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False Imprisonment--Restraint of Mentally Ill Persons (Jillson v. Caprio, 181 F.2d 523 (D.C. Cir. 1950))

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In the principal case the Appellate Division, in holding that the testimony of the crew on the eastbound train failed to raise an issue of fact on the question of defendant's negligence, relied chiefly on two cases, *Foley v. N. Y. Central & H. R. R. R.*[9] and *Culhane v. N. Y. Central & H. R. R. R.*,[10] which stand for the proposition that testimony negative in character does not raise an issue, as against affirmative testimony, when it appears that the attention of the witness so testifying was not directed to the fact at the time. In the *Foley* case it appeared that the position of the witnesses was unfavorable, while in the *Culhane* case the witnesses were the parties struck by the train.

It is to be observed that the instant case is distinguishable from both the *Culhane* and *Foley* decisions. In the *Culhane* case the plaintiff's agent was the witness, while here the witnesses were disinterested parties. In the *Foley* case the witnesses were not in a favorable position, while in the principal case it appears from the evidence that the eastbound train was abreast of the westbound at the time the warning is alleged to have been sounded. The trainmen aboard the eastbound were thus in such proximity to the whistle that, in the nature of things, they probably would have heard it had it been sounded, or so a jury might have found.

It is submitted that the court, recognizing from the nature of the affirmative and negative testimony offered that reasonable minds could differ on the presence or absence of a warning signal, was correct in referring the question of defendant's negligence to a jury.

FALSE IMPRISONMENT — RESTRAINT OF MENTALLY ILL PERSONS.—At the instance of the husband, defendant psychiatrist visited the plaintiff wife. After the husband told of alleged violent threats made by the wife, which she denied, the defendant called the police. The plaintiff refused to go with the police because they had no warrant. They nevertheless overpowered her and took her to a hospital from which she was later released as sane. The police had acted upon the defendant's representation of her insanity and under his direction. Plaintiff brought suit for false imprisonment. The District of Columbia Code permits the arrest of an alleged mentally ill person without a warrant, if found in a public place; [1] or if the person

proached the crossing. There was also testimony of the conductor, engineer and fireman that the whistle was blown. As the majority of plaintiff's witnesses were so located that they would probably have heard the whistle if it had been blown, there was a conflict of testimony with respect to defendant's negligence which was properly left to a jury." *Id.* at 381.

[9] 197 N. Y. 430, 90 N. E. 1116 (1910).

[10] 60 N. Y. 133 (1875).

[1] D. C. CODE § 21-326 (1940).

has homicidal or dangerous tendencies, though not found in a public place, on the affidavits of two persons and certificates of two physicians.[2] *Held,* directed verdict for defendant reversed and cause remanded. Arrest on the advice of one physician is not authorized by statute. *Jillson v. Caprio,* 181 F. 2d 523 (D. C. Cir. 1950).

In many jurisdictions, by common law principles, an alleged mentally ill person may be summarily restrained by a private citizen without court process, if at the moment he is dangerous to the community or to himself.[3] The danger must be present and imminent, otherwise the co-existing statutory procedure must be observed.[4] The restraint may continue for such time as is necessary to procure a court order for commitment in compliance with statutory procedure.[5] An alleged mentally ill person not manifesting those characteristics may not be restrained and liability for false imprisonment will exist despite the person's later commitment to a mental hospital.[6] The burden of justifying the summary arrest by proving the urgency and necessity for the action rests upon the one who caused the restraint.[7] Physicians, so acting, must exercise ordinary care and prudence and make the proper examination of the person's sanity,[8] otherwise the physician may be liable in a tort action because his duties are not judicial.[9] Confinement, when warranted, for a temporary period pending judicial proceedings is not a deprivation of the patient's liberty without due process of law.[10]

Statutory provisions governing the temporary restraint of alleged mentally ill persons vary markedly with the jurisdiction. The New York Mental Hygiene Law exemplifies a hospitalization procedure which balances the protection of the community and the rights of an alleged mentally ill person, with an absence of the characteristics of criminal proceedings. It applies to "any person alleged to be mentally ill to a degree which warrants institutional care." [11] The rules of procedure alter with the exigency, and are directed toward an

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[2] D. C. CODE § 21-327 (1940).

[3] Look v. Dean, 108 Mass. 116 (1871); Keleher v. Putnam, 60 N. H. 30 (1880); Anderdon v. Burrows *et al.,* 4 Car. & P. 210, 172 Eng. Rep. 674 (1830).

[4] Warner v. State, 189 Misc. 51, 68 N. Y. S. 2d 60 (Ct. Cl.), *rev'd on other grounds,* 272 App. Div. 954, 71 N. Y. S. 2d 559 (4th Dep't 1947), *rev'd on other grounds,* 297 N. Y. 395, 79 N. E. 2d 459 (1948).

[5] Colby v. Jackson, 12 N. H. 526 (1842).

[6] Look v. Dean, 108 Mass. 116 (1871).

[7] Emmerich v. Thorley *et al.,* 35 App. Div. 452, 455, 54 N. Y. Supp. 791, 793 (1st Dep't 1898); Scott v. Waken, 3 F. & F. 328, 334, 176 Eng. Rep. 147, 150 (1862).

[8] Ayers v. Russell *et al.,* 50 Hun 282, 3 N. Y. Supp. 338 (Sup. Ct. 1888).

[9] *Id.* at 289, 3 N. Y. Supp. at 341.

[10] "The State provides the best system its wisdom suggests, but so long as it must be administered by men, it cannot guarantee against occasional mistakes." *Id.* at 287, 3 N. Y. Supp. at 339.

