Hunter v Mann

QUEEN'S BENCH DIVISION
LORD WIDGERY CJ, BOREHAM AND MAY JJ
8th FEBRUARY 1974

Road traffic – Offence – Information – Duty to give information – Duty of any person to give information which it is in his power to give and may lead to identification of driver – Doctor – Information obtained by doctor in professional capacity – Whether 'any . . . person' to be construed restrictively so as not to include doctor under professional duty of confidence – Whether 'in [doctor's] power' to disclose information – Road Traffic Act 1972, s 168(2)(b).

An accident took place involving a motor vehicle. The driver of the vehicle and the passengers hurried away from the scene of the accident. On the same day the appellant, a doctor, treated a man and a girl in his surgery. The girl told him that she had been involved in a motor accident. The doctor advised them to see the police, but he did not seek their consent to disclose their identity to the police. Some days later a police officer requested the appellant to disclose the names and addresses of the man and the girl. The appellant refused on the ground that the information was confidential, having been obtained by him solely by reason of the relationship of doctor and patient. Subsequently the police officer served on the appellant a written notice requesting the information. The notice stated that the driver whose identification was sought was alleged to be guilty of dangerous driving. The appellant again, and for the same reason, declined to give the information. The appellant bona fide believed that it was not within his power to divulge the information and that such a disclosure would have been a breach of his professional code of ethics. The appellant was charged with failing to comply with a requirement under s 168(2)(*b*)[a] of the Road Traffic Act 1972 to give information which it was in his power to give and which might have led to the identification of the driver of the vehicle who was alleged to be guilty of dangerous driving, contrary to s 168(3)[b] of the 1972 Act. The appellant was convicted and appealed on the ground that in view of the professional duty of confidence which a doctor owed to his patient, the words 'any other person' in s 168(2)(*b*) did not extend to a doctor who had obtained confidential information in his professional capacity and that furthermore, in consequence of that duty, the information was such that it was not, within s 168(2)(*b*), 'in his power' to disclose it.

Held – Although a doctor was under a duty to his patient not to disclose voluntarily, without the consent of his patient, information which the doctor had gained in his professional capacity unless compelled by law to do so, it did not follow that the words 'any other person' in s 168(2) were to be construed in any restricted sense; they were wide enough to include a doctor who had obtained information in his professional capacity. Accordingly the appellant was guilty of the offence charged for, in the circumstances, it was in his power to give the information requested by the police officer. The appeal would therefore be dismissed (see p 419 *a b d e h* and *j*, post).

Notes

For the duty to give information as to the identity of a driver, see 33 Halsbury's Laws (3rd Edn) 649, para 1095.

Section 168(2), so far as material, is set out at p 417 *e*, post
Section 168(3), so far as material, is set out at p 417 *f*, post

For privilege in respect of communications to medical advisers, see 10 Halsbury's Laws (3rd Edn) 479, 480, para 877, and for cases on the subject, see 22 Digest (Reissue) 457, *4566-4572*.

For the Road Traffic Act 1972, s 168, see 42 Halsbury's Statutes (3rd Edn) 1811.

Case referred to in judgment

Parry-Jones v The Law Society [1968] 1 All ER 177, [1969] 1 Ch 1, [1968] 2 WLR 397, CA, Digest (Cont Vol C) 897, *830a*.

Case also cited

Attorney-General v Mullholland, Attorney-General v Foster [1963] 1 All ER 767, [1963] 2 QB 477, CA.

Case stated

This was an appeal by way of a case stated by justices for the county of East Sussex acting in and for the petty sessional division of East Grinstead in respect of their adjudication as a magistrates' court sitting at East Grinstead on 25th June 1973.

On 30th April 1973 an information was preferred by the respondent, Derrick Mann, a chief inspector of police, against the appellant, John David William Hunter, that he between 6th March 1973 and 21st March 1973 at East Grinstead in the county of Sussex failed, contrary to s 168(3) of the Road Traffic Act 1972, to comply with a requirement under s 168(2)(*b*) of that Act to give information which it was in his power to give which might have led to the identification of the driver of a stolen motor vehicle, index number BUF 769C, who was alleged to be guilty of the offence of driving the motor vehicle in a manner dangerous to the public, contrary to s 2 of the Road Traffic Act 1972, on 3rd January 1973.

