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7. The sting of the libel complained of by the Appellant as appears in the record of his examination in chief and cross-examination is follows :-

10 "I was upset by this emphasis of Doctor Kenneth Royes as a well known or a foremost psychiatrist attached to the Bellevue and Bellevue was a mental Asylum. Doctor Kenneth Royes was attached to it. When I saw the report the following day I consulted my solicitor Mr. K.C.Burke, 47 Duke Street that is 30th January 1973. Went to work the following day I drove a car, park my car. Company gave me a shelter Parking Lot to park my car below my office with my name in the parking area. Parked my car there - that day 30th January 1973. Noticed on my car as I parked my car above my name I saw something written.

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p.10,11.1-17

Writing on the wall was "Madman, go back to Bellevue,".

p.11,11.21-22

30 Made report to company Safety Officer Mr. Roy Leon about these writings. Asked him to take photographs of the markings on the wall. Can't remember the day that he did so. He had the company's camera. He took 2 different sets of photographs Court adjourns to 2 p.m. Resumes 2 p.m. Jury checked all present. Charles Wright (still on oath)

p.12,11.17-34

40 In chief continues (2 photographs shown to witness) These are the photographs he took. It is an instamatic camera photograph together photograph tendered in evidence as exhibit. Writing on one photograph is "Wright the Bellevue man" and second "Wright the mad man".

(separately produced)

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p.14,11.1-6

Received telephone calls they were chiefly related to my being in Bellevue. Sometimes the caller said "You mad man" and hang up even at 11.30 p.m. at nights. There was one call - rude used indecent language and said Bellevue.

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.....

p.15,11.8-13

Ques. Did the reference to Bellevue upset you.

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Ans. Certainly it did.

Ques. If it had said Saint Josephs would it have upset you.

Ans. Not as much.

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p.16,11.56-58
p.17, 1.1

Ques. The most upsetting part of column 5 was the refer to Bellevue.

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Ans. The entire paragraph was abominable and disgusting. "

8. Carberry J.A. said in the judgment of the Court of Appeal :-

p.51,11.41-end
p.52, 11.1-2

"The Bellevue Hospital is so well known as the only asylum or explicit mental hospital in Jamaica that at first glance I myself would have thought the words defamatory in their ordinary and natural meaning. Further, the status of Bellevue Hospital is a matter of Statute; it is expressly so recognized and treated in The Mental Hospital Act. I would have been prepared to treat its status and function also as a matter of which judicial notice could be taken. (Though the late Dr. Royes was almost equally well known, I agree that some proof of the nature of his specialist practice would be required)."

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p.27

9. Mr. Bancroft Fitzgerald Smelle for the Plaintiff gave evidence to the effect that the Plaintiff according to his records kept by him

in the company for which the Plaintiff works, the Plaintiff was not absent from work on any working day in December 1971. The Plaintiff's case was closed at that point.

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10. The Respondent did not tender any evidence.

p.29,11.5-16

11. Counsel for the Plaintiff and for the Respondent agreed the questions which the learned Trial Judge should submit to the jury.

10 12. The questions agreed by counsel were put by the learned Trial Judge to the jury. The questions and answers are as follows :-

p.52,11.2-end
p.50,11.46-end
p.51,11.1-4

1. Are the words in their natural and ordinary meaning defamatory to the Plaintiff? Answer. Yes.

2. Are the words a fair and accurate report of the proceedings? Answer: No.

20 3. Are the words substantially true? Answer: No.

4. Is the apology sufficient? (No answer given)

5. If yes how much damages? Answer: \$2,000.00

The learned Trial Judge entered judgment for the Appellant accordingly.

p.29,11.4-5

30 13. The Respondent appealed on the 30th June 1975 against the judgment of the Supreme Court. The grounds of appeal were as follows :-

" 1. That the verdict of the Jury is unreasonable and cannot be supported having regard to the evidence and the admissions on behalf of the Plaintiff-Respondent.

2. That the learned Trial Judge misdirected the Jury on the issue of justification.

3. That the learned Trial Judge

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misdirected the Jury on the issue of whether or not the report was a fair and accurate report.

