of insane patients in the community, and will doubtless also help to a definite result in the near future.

It should also be noted that in Western Australia a mental ward is already in existence in connection with the Perth Hospital, and that it is proposed to extend this system to other hospitals in the country.

The Legal Duties and Responsibilities of the Medical Profession in Matters of Lunacy. (1)

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THE object of this paper is an endeavour to suggest for the consideration of the medical profession certain aspects of their legal duties and responsibilities in matters of lunacy.

It may be well at the outset to state definitely that the medical practitioner has in cases of insanity no greater privilege or protection than is extended to the ordinary layman, except such as are expressly conferred upon him by the Statute Law. Yet how often do we find that he overlooks this, and with the single eye to the relief or cure of his patients assumes or directs the custody or control of a person mentally afflicted, and regards him as an individual bereft of his ordinary rights and privileges. No doubt he acts with a large heart and with the best of intentions, and does that which humanely and medically is, in his opinion, the best for the patient, and accepts, perhaps, without thinking of it, the responsibilities of the situation with never a conception of the risks he runs, or of the possibility of having to defend an action for assault or false imprisonment. Yet it is a matter worth pausing to consider not only from his individual standpoint, but as one intimately affecting the larger questions of the treatment of the actually insane, or of those whose condition is on the border-line of insanity. To rightly appreciate the importance of the consideration, I venture to put before you a statement of the matter as it presents itself to the legal mind.

Accepting the fact that an individual is suffering from some form of mental disease, one of the first and most important considerations for the medical practitioner who is called in is

to decide what is to be done with the patient, and, particularly, can he be safely and properly treated without certification.

Primarily the functions of the medical adviser are by advice and treatment, to attempt the relief or cure of the malady; incidentally (and I might almost say in nearly all cases of mental disease, "necessarily") this may involve some interference with the exercise by the patient of his rights of liberty and the free exercise of his own will. Ordinarily the patient is free to adopt or reject the advice; if he is sufficiently of sound mind he may voluntarily place himself under the control of his medical attendant who would then be justified in interfering with his rights to the extent to which it would be reasonably necessary for the purposes of treatment, but not further. Persons standing in *loco parentis* to the patient, too, may safely commit him to the control of the medical practitioner to the like extent; but in all other cases, such as those in which near relatives or friends act, the medical practitioner may not protect himself under their authorisation. Where from the very nature of the disease, such as lunacy, the patient is either quite incapable of expressing his voluntary desire for treatment and of surrendering his free will, and where as in most cases he is resistive to it, the physician making control part of his treatment has to bear the responsibility of so dealing with him, unless he acts strictly within the prescribed law.

The position may be regarded from three points of view:

(1) The legal, which cares only for the due and proper care and protection of the person of the patient and of his estate, and provides for the well-being and requirements of society.

(2) The medical, which views the case from a remedial stand-point only, necessarily including the care of the person.

(3) The sentimental, which regards only the feelings and susceptibilities of the patient's family, caring only to a minor degree for the personal treatment of the patient, and often entirely disregarding his advantage or best interests.

(1) *The Legal Position.*

This regards primarily the inviolability of the liberty of the individual, and secondarily the protection of his interests.

Except in infancy, under the age of fourteen years, where the personal liberty of the individual is entrusted by law to his

parents or guardian, every person of sound mind has a natural right to his liberty and to the unrestricted enjoyment of his freedom of will and self control, and by the common law none may, as a general rule, interfere with it. This natural right is of course subordinated to the general welfare of the community, of which the individual is only a unit, and is interfered with, checked and controlled by the State in many directions; not only is this done in cases where the individual voluntarily provokes action by committing a breach of the law but in cases in which he is an involuntary victim, as where he contracts a dangerous infectious disease such as smallpox. Lunacy is another such condition in which the law controls the individual for his own protection and for the welfare of society.

This interference with his natural rights may be effected directly, in the manner prescribed by the Lunacy Acts, or may be justified to a limited degree under the common law.