The justices found the following facts. (a) On 27th December 1972 one Pamela Jean Werham discovered that her motor vehicle, BUF 769C, was missing from a multi-storey car park opposite East Croydon railway station where it had been parked five days earlier. (b) On 3rd January 1973 there was an accident involving the motor vehicle, BUF 769C, whereby damage was caused to another vehicle. (c) The driver and passengers of the motor vehicle, BUF 769C, hurried away from the scene of the accident. (d) On that same day the appellant, a registered medical practitioner, treated a man in evening surgery. (e) Later that same night, at the request of the same man, the appellant treated a girl who told him she had been involved in a motor car accident. (f) Although the appellant advised the man and the girl to visit the police, he did not however seek their consent to disclose their identity to the police. (g) On 22nd January 1973 Police Sergeant Davies personally requested the appellant under s 168(2)(*b*) of the Road Traffic Act 1972 to divulge the name and/or address of the man and the girl or alternatively to give him such information which could lead to the police discovering those names and/or addresses. (h) The appellant declined to divulge the information requested of him as he considered such information was confidential, it having been obtained solely through his relationship of doctor and patient, and he so informed the police officer at the relevant time. (i) On 7th March 1973 Police Sergeant Davies served on the appellant a written application for information which might have led to the identification of the driver who was therein alleged to be guilty of dangerous driving. (j) A letter dated 20th March 1973 was received from the appellant in which he declined to supply any information on the grounds that it would be a breach of professional conduct. (k) The appellant at the relevant time bona fide believed (i) that it was not in his power to divulge the information, and (ii) that it would have been a breach of the professional code of ethics. (l) The British Medical Association in its members' handbook for practitioners, laid down a code of conduct for members and included the principle that a doctor should refrain from disclosing voluntarily to a third party information which he had learned directly or indirectly in his professional relationship with a patient subject

to exceptions, including the following: (i) the patient gave his consent, (ii) the information was required by law. *a*

It was contended by the appellant that such information as he was requested to divulge was not within his power to give, within the meaning of s 168(3) of the 1972 Act, since he was precluded from giving it by the professional ethics of medical confidentiality.

It was contended by the respondent that such information as the appellant was requested to divulge was within his power to give as being within his knowledge. *b*

The justices were referred to Archbold's Criminal Pleading, Evidence and Practice[1] in which authorities were cited for the view that there was no privilege entitling a medical practitioner to refuse to give in evidence statements made to him by a patient however confidential they might be.

The justices were of the opinion that that information was within the appellant's knowledge, was required by law, and was within his power to divulge and accordingly they found him guilty. They fined him £5. *c*

The question for the opinion of the High Court was whether a medical practitioner who failed to comply with a requirement under s 168(2)(*b*) of the 1972 Act for information brought to his knowledge in the course of his professional relationship with a patient was guilty of an offence under s 168(3) of the 1972 Act. *d*

Thomas Bingham QC and *Andrew Brooks* for the appellant.
Richard Carr for the respondent.

BOREHAM J delivered the first judgment at the invitation of Lord Widgery CJ. *e* This is an appeal by way of case stated from a decision of justices acting for the county of East Sussex and sitting at East Grinstead on 25th June 1973.

On that date the appellant, who is a registered medical practitioner, appeared before them charged with an offence under s 168 of the Road Traffic Act 1972, namely, that he had failed to comply with a requirement under that section to give information which it was in his power to give and which might have led to the identification *f* of the driver of a stolen motor vehicle who (that is the driver) was alleged to be guilty of dangerous driving.

The facts as they are found by the justices are, shortly, these. On 3rd January 1973 there was an accident involving the motor vehicle, BUF 769C, in which damage was caused to another vehicle and which led to the allegation that the driver of BUF 769C was guilty of dangerous driving. After the accident the driver and the *g* passenger of the motor vehicle, BUF 769C, hurried away from the scene of the accident and no one was able to identify them. Nor was the owner, or, as it is now put, the keeper, of that vehicle able to assist in identification, for the vehicle had been taken without her consent or authority some time between 22nd and 27th December 1972.