4. That the learned Trial Judge failed to direct the Jury on the effect of admission made on behalf of the Plaintiff-Respondent.

5. That the learned Trial Judge erred when he directed the Jury to effect that the Defendant-Appellant had tendered an apology.

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6. That the learned Trial Judge failed to direct the Jury on the principles of Law applicable where a Defendant is prevented by the conduct of a Plaintiff from tendering an apology.

7. That the award of damage by the Jury is manifestly excessive in all the circumstances."

p.45,11.30-33

14. The Court of Appeal allowed the appeal on the 12th July 1978 and ordered a new trial; it also ordered that the Respondent should have the costs of the appeal to be agreed or taxed and that the costs below should abide the result of the new trial. The court gave the reasons for its judgment on the 21st February 1979. The Court of Appeal rejected grounds 1 and 3. It did not deal with grounds 5 and 6. The Court made passing references to ground 7 and upheld grounds 2 and 4. In the reasons for judgment, the Court had the following to say of grounds 2 and 4:

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p.46-61

"Remembering that what we have here is the "outline" of the summing-up and that what is alleged in effect is "non-direction" we have found it difficult to decide. But we have anxiously searched for directions on these matters: Was the sting of the libel that the Plaintiff was mentally ill and was hospitalized in a mental institution?

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p.57,11.32-end
p.58,1.1

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.....
While the learned Trial Judge did direct the jury on many of the matters relating

to the plea of justification that have
 been mentioned above, we came to the
 conclusion that he did not sufficiently
 direct them as to what was the gist of
 the libel, and invite their attention
 to the various "gists" that might be
 alleged to be fairly found in it, and
 as to whether the Defendant/Appellant
 had proved substantially that which was
 10 complained of. As conducted the case
 presented certain difficulties. It
 may be doubtful if the jury fully
 appreciated the admission that was made
 by the Plaintiff's counsel, or understood
 the extent to which it had been shown
 that the Plaintiff had denied or
 concealed the truth, wittingly or
 unwittingly in the witness box, and if
 20 unwittingly, did this not in itself
 lend support to the charge that he was
 "mentally ill"? The question of whether
 there has been substantial justification
 is however one for the jury, properly
 directed. We are not, I think, entitled
 to substitute our own views upon the
 matter, and on this score we were of
 opinion that there must be a new trial
 and so ordered on the 12th July, 1978.
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 "On the issue of damages we incline to
 the view that the directions we have
 seen in the Judge's outline summing-up
 were inadequate. Assuming for the
 moment that the jury did find (properly
 directed) that the sting of the libel
 had not been fully justified and that
 the report was inaccurate because it
 40 mentioned Bellevue as the hospital,
 while the witness had not specified which
 hospital it was, we think that the jury
 should have been advised that the
 damages would lie not for imputing mental
 illness, treated by Dr. Royes, (with
 whatever connotations that carried),
 for that was admitted, but only for the
 further suggestion that it was severe
 enough to warrant admission to the
 50 state mental institution rather than
 to a private hospital. How much this
 would add to the sting of proven

p.60,11.36-41
 p.61,11.1-26=

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admission to a private hospital for paranoid depression and treatment therein by the doctor in charge of the state mental institution would be the question to which the jury should have been invited to address their minds. Having regard to the view that we have come to as to the direction or non-direction on the issue of justification and the fact that we have ordered a new trial, it is not necessary to express an opinion on the question of whether or not the damages here awarded (\$2,000.00) was excessive or not, beyond noting with some interest that the Plaintiff, through his counsel, exercised his right to withhold consent to this Court assessing damages, though he complained that the damages were "small".

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In the event we have allowed the appeal and ordered a new trial. The Appellant will have the costs of the appeal. The costs of the first trial will abide the result of the new trial.

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I think it would be proper to express the hope that having regard to the history of this piece of "prestige" litigation, the parties will on the next occasion take the precaution of having a shorthand note made of the summing-up of the learned Trial Judge."

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15. It is submitted that the Court of Appeal erred in speculating as to whether there was or was not an insufficient direction on the question of justification. It recognised, in its reasons for judgment, that all it had before it was a note made by the Judge for his summing-up.

16. It is submitted that the Court of Appeal was inconsistent in its reasoning in that one of the questions which the Judge proposed to leave to the jury, agreed to by counsel was :

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p.50,11.52-53

"Are the words substantially true?
Answer: No. "

but the Court of Appeal went on to say :-

p.52,11.2-11

"However, in any event, the questions

are formulated for the jury were agreed by the respective counsel, no question directed to the innuendo as opposed to the ordinary and natural meaning was left to the jury and we do not consider that at this stage it is open to the Appellants to contend that an inappropriate question was left to the jury: See Seaton v. Burnand (1900) A.C. 135 at 143. "

10 "Unfortunately no verbatim note was taken of the summing-up. We have been presented with outline notes made by the judge as to what he proposed to say." p.50,11.29-32

17. The Appellant humbly submits that the decision of the Court of Appeal of Jamaica dated the 12th day of July 1978 should be set aside and that the Judgment of the Supreme Court of Jamaica, dated 21st day of May 1975, be restored; and that the costs of the appeal to Her Majesty in Council and the costs in the Court of Appeal of Jamaica, be paid by the Respondent to the Appellant.

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18. The Appellant submits that the appeal be allowed for the following, amongst other,

R E A S O N S

1. BECAUSE the Court of Appeal erred in speculating as to what were the actual directions given by the Trial Judge to the jury in the absence of any transcript of the Trial Judge's summing up, or a note by him of his recollection of his actual summing up to the jury.

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2. BECAUSE the Court of Appeal erred in drawing inferences of misdirection and non-direction from a note which the Trial Judge prepared for his summing up, and to which he appended a head note, that his note for summing up, was only an outline and not exhaustive.

p.50,11.29-32

p.29,11.39-40

3. BECAUSE the Court of Appeal erred in finding that there had been an insufficient direction on the plea of justification, when in fact, it did not have before it a transcript or a note by the Judge of his recollection of his summing up.

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p.2,11.11-14

4. BECAUSE the Court of Appeal erred in failing to appreciate that the sting of the libel was that the Appellant had been hospitalised in a mental institution.

p.52,11.2-4

5. BECAUSE the Court of Appeal erred in setting aside the verdict of the jury and the judgment of the Supreme Court on the ground of non-direction when at the trial (a) the questions put by the Judge to the jury, had been agreed by counsel for both parties and (b) no request was made by counsel for the Respondent to the Judge for any additional direction.

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BERTHAN MACAULAY

MARGARETTE MACAULAY

ANNEXURE

THE MENTAL HOSPITAL ACT

Section 2 (1) The expression, "Bellevue Hospital" shall include any lands, tenements, or hereditaments, and the buildings thereon, which may from time to time be notified in the Gazette by the Minister to be, or to form part of Bellevue Hospital under this Act.

10 (2) In this Act :-

"certifying medical practitioner" means any duly registered medical practitioner so designated by the Minister pursuant to section 8A;

"the Director" means the Chief Medical Officer of this Island;

"mental health officer" means any person so designated by the Minister pursuant to section 8A.

20 Board of Visitors

Section 3 It shall be lawful for the Minister to constitute a Board of Visitors of Bellevue Hospital, to consist of such persons as he shall from time to time appoint, of whom three shall be a quorum. The Minister may from time to time add persons to and remove persons from the Board of Visitors as he may think fit, and may from time to time appoint any member of the Board to be Chairman thereof. The Board of Visitors so constituted, and the members thereof, shall have and exercise all the powers, duties, liberties, privileges, and rights given to the Board of Visitors and the members thereof under this Act.

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Admission and Detention of Lunatics

40 Section 9 Where any constable finds any person in a public place or wandering at large, in such a manner or under such circumstances as to denote that

he is of unsound mind, that constable may without a warrant take such person in charge and accompany him or arrange for him to be conveyed with all reasonable care and dispatch to a government clinic or hospital for any attention which may be necessary.