The Statute law prescribes certification as an absolute and indispensible preliminary. There is no authority at common law for one or two men, be they medical practitioners or not, to say or to certify that another is a lunatic and so justify taking him and depriving him of his liberty unless he is in fact insane. Every person, whether a medical practitioner or not, may justify control exercised by or directed by him in cases of actual insanity or *delirium tremens* by showing that such control was reasonably necessary, either to cure the individual or to restrain him from doing mischief to himself or others; thus far he may go, but no further. Except as provided by Statute law the medical practitioner, no matter how expert he may be in diagnosing mental conditions, has no recognition different from or superior to the ordinary layman.

Such are the very limited restrictions of the common law which, in cases only of "actual" insanity, narrow the right of any person to interfere with the liberty of another, and similar limitations will be found in the Statute law.

The Lunacy Acts have, however, enlarged the field of control by giving the right to the State, but to no one else, to actively interfere with the liberty of the individual in certain cases where the insanity is not actual and manifest, but is incipient or suspected only.

When a person is only "deemed to be insane" he may, under certain conditions, be apprehended, that is, when he is

without sufficient means of support, or when he is wandering at large, or when he is discovered under circumstances that denote a purpose of committing some offence against the law. In other cases, too, when a person "deemed to be insane" is not under proper care or control, or is cruelly treated or neglected by any person having or assuming the care or charge of him, he may be apprehended if it appear to a justice after a personal visit, examination and inquiry, or upon the report of a medical practitioner, that he is insane. In such case, if a medical practitioner subsequently certifies that he is only apparently insane, but that the symptoms are not sufficiently marked to enable him to certify that he is actually insane, he may be deprived of his liberty and sent to a receiving house for treatment and his condition thereby ascertained.

In all other cases, however, as well under the Statute as the common law, the fact of "actual" insanity must be first established before any interference with the liberty of the person can be justified: and when we find a condition of less than actual insanity there is no legal justification whatever for the interference by any individual (medical practitioner or not) with the liberty of another, or for controlling him in any way for treatment without his consent; and the advocacy by some alienists for some sanction for such an interference, however necessary or advisable it may be for treatment, is too dangerous an inroad with the principles of the law to be lightly considered, and too open to abuse in its practical application to justify its adoption without every possible restriction and safeguard being prescribed. As I have mentioned, the Legislature has moved with a very cautious step in this direction, and has kept the right to use it in its own hands, and has wisely confined it to admission to institutions under its own supervision and departmental control and responsibility.

The legal position that I have endeavoured to make clear has frequently been unappreciated by medical practitioners, and in many so-called border-line cases they have, with the best intentions, ignored the position and undertaken the attendant risks. The patient, if he recovers, either from his thankfulness for his restoration to health, or supineness, may disregard the breach of the law and the technical wrong that has been done to him, while, if he does not recover, his subsequent certification and admission to a hospital or licensed house may over-

shadow his previous position, and to some extent justify the acts of the medical practitioner. Regarded from a legal standpoint this position should certainly not, in the interests of the medical profession, be tolerated.

The fact of an insane condition sufficient to justify control or interference should, by some means or other, always be clearly established and recorded before any control or interference whatever is sanctioned by the law.

Certification is the method adopted by the law to establish the fact of actual or presumptive insanity, and this should be insisted on for the protection of the individual and the justification of the person responsible for the control or interference.

Certification in itself merely means the establishment by law of what is deemed sufficient *primâ facie* evidence of the condition of insanity sufficient to justify control. It does not in itself establish beyond all question the fact or the condition of insanity, and unless it is acted upon and taken as a basis for admission to an institution it is ineffective.

A certificate may be given by any medical practitioner, whether he has had any training or experience in mental disorders or not, so long as he acts *bonâ fide* and with reasonable care, according to the average medical knowledge in such matters. Reasonable care means considerable care, and want of reasonable care means negligence. Reasonable care imports a due and proper personal examination of the individual, and the making of such inquiries as are necessary, and which a medical man ought, under such circumstances, to make. The opinion that the person is insane may be formed upon the personal examination alone, and further inquiries may not be necessary—the medical practitioner is not bound to make them, if he is satisfied on the personal examination. If the facts observed by himself are not sufficient for him to form his opinion, then he is bound to make further inquiry, but he may not form his opinion only on facts communicated to him by others.