On the same day as the accident, 3rd January, the appellant, in his capacity as a *h* registered medical practitioner, treated a man at his evening surgery, and on the same evening he had, at the request of that man, treated a girl, who told him that she had been involved in a motor car accident. It is right that it should be emphasised —for it indicates, if indication is needed, that the appellant's attitude to this matter was an entirely responsible one—that he advised that man and that girl to visit the police; advice which clearly was not taken. But he did not seek to obtain their consent to disclose their identities to the police. Thus, when, on 22nd January, Police Sergeant Davies requested the appellant under s 168 to divulge the name and/or address of the man and the girl, or alternatively to give him other information *j*

1 38th Edn (1973), p 633, para 1306

which could lead to their identification, he declined. He declined on the ground that he considered such information to be confidential because it had been obtained solely through the relationship of doctor and patient. He told the police officer his reason at the time. On 7th March there was served on him a written application for the sort of information that I have outlined. It was stated in that application that the driver whose identification was sought was alleged to be guilty of dangerous driving. By letter of 20th March the appellant again, and for the same reason, declined to give that information.

The justices find that the appellant bona fide believed (a) that it was not within his power to divulge the information required by the police and (b) that such disclosure would have been a breach of his professional code of ethics. The justices had before them, and they quote from it, the British Medical Association's handbook for the guidance of practitioners, which lays down a code of conduct for members of the medical profession. It includes this principle, that a doctor should refrain from disclosing voluntarily to a third party information which he has learned directly or indirectly in his professional relationship with a patient, subject to these, amongst other, exceptions: (1) the patient gives his consent to that disclosure; (2) the information is required by law. It may be a matter of some interest, if not of significance, to observe that the British Medical Association's code specifically refers to voluntary disclosure.

It would be useful to turn briefly to the provisions of s 168 of the 1972 Act. Subsection (1) I need not dwell on, for it is conceded that the section applies in this case because the unidentified driver was alleged to be guilty of dangerous driving. Section 168(2) provides:

> 'Where the driver of a vehicle is alleged to be guilty of an offence to which this section applies [para (*a*) deals with the person keeping a vehicle] (*b*) any other person shall if required as aforesaid give any information which it is in his power to give and may lead to the identification of the driver . . .'

'Any information aforesaid' refers to such information as to the identification of the driver as he may be required to give by or on behalf of the chief officer of police. Section 168(3) provides: '. . . a person who fails to comply with the requirement of subsection (2)(*b*) . . . shall be guilty of an offence.' It was that offence with which this appellant was charged and of which he was found guilty by the justices. As I understand it, it is not disputed that the appellant had in his possession information which might have led to the identification of the driver.

The contentions of counsel for the appellant are directed towards a construction of s 168. His first contention is this. He says that the appellant does not fall within the limits of the expression in sub-s (2)(*b*) 'any other person'. He says, and this is the basis of his submission on this aspect of the case, that it would not be right in the circumstances to give an unrestricted meaning to those words so as to include everyone except the driver or the keeper of the vehicle. He says that it would be wrong to give those words so unrestricted a meaning as to cause a doctor, or, as I understand it, any other professional man who stands in relation to his clients or patients in a position similar to a doctor, to act in breach of the duty of confidentiality on which a doctor's patient is entitled to rely.

He puts forward in support of that contention three propositions. He says first of all, and in effect this is a concession, that there is no absolute privilege in judicial proceedings for a doctor in respect of the disclosure of confidential information which was obtained by him in the course of his professional relationship with his patient. For my part at any rate I need no authority for that proposition; I accept it. The second proposition is this: that in common with other professional men, for instance a priest and there are of course others, the doctor is under a duty not to disclose, without the consent of his patient, information which he, the doctor, has gained in his professional capacity, save, says counsel for the appellant, in very exceptional

circumstances. He quoted the example of the murderer still manic, who would be a menace to society. But, says counsel, save in such exceptional circumstances, the general rule applies. He adds that the law will enforce that duty.