[11] N. Y. MENT. HYG. LAW § 70.

observation period to determine the extent of the patient's illness and his need for further treatment.[12]

A patient may voluntarily apply for admission to a state hospital for a period of observation by signing a request,[13] or a state hospital may receive a patient on the certificate of one certified medical examiner[14] and the verified petition[15] of a relative provided the patient consents.[16] Provision is made to admit a person to a state hospital, who, in the opinion of the county commissioner of health or health officer,[17] after a personal examination, is dangerous to himself or others and needs immediate care and treatment.[18] The normal procedure, however, is by application to the judge of a court of record to order, in his discretion, a patient to a state hospital for an observation period.[19] Such application must be accompanied by a verified petition and certificates of two qualified medical examiners.[20] If a person is dangerous or where it would be for his benefit to receive immediate care, an emergency proviso permits admission of a patient to a state hospital for a period of ten days, upon a verified petition and certificates of two certified medical examiners.[21]

In certain overpopulated communities of the state, such as the City of New York,[22] the procedure for admitting a patient to a city hospital for observation pending possible hospitalization in state institutions, has been modified to facilitate the needs of the locality.[23] A person who, in the opinion of the chief resident alienist, needs

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[12] *Cf.* Quarterman v. Quarterman, 179 Misc. 759, 39 N. Y. S. 2d 737 (Sup. Ct. 1943). The patient was committed to a State hospital pursuant to provisions of the New York Mental Hygiene Law. The court said: "Such a proceeding has a distinct object in view, to wit, the care and treatment of the patient and the protection of the public. It is not designed as a substitute for an inquisition, and an order entered thereon does not effect an adjudication of incompetency."

[13] N. Y. MENT. HYG. LAW § 71. (A person can be detained for a period not exceeding 60 days and thereafter until 15 days after receipt of a request to leave.)

[14] N. Y. MENT. HYG. LAW § 19. (A licensed physician with at least three years practice in his profession who is certified by the judge of a court of record in a form prescribed by the commissioner of health).

[15] N. Y. MENT. HYG. LAW § 74. (A statement of facts upon which the alleged mental illness is based and the reason for the requested order).

[16] N. Y. MENT. HYG. LAW § 73; OPS. ATT'Y GEN. 265 (1946). (A patient should not be admitted to a state institution pursuant to this section if there is any objection on the part of such patient.)

[17] N. Y. MENT. HYG. LAW § 72. (In addition certified examiners duly designated by either of them may exercise this authority and their names shall be listed with the department of hygiene.)

[18] N. Y. MENT. HYG. LAW § 72. (Such period should not exceed 60 days from and inclusive of the date of the order.)

[19] N. Y. MENT. HYG. LAW § 74.

[20] *Ibid.*

[21] N. Y. MENT. HYG. LAW § 75.

[22] N. Y. MENT. HYG. LAW § 81. (This includes the county of Erie and elsewhere where the state or any political subdivision thereof shall have a psychopathic hospital or a psychopathic ward of a general hospital.)

[23] *Ibid.*

immediate care, treatment or observation to ascertain his mental condition, may be removed to the psychopathic division of Bellevue Hospital [24] for a period not to exceed sixty days.[25]

It was held in *Warner v. State* [26] that the New York Mental Hygiene Law did not abolish or curtail the common law power of summary arrest and restraint of a mentally ill person when necessary to prevent him from doing some immediate injury to himself or others.

Judge Washington's concurring opinion in the principal case recognizes this co-existing procedure in New York and would apply the common law rule to mitigate the defendant psychiatrist's liability. He argues that the defendant be permitted to submit as grounds for further reduction of damages that he acted in good faith by proving the patient's need for treatment and that the hospitalization was beneficial. He does not believe that Congress intended to penalize physicians "for assuming responsibility and taking the action which membership in their profession and the welfare of the community require." [27]

It would seem that this view propounds a more sound foundation for deciding cases of this kind as compared to the broad measure of liability imposed by the majority opinion.

It is submitted in cognizance of the increasing mental health problem,[28] that existent laws in regard to the procedure of hospitalizing the mentally ill [29] could, in many jurisdictions be modified to acknowledge improved medical principles and social concepts.[30]

INSURANCE — RIGHTS OF MORTGAGEE UNDER MORTGAGEE CLAUSE OF STANDARD NEW YORK FIRE INSURANCE POLICY. — The plaintiff held a mortgage on a building which the owner-mortgagor insured with the defendant company. The policy contained a New

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[24] N. Y. CITY CHARTER, c. 23, § 583. (The psychopathic ward of the hospital must operate under the New York Code of Criminal Procedure, Section 939.)

[25] N. Y. MENT. HYG. LAW § 81.

[26] 297 N. Y. 395, 79 N. E. 2d 459 (1948).

[27] Jillson v. Caprio, 181 F. 2d 523, 525 (D. C. Cir. 1950).

[28] Arestad and McGovern, *Hospital Service in the United States*, 143 A. M. A. J., No. 1, p. 25. (In 1949 general patients hospitalized in the United States totaled 1,224,951 and mental patients comprised 675,096 of this total.)

[29] FEDERAL SECURITY AGENCY, FSA-A84 (1950). (Eleven states permit temporary admission only after a court order has been obtained. Seven states still have no provision for temporary admission to a state hospital for observation or for emergency commitment without a court order. Eight states still have no provision for voluntary admission to state hospitals. Mentally ill persons may be kept in jail during the commitment process and while awaiting hospital admission in thirty-five states.)

[30] See Note, 56 YALE L. J. 1178 (1947) (excellent analysis of this problem).