He may form his opinion upon the statements made by the person under examination—a certificate based "upon conversations I have had this day with her" has been held sufficient in law—without the actual statements being recorded on the certificate; but, in my opinion, this is an extreme case, and when the purpose and object of the certificate is considered, I

think the medical practitioner should in all cases be more precise and particular in complying with the statutory requirements, and that such detailed facts should be set out as upon their face would indicate that the opinion was well formed.

The prescribed form of certificate merely gives expression to the "opinion" of the medical practitioner, and that may be disputed. In itself it is inconclusive, and can cast no stigma upon the individual, that stigma which is so much relied on as a thing to be avoided, and which, in fact, only arises, if at all, when a certificate is acted upon by the admission of the patient into a hospital for the insane. The certificate itself—by itself—is perfectly harmless, until it is acted upon by some person who, relying upon it, prefers a request in writing for the admission of the patient to a hospital for the insane or a licensed house. It is the action of the relative or friend who makes the request and accepts the responsibility that gives any life or force to the certificate, and makes it sufficient *primâ facie* evidence of the insanity to justify the superintendent to admit and control the patient.

The law does not prescribe that every insane person shall be certified; many of the afflicted are cared for, treated, and die without certificates. An insane person may be treated and cared for in his own home with his family or in the house of a friend who derives no profits from it, otherwise he must be certified.

The certificate may be defective or bad in law, but that does not destroy the common law right to restrain the individual if, as a fact, he is actually insane.

It is a confusion of ideas to speak of certification as in itself in any way objectionable; it is merely prescribed as the simplest and safest method of recording the *primâ facie* evidence on a medical opinion that the person is insane and a proper subject for detention and treatment. It is the admission into a public hospital that, being public, may stamp the patient with the mark of insanity.

Now in order to elude this stamp, where the condition of insanity is undeveloped and either minatory or uncertain, and at the same time sufficient to justify interference when control is necessary, some course of action is desirable.

On the one hand we have the medical view that for remedial purposes the earlier the treatment the better the curative results;

on the other hand we have the jealous guardianship of the law of the rights of the individual. There is also to be taken into consideration the social effect upon him and his family. To weld these diverse considerations into a system which will provide for the maximum benefit to the individual and the minimum of interference with his rights is no doubt a vexatious and difficult task. Many schemes have been devised, but they all turn ultimately on the pivot of the protection of the individual, and the medical and social sides of the question are subordinated. I have referred to treatment in the individual's own home or in that of a friend as permissible without certificates, but the great majority of cases require treatment elsewhere, and following the safe lines sanctioned in cases of this class by the Lunacy Acts, it appears to me that they should only be dealt with under some prescribed method of recording the condition, and in some prescribed place under the supervision of responsible authority.

The secondary position from which the legal position regards certification is the care, preservation, and administration of the estate of the insane person.

It has been the prerogative of the King to preserve and administer the estates of idiots and lunatics, and is exercisable now through his Courts of Justice, where action is sought in cases of all such persons whether patients in a hospital for insane or licensed house or not.

In the case of patients its exercise is by statute deputed to the Master-in-Lunacy, who is required, as a matter of duty, to undertake the personal care, protection, and management or supervision of the management of the estates of all lunatics and lunatic patients, and to take possession and care of, collect, preserve, and administer the property and estates of all lunatic patients.

Here it may be noticed that the operation of this interference is limited to those cases in which the fact of actual lunacy is established, or in which the patient is in a receiving house and does not arise under any less modifications of the mental condition. In cases before the Courts the fact is made certain by inquisition; in cases under the Master the fact has been established by the certification of the patient, or by certificates in other cases when the lunatic is neither a patient nor under the orders of the Court. In incipient or border-line cases

the interference does not exist, nor does it exist where the lunatic is treated in his own home. In none of these cases is the fact of insanity either ascertained or recorded.

In order that the interference of the Master in Lunacy in the regulation and disposition of estates may be clearly and fully understood it may be thus stated.

There is a popular delusion that upon certification and admission to a hospital for the insane or a licensed house, the Master takes the estate, sells it, and applies the proceeds to the maintenance of the patient, and presumably confiscates the balance for the purposes of the State.