I would accept that proposition if before the word 'disclosing' there were to be added the adverb 'voluntarily', as in the British Medical Association's handbook. I accept too counsel's cited authority for the proposition that the duty not to disclose information is enforceable at the behest of the patient in an action of contract or for breach of duty. But for my part at any rate I do not consider that that proposition covers the position where the doctor is compelled by law to disclose. In my judgment counsel for the appellant's second proposition relates only to voluntary disclosure. The third proposition is that protection is given to professional confidences to the extent that those who are bound by them are not ordinarily required to breach them and will only be compelled to do so by the order of a judge. Again counsel for the appellant has quoted authorities. I hope it will not indicate any lack of respect for him or for the authorities that he quoted if I do not cite them at this stage.

I would prefer to put the proposition in another way. I accept that the doctor, in accordance with the first proposition, has no right to refuse to disclose confidential information in the course of judicial or quasi-judicial proceedings; but I also accept that the judge in certain circumstances, and in the exercise of his, the judge's, judicial discretion, may refuse to compel him to do so. Further than this, in my judgment, the authorities which have been cited to us do not go. Moreover each one of those authorities was concerned with legal proceedings. In the present case it is important to bear in mind the distinction between privilege which is to be claimed in legal proceedings and a contractual duty not to disclose; that distinction is marked by a passage in the judgment of Diplock LJ in *Parry-Jones v The Law Society*[1]:

> 'So far as the plaintiff's point as to privilege is concerned, privilege is irrelevant when one is not concerned with judicial or quasi-judicial proceedings because, strictly speaking, privilege refers to a right to withhold from a court, or a tribunal exercising judicial functions, material which would otherwise be admissible in evidence. What we are concerned with here is the contractual duty of confidence, generally implied though sometimes expressed, between a solicitor and client. Such a duty exists not only between solicitor and client, but, for example, between banker and customer, doctor and patient, and accountant and client. Such a duty of confidence is subject to, and overridden by, the duty of any party to that contract to comply with the law of the land. If it is the duty of such a party to a contract, whether at common law or under statute, to disclose in defined circumstances confidential information, then he must do so, and any express contract to the contrary would be illegal and void.'

With those words in mind I proceed to the conclusion drawn by counsel for the appellant from his contentions. He says that when one comes to construe the statute one should approach it thus; that Parliament must not be taken to have overridden or to have attempted to override the duty of confidence to which reference has been made, except by clear language or necessary implication. He says, and this is the burden of his whole contention, that 'any other person' in s 168 must be read in a restricted way so that that duty is not breached. He quotes from Maxwell on the Interpretation of Statutes[2]. I shall not repeat the reference.

It seems to me that my first duty is to look at the section and give the words their ordinary natural meaning, and in the absence of equivocation or ambiguity to give effect to such meaning, unless of course there is something in the context of the

1 [1968] 1 All ER 171 at 180, [1969] 1 Ch 1 at 9
2 12th Edn (1969), p 116

section or of the Act itself which suggests that a special or restricted meaning should be given.

For my part I cannot find any ground for saying that a restricted meaning should be given. I find the words clear and unequivocal. I accept, as counsel for the appellant has suggested, that one should assume that Parliament has passed this Act, and this section in particular, with the existing law in mind. Accepting that, then it seems to me that Parliament must have been conscious of the use of very wide words here and, if it had been intended to create exceptions, it would have been easy enough to do so. It has not been done. Moreover I ask myself the question: if there is to be a restriction how far is it to go? Where is it to stop? I find it impossible to provide an answer to that question. In these circumstances I am driven to the conclusion that a doctor acting within his professional capacity, and carrying out his professional duties and responsibilities, is within the words 'any other person' in s 168(2)(*b*).

The next limb of counsel for the appellant's argument was directed to the words 'in his power' in the expression 'information which it is in his power to give'. He contends that power must include a legal right, that there is no legal right or power to disclose so far as a doctor is concerned and, therefore, that he is not caught by those words.

I am not going to attempt to define 'power'. It seems to me a word of fairly common understanding and reading it in its ordinary way I have no difficulty in coming to the conclusion that a doctor in the circumstances in which the appellant found himself had the power. It may be that but for the section in the Act he would not have exercised that power because of his duty to his patient, but that seems to me to beg the question, for that would have been in accordance with his duty not to make voluntary disclosure. Once it is decided that the appellant is a person to whom the statutory duty imposed by s 168 applies, then I have no doubt that he had the power. I think it would be no injustice to counsel for the appellant to say that this was the least strenuously argued of his points and I find it a point without substance.

