

The Midwife.

APPEAL TO THE HIGH COURT.

In the High Court of Justice, King's Bench Division, Divisional Court in the Royal Courts of Justice, on Monday and Tuesday, December 16th and 17th, before Mr. Justice Darling, Mr. Justice Avory and Mr. Justice Salter, the appeal was heard of *Davies v. The Central Midwives Board*.

Mr. Thomas appeared for the Appellant (Mrs. Gertrude Davies, certified midwife, No. 29,355, New Tredegar) and Mr. Rawlinson, K.C., and Mr. Theo. Mathew appeared for the respondents.

The case, in which the midwife was charged with failing to comply with the rules of the Central Midwives Board, and with neglect of duty, in a case of ophthalmia neonatorum, was heard before the Central Midwives Board on January 10th, 1918. The Board found the charges proved but deferred judgment and asked for a report on the midwife in three and six months' time. On hearing from the Local Supervising Authority of a further case of ophthalmia neonatorum in her practice which she had failed to notify promptly, the Board directed that the midwife's name should be removed from the Roll, and her certificate cancelled. It was against this decision that Mrs. Davies appealed.

JUDGMENT.

MR. JUSTICE DARLING said in part: "This is an appeal brought by a midwife who complains of the decision given by a Medical Board [the Central Midwives Board—ED.]. Having heard the case, I have come to the conclusion that there can be no possible doubt that in the case of Mrs. Davis * the Medical Board heard the case properly . . . That they came to a right and just conclusion.

In the second case (that of Mary Evans) the Judge held that the case "was perfectly well proved, that the Appellant neglected her duty as she did in the case of Mary Davis, that the Medical Board came to a right conclusion upon the proper evidence, and the Court, having heard more evidence than they heard, had arrived at the same conclusion as that to which they arrived, and he thought in these circumstances they were right to cancel the certificate of the Appellant as they did."

THE RULE OF NATURAL JUSTICE.

MR. JUSTICE AVORY concurred in the judgment of Mr. Justice Darling, and mentioned two points which he considered deserved notice. Mr. Thomas had, he said, argued that "the Central Midwives Board in this case were guilty of an irregularity, if not of illegality, in their procedure in receiving the statutory declaration of the mother of the child Davis, and he complained that they, having received the statutory declaration, did not, in

*The mother of the infant with ophthalmia.—ED.

fact, afford his client an opportunity of cross-examining Mrs. Davis upon it. Now, I think it right to express my opinion that under Rule 6 of the Rules of Procedure which have been approved by the Privy Council under the Act of Parliament, the Central Midwives Board are entitled to receive statutory declarations of witnesses who cannot be called before the Board to give oral evidence . . . I think, said the Judge, under that Rule, provided that a copy of the Statutory Declaration is supplied to the accused person before the day fixed for the meeting of the Board they were entitled to receive and consider such statutory declarations."

"The other point, which was one made by Mr. Rawlinson, was that the Central Midwives' Board having decided to convict, and having adjourned its actual decision in order that a report might be made to them as to her future conduct for the next six months—Mr. Rawlinson says that the Board was entitled to act upon that report, if it were adverse to her, without giving her any opportunity of being heard in answer to it. Now I am not prepared to assent to that proposition. . . . A very ancient authority laid down what is called the Rule of Natural Justice, and the learned Judge who delivered the judgment said that even Adam was given an opportunity of being heard before he was condemned. I do not assent to the proposition that the Central Midwives' Board in such a case, where they follow such a procedure, should act upon an adverse report without giving the accused person an opportunity of making some answer to it. . . .

MIDWIFE'S RIGHT OF REPLY TO ADVERSE REPORT.

MR. JUSTICE SALTER: "I agree that the appeal should be dismissed. . . . With regard to Rules 5 and 10 of Section D. of the Rules of the Board I am bound to say that, in my opinion, Rule 5 cannot be restricted to the preliminary inquiry which the Board may make, but must be applied also to the actual hearing and determination by them of the case. I think that at such hearing they have power to receive evidence by way of statutory declaration, if in their opinion it is impossible to obtain oral evidence. It follows from this that the right of cross-examination given to the accused person in the latter part of Rule 10 must be restricted to a right to cross-examine those witnesses who attend personally. The receiving of evidence by statutory declaration does deprive the accused of this right, and for that reason the Central Midwives Board should be very careful never to admit statutory declarations unless they are fully satisfied that oral evidence cannot be obtained. I also agree with Mr. Justice Avory that it would have been desirable that this Appellant should have been called upon to answer the adverse report which was made concerning her."

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