What actually occurs in practice is this :

If the patient is in a receiving house, or in a hospital or licensed house, no active steps are taken pending the ascertainment of the condition of the patient, his prospects of recovery and the desirability, if any, for protection or prompt action. Should it be made apparent that the Master must act, inquiry is made and the protection of the estate and the interests of all parties concerned in it (the patient, his family and creditors) are carefully conserved. If it appears that his affairs are in the hands of a capable administrator, in whom the patient had reposed confidence, that situation is continued unchanged, subject to supervision by the Master, so long as he considers the patient's interests are in no danger. If his affairs require investigation, that is conducted, and when placed in a condition of safety and on a proper basis the Master may allow the wife or son to manage the estate subject to supervision. If, however, an active control and management requires to be undertaken, the Master himself takes possession and actively administers. He then acts as and for the patient, protecting and providing for the family of the lunatic or others heretofore dependent on him, applying such sum as is reasonable under all the circumstances of the case towards his maintenance, and holding the balance in trust for the lunatic, or if he do not recover, for his next of kin.

The Master is but a trustee, but with somewhat wider personal obligations to protect and provide for the wife and children of the patient than an ordinary trustee.

One of the objections to certification is that it vests in the Master the control and administration of the estate of the patient, and this objection is not always absent even from the mind of

the medical attendant, and is in some cases a deterrent to the friends and relatives, but in every case wherein it has been apparent a personal explanation has removed it, and it has been welcomed as a beneficent provision. On the recovery of the patient the confusion of his affairs, brought about by his actions while of unsound mind, has been removed, complications straightened out, and he returns to find everything smoothed for him, no difficulties to worry him, and nothing from a business point of view to disturb his convalescence.

The second aspect in which the patient is considered is the medical one of treatment.

This, as I have pointed out, connotes detention and control or the interference with the liberty and free exercise of the will of the individual, and I have stated the limitations under which this may be lawfully exercised. Under these conditions the medical adviser, acting *bonâ fide* and with that skill and reasonable care that may be expected from the average medical practitioner, is protected.

When a medical practitioner is duly registered the inference is that he is competent and his treatment correct until the contrary is shown.

In the specialist, however, a higher standard of care and competency is required.

But in every case the use of restraint greater in degree, more severe in character, or longer in duration than is necessary for the security and care of the lunatic is an offence at common law and punishable by indictment.

Where a patient is certified and passes under the control of the superintendent of a receiving house or hospital for the insane, the treatment by the general medical practitioner is at an end. When, however, the patient is admitted to a licensed house, he may continue to influence treatment as a consultant, but even then the treatment is liable to be affected by the patient's ability to pay for it. Medical practitioners are not philanthropists by choice, although in many cases they are compelled to accept that situation, and perform services and effect cures without receiving their just dues. Treatment in a licensed house is an expensive matter, and many who can afford the expenditure for a limited period in the hopes of a speedy cure are unable to meet it for a protracted period. Medical practitioners do not, as a rule, inquire into the means

and ability of a patient to pay, but attend in the reasonable expectation of their fees being met, being more professionally interested in the medical aspects of the case and the hope of being able to relieve the patient. In licensed house cases where the expenses are being defrayed exclusively out of the patient's own estate, it is therefore customary where it is apparent to the Master-in-Lunacy that the expenditure on medical attendance (other than that provided by the Act) cannot be justified, to give the consultant notice of it, leaving him to elect whether he will continue to attend with the possible prospect of receiving no fees for it.

In cases where the mental condition is not so advanced as to require certification, the medical treatment and the relations as between physician and patient in ordinary cases holds good.

The question of certification is one of importance, personally, to the medical practitioner, inasmuch as it affects his continuation of particular treatment, but so also does the condition of the patient's means and the opinion of the patient or his relatives—who may discontinue his services—and therefore this interference may not be regarded as of so much importance as in itself to render certification objectionable. But so long as the condition is less certifiable the medical attendant should have every facility for pursuing his treatment compatible with a scrupulous protection of the rights of the individual.

How this should be effected is, as I have said, a difficult problem, and one which, though cognate to the subject of this paper, would take too long to discuss.

In considering the third aspect in which the condition of lunacy may be regarded, the "sentimental" one, the mere contemplation of its attributes indicates how inferior in importance it is to either the legal or the medical