In my view it is important when one is considering this section to have in mind that on many occasions serious accidents are caused by people who take away, without consent, other people's motor cars and who have no hesitation in leaving the scene as quickly as they possibly can so as to avoid detection. I therefore find it a comfort to think that the section gives the police a wide power for the purpose of detecting people who may cause damage to others.

May I say, before leaving this case, that I appreciate the concern of a responsible medical practitioner who feels that he is faced with a conflict of duty. That the appellant in this case was conscious of a conflict and realised his duty both to society and to his patient is clear from the finding of the justices, but he may find comfort, although the decision goes against him, from the following. First that he has only to disclose information which may lead to identification and not other confidential matters; secondly that the result, in my judgment, is entirely consistent with the rules that the British Medical Association have laid down and from which I have quoted in the course of this judgment.

In the result I have come to the conclusion that the justices were correct and that this appeal, therefore must be dismissed.

MAY J. I agree.

LORD WIDGERY CJ. I agree also. With all deference to counsel for the appellant's argument, I felt that he was claiming a degree of medical confidence wider than that which his authorities would support. I would compliment the authors of the British Medical Association handbook to which reference has already been made, for a brief and, I think, effective statement of the position. I repeat it:

'A doctor should refrain from disclosing voluntarily to a third party information which he has learnt professionally or indirectly in his professional relationship with a patient, subject to exceptions, including the following . . . (2) the information is required by law.'

I would add one other point, namely, that if a doctor, giving evidence in court, is asked a question which he finds embarrassing because it involves him talking about things which he would normally regard as confidential, he can seek the protection of the judge and ask the judge if it is necessary for him to answer. The judge, by virtue of the overriding discretion to control his court which all English judges have, can, if he thinks fit, tell the doctor that he need not answer the question. Whether or not the judge would take that line, of course, depends largely on the importance of the potential answer to the issues being tried. I too would dismiss the appeal.

Appeal dismissed. The court certified under s 1(2) of the Administration of Justice Act 1960 that a point of law of general public importance was involved, viz, 'whether a medical practitioner who failed to comply with a requirement under s 168(2)(b) of the Road Traffic Act 1972 for information brought to his knowledge in the course of his professional relationship with a patient was guilty of an offence under s 168(3) of the 1972 Act', but refused leave to appeal to the House of Lords.

Solicitors: *Hempsons* (for the appellant); *T Lavelle*, Lewes (for the respondent).

N P Metcalfe Esq Barrister.

George Hensher Ltd v Restawile Upholstery (Lancs) Ltd

HOUSE OF LORDS

LORD REID, LORD MORRIS OF BORTH-Y-GEST, VISCOUNT DILHORNE, LORD SIMON OF GLAISDALE AND LORD KILBRANDON

18th, 19th, 20th, 21st FEBRUARY, 1st MAY 1974

Copyright – Artistic work – Work of artistic craftsmanship – Meaning of artistic – Plaintiffs manufacturing suites of chairs and settees – Plaintiffs producing prototype for new type of suite – Prototype consisting of frame nailed together and upholstered – Prototype used as model and then destroyed when suites in production – Defendants selling copies of plaintiffs' new suite under another name – Plaintiffs alleging defendants infringing their copyright in prototype – Whether prototype qualifying as 'work of artistic craftsmanship' – Copyright Act 1956, s 3(1)(c).

The plaintiff company manufactured upholstered furniture and in particular three piece drawing room suites. One such suite, which was sold under the name 'Denver', had a distinctive boat shape and was supported on spindle shaped legs. When the sales of that suite began to decline, the managing director of the plaintiff company and two of the plaintiffs' craftsmen collaborated to produce an improved design. They stripped down the Denver to its frame, removed the legs and replaced the legs by a sloped wooden plinth with casters on the corners and covered with a strip of wood trim. The frame was nailed up and re-upholstered. The resulting article was the prototype for a new suite that was to be known as 'the Bronx'. The prototype was too flimsy to be used as a seat but it served as the model for the Bronx chairs etc, which were copied from it and sold. Once the Bronx suite was in production,