

The Midwife.

A CASE OF GREAT IMPORTANCE.

A case of great importance which has aroused extreme interest in both legal and medical circles during the last month has been the trial of Mr. Aleck William Bourne, of Wimpole Street, London, W., before Mr. Justice Macnaghten, at the Old Bailey on July 18th and 19th, on a charge of "unlawfully using an instrument with intent to procure the miscarriage of a girl under 15." The Attorney-General, Sir Donald Somervell, K.C., led for the prosecution with Mr. L. A. Byrne and Mr. Henry Elam, and Mr. Roland Oliver, K.C., and Mr. Gerald Thesiger were for the defence.

Mr. Roland Oliver, at the outset, objected to the indictment on the ground that it did not contain the word "unlawfully," which, he said, was vital to his case. By the direction of the Judge, who asked to see the indictment, and said that it was desirable that the word "unlawfully" should be specifically stated, the charge was amended by its insertion.

Mr. Oliver then raised the further point, with which the Attorney-General associated himself, that if any men or women summoned for the jury considered, on religious grounds, that in no circumstances should a pregnancy be determined, it would be desirable that they should not sit upon the case, and the Judge directed the jury that if any member of it, by reason of any preconceived view, felt that he or she was in a difficulty—by reason of what he might call bias—about giving a verdict according to law, and according to the evidence, it was desirable in the interests of justice that such a member of the jury should retire.

None of the jury availed themselves of this opportunity and they were then sworn.

The Attorney-General Opens the Case.

The Attorney-General, opening the case, said that the charge was under Section 58 of the Offences Against the Person Act, 1861.

He briefly related the facts of the case, namely, that the girl, on April 27th, was the victim of a terrible assault, and was raped by a man who was afterwards convicted. Up to that date she was a virgin. On May 21st she was taken to see Dr. Joan Malleon, who came to the conclusion that she was pregnant. Dr. Malleon then wrote to Mr. Bourne, a leading gynaecologist and obstetrician, on the staff of St. Mary's Hospital, Paddington, informing him about the case on which she had been consulted, and telling him that everyone connected with it, the police surgeon, the doctor at her work, and the school doctor, all felt that curettage should be allowed her, and also that a psychiatrist would be prepared to sponsor the operation, but all this led nowhere unless someone of his standing was prepared to undertake it.

Mr. Bourne replied that he was willing to undertake the operation, and performed it in St. Mary's Hospital, Paddington, on June 14th, and on that day Chief Inspector Bridger of Scotland Yard saw Mr. Bourne at St. Mary's Hospital, who said, "I operated this morning and I want you to arrest me." He cautioned Mr. Bourne and told him the facts would be reported to the proper authority. Mr. Bourne replied, "In my opinion, as an obstetric surgeon, it may be dangerous for a girl of her age to bear a full-term child." Inspector Bridger added that he then said, "The object of my visit is useless. I had come to warn you we could not consent to any action you proposed to take."

That, then, was the position. An eminent obstetric surgeon acting in the honest belief, based on adequate

knowledge and experience, that it was in the best interests of the girl's health that her pregnancy should be terminated, quite openly, in a public hospital, performed the operation which he believed to be necessary, and the law was immediately set in motion, the surgeon was arrested, and tried in a criminal court for an alleged offence against the common law. Yet up and down the country abortionists ply their unholy trade, not that there is any reason why the pregnancies that they terminate should not come to fruition, but that women wishing to avoid the inconvenience of pregnancy, and perhaps the evidence of sin, resort in secret to known abortionists, medical practitioners, midwives, or may be, neither, who are willing to terminate the pregnancy for abnormal fees, paid in gold, or notes, before the operation.

Surely, it is time that the law of 1861 should be amended.

Mr. Bourne, "one of the foremost obstetric surgeons in London," was brought to trial in a criminal court. By reason of his eminence and assured position as a gynaecologist, he was able to secure the support of such a leader of the medical profession as Lord Horder, of Dr. Jacob Arthur Gorsky, police surgeon, and of Dr. John Rawlings Rees, a consultant in psychological medicine, and Mr. William Gilliatt, obstetrician and gynaecologist. What would be the position of a young and comparatively unknown surgeon engaged in obstetric practice in similar circumstances? True, he would be wise to consult with a senior colleague, but he would be faced with the necessity for the decision whether he would carry out what his conscience and medical knowledge directed was the right course to pursue in regard to his patient, or whether he would allow the instincts of self-preservation and self-interest to prevail. It is a decision which a medical practitioner should not be forced to make. Medical practitioners should not be faced with arrest and possible professional ruin if they treat patients who consult them as their medical knowledge and skill dictates. Notification of procuring miscarriages and abortions should be required by law of members of the medical profession, who alone should be authorised to perform such operations, and any neglect to notify should be a statutory offence. Their performance by anyone not possessing a medical qualification should bring an offender at once within the arm of the law when detected, without waiting for a death to occur before the police take action. It might then be possible to stem the widespread and, we fear, increasing practice of abortion.

Whether it is advisable that a pregnancy should or should not be terminated is for the medical profession, not for the police, to decide.

The verdict of "not guilty" brought in by the jury in relation to Mr. Bourne commended itself to his medical colleagues when announced to the British Medical Association in session at Portsmouth. It will, we believe, commend itself to most people, except to those members of the Roman Church, who believe that in no circumstances should miscarriage or abortion be performed. Pushed to its inevitable conclusion in extreme cases this means that a doctor must stand by and see a patient die, whose life he might save by timely intervention that the mother's life must be sacrificed that the child may live. Few doctors, we believe, would be willing to adopt this course. Mr. Bourne will have done good if his action in this case results in the law being brought up to date, and the public will admire his courage in acting as his conscience dictated in the interest of his patient, regardless of the result which he foresaw might occur, and which actually did occur to himself.

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