

1941

## RE CARNOCHAN

\* May 23.

\* June 24.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

*Habeas corpus*—Appeal taken, pursuant to s. 8 of *Habeas Corpus Act*, R.S.O., 1937, c. 129, from dismissal of application for order discharging applicant from detention in mental hospital—Powers of Court of Appeal as to procedure—Direction for examination and report by doctors—Sufficiency of certificates for admission of a patient to hospital, under s. 20 of *Mental Hospitals Act*, R.S.O., 1937, c. 392, as to examination and investigation made.

On an appeal, taken pursuant to s. 8 of *The Habeas Corpus Act*, R.S.O., 1937, c. 129, from the dismissal of appellant's application (made following the issue of a writ of *habeas corpus*) for an order discharging him from custody in an Ontario hospital where he was detained as being mentally ill, the Court of Appeal for Ontario, after reserving judgment, directed that appellant be examined separately by two doctors appointed by the Court, not connected with any Ontario hospital for persons mentally ill, and then adjourned the appeal *sine die*. The two doctors made their reports, finding appellant to be mentally ill; whereupon the Court of Appeal dismissed the appeal. Appellant appealed to this Court.

*Held*: Under s. 8 (2) of said Act, the Court of Appeal had the power to proceed as it did; and the present appeal from its order should, upon consideration of said doctors' reports, be dismissed.

A point raised in the Court of Appeal and in this Court (and which, it was held, could, in a proceeding of this nature, be so raised, though not raised before the Judge of first instance) was that appellant was improperly detained because he was not a properly certificated patient under s. 20 of *The Mental Hospitals Act*, R.S.O., 1937, c. 392, in that the certificates upon which he was originally admitted to the hospital did not "show clearly" that the medical practitioner "after due inquiry into all the necessary facts relating to the case of the patient, found him to be mentally ill." No opinion was expressed in the Court of Appeal or in this Court as to the sufficiency of the certificates in question; but this Court pointed out

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\* PRESENT:—Duff C.J. and Rinfret, Crocket, Kerwin and Taschereau JJ.

that "it might be difficult successfully to contend that a certificate did 'show clearly' that due inquiry was made into all the necessary facts relating to the case of the patient, if a medical practitioner signing a certificate considered that the patient had delusions without any investigation on the doctor's part as to whether they were in fact delusions."

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· APPEAL from the judgment of the Court of Appeal for Ontario dismissing the appellant's appeal from the order of Hogg J. (1) dismissing his application (made following the issue of a writ of *habeas corpus*) for an order discharging him from custody in the Ontario Hospital at Brockville, where he was detained as being mentally ill.

*S. Berger K.C.* and *H. Solway* for the appellant.

*C. P. Hope K.C.* for the respondents.

The judgment of the Court was delivered by

KERWIN J.—This is an appeal by Robert Kenneth Carnochan from an order of the Court of Appeal for Ontario affirming the dismissal by Hogg J. of the application of the appellant for an order discharging him from custody in the Ontario Hospital at Brockville. The only ground stressed before us was that the appellant never was, and is not now, a proper certificated patient under section 20 of *The Mental Hospitals Act*, R.S.O., 1937, chapter 392, and that he is, therefore, improperly detained and should be discharged.

The certificates upon which the appellant was admitted to the institution were made upon the prescribed forms but it is said that they were not sufficient because each does not, to quote subsection 2 of section 20,

state and show clearly that the medical practitioner \* \* \* after due inquiry into all the necessary facts relating to the case of the patient, found him to be mentally ill.

Emphasis was placed upon the words "show clearly." In each certificate appears paragraphs 1 and 2. These, together with the answers made by one doctor, are as follows:—

1. Facts indicating mental illness observed by myself:

Appearance. Negative.

Conduct. Quiet and rational. Seems to have fixed delusions as to the infidelity of his wife and says his mother, brother

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and sister side with her. Also will not definitely state  
 Conversation. that his wife may have put poison in his food but that  
 he has some grounds for thinking so.

2. Other facts, if any, indicating mental illness communicated to me  
 by others:

(State from whom the information received.)

[Not answered.]

In the other certificate, these paragraphs and the answers  
 read:—

1. Facts indicating mental illness observed by myself:

Appearance. Nervous, suspicious.

Conduct. Talkative, agitated.

Conversation. Pertaining to supposed infidelity of wife and fact which  
 to the patient's mind confirms his theory of her infidelity  
 and illegitimacy of their child.

2. Other facts, if any, indicating mental illness communicated to me  
 by others:—

(State from whom the information received.)

Brief outline of history for past 2 years obtained from Dr. McKerracher  
*re* patient's belief that his wife has committed adultery with patient's  
 brother, that child is illegitimate, that he is actually impotent, that wife  
 has fed him saltpetre, etc., causing monthly rectal pains.

This point was not dealt with by Mr. Justice Hogg  
 because at that time counsel for appellant admitted "that  
 all the terms and provisions of section 20 of the said  
 statute were complied with." The question was raised,  
 however, before the Court of Appeal, and in a proceeding  
 of this nature there is nothing to prevent this being done.  
 We do not understand that the Court of Appeal took any  
 different view. The formal order of that Court states:—  
 "this Court expressing no opinion or conclusion thereon."  
 After reserving judgment, the Court of Appeal directed  
 that the appellant be examined separately by two doctors  
 appointed by the Court, not connected with any Ontario  
 Hospital for persons mentally ill, and then adjourned the  
 appeal *sine die*. The two doctors made their reports, find-  
 ing the appellant mentally ill, whereupon the Court of  
 Appeal dismissed the appeal.

A writ of *habeas corpus* had been issued, following which  
 the motion was made before the judge of first instance,  
 and the appeal from the latter's order to the Court of  
 Appeal was taken pursuant to section 8 of *The Habeas  
 Corpus Act*, R.S.O., 1937, chapter 129. Under subsection  
 2 of this section, that Court had the power to proceed  
 as it did, and consideration of the reports from the two  
 doctors appointed by the Court of Appeal satisfies us that

the proper order has been made in the circumstances. We express no opinion as to the sufficiency of the certificates under which the appellant was originally committed to the Ontario Hospital at Brockville, but deem it proper to point out that it might be difficult successfully to contend that a certificate did "show clearly" that due inquiry was made into all the necessary facts relating to the case of the patient, if a medical practitioner signing a certificate considered that the patient had delusions without any investigation on the doctor's part as to whether they were in fact delusions.

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The appeal should be dismissed without costs.

*Appeal dismissed without costs.*

Solicitors for the appellant: *Berger & Greenberg.*

Solicitor for the respondents: *C. P. Hope.*

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