Section 10 Any Justice, upon information being laid before him on oath, that any person within the limits of his jurisdiction has been or is wandering at large, and is deemed to be of unsound mind, and that it will be dangerous to permit such person to continue to wander at large, or that it would be better for such person that he should be detained in Bellevue Hospital, may issue his warrant to apprehend such person and bring him before any Justice. 10 20

Section 11 A Justice before whom any person is brought under section 10, shall forthwith call to his assistance a certifying medical practitioner, and may summon witnesses; and if upon examination of the alleged lunatic, and the taking of evidence, it shall appear that he is of unsound mind and that it would be better for him that he should be detained in a mental hospital, he may by order direct such person to be conveyed to and detained in Bellevue Hospital. The said examination may be adjourned from time to time, if necessary, for a period in the whole not exceeding ten days, during which time the alleged lunatic shall be detained in some convenient police station or lock-up, or other suitable place. 30 40

Section 12 Any person to whose knowledge it may come that any person within the parish not wandering at large is thought to be of unsound mind, and is not under proper care or control, or is cruelly treated or neglected by any relative or other person having the care or charge of him, shall give information thereof on

oath to a Justice.

- Section 13 The Justice, on receiving such information, may himself visit the alleged lunatic; and shall, whether making such visit or not, direct and authorize two duly registered medical practitioners to visit and examine the alleged lunatic, and to certify their opinion as to his mental state.
- 10 Section 14 If upon receiving the certificate of such medical practitioners, or after such other and further inquiry as the Justice may think necessary, he is satisfied that the alleged lunatic is of unsound mind, and is not under proper care and control, or is cruelly treated or neglected by any relative or other person having the care or charge of him, and that it is better for him that he should be detained in Bellevue Hospital, the Justice may by order direct that he be conveyed to and detained in Bellevue Hospital.
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- Section 15 A Justice making an order under section 11 or 14, may suspend the execution of the order for such period, not exceeding fourteen days, as he may think fit; and in the meantime may give such directions, or make such arrangements for the proper care and control of the lunatic, as he may consider proper.
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- Section 16 Nothing in this Act shall prevent any relative or friend from retaining or taking care of a lunatic as to whom an order might be or has been made under this Act, if such relative or friend satisfies the Justice before whom the lunatic has been brought, or before whom the information has been sworn, that such lunatic will be properly taken care of.
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- Section 17 Every order for detention in Bellevue Hospital under section 11 or 14 shall be according to the form in the First Schedule, and shall be accompanied

by a statement of particulars according to the form in the said Schedule, to be drawn up and signed by the Inspector of Poor or other person who may have laid the information or brought the lunatic before the Justice. The order shall also be accompanied by the certificate of the medical practitioner or the certifying medical practitioner, as the case may be, who made or assisted at the examination, which certificate shall be according to the form in the Second Schedule, and the order, with the accompanying documents, shall be forwarded with the lunatic to Bellevue Hospital and left there with the Senior Medical Officer. 10

Reception from Public Institutions

Section 29 (1) It shall be the duty of the Senior Medical Officer of Bellevue Hospital to receive into Bellevue Hospital from any public institution, any person concerning whom the medical officer of the institution from which the person is sent has given a certificate that such person is insane, and a certifying medical practitioner has also given a certificate that he has at least on two occasions examined such person as to his mental condition, and that such person is in his opinion insane, and a fit subject to be confined in Bellevue Hospital: 20 30

Provided, that such two certificates shall be sent with any such person to Bellevue Hospital, and shall be given to and left with the Senior Medical Officer of Bellevue Hospital as his authority for receiving such person; and such certificates may be in the form in the Second Schedule, or to like effect. 40

(2) In case any person who may be sent to Bellevue Hospital for admission shall appear to the Senior Medical Officer to be an unfit subject for admission, or shall so appear to him

within seven days of his admission, the Senior Medical Officer may refuse to receive such person in or may discharge such person from the institution, as the case may be. The Senior Medical Officer shall have power to send any such person, if sick, to the Public Hospital or if a leper, to the Hansen Home or if destitute, to an alms-house, and shall at the same time enter his reasons for so acting in the books of Bellevue Hospital, a copy of which shall be forthwith transmitted to the Minister.

(3) Any person admitted to Bellevue Hospital may be at any time discharged therefrom if, in the opinion of the Senior Medical Officer, it shall be safe and expedient to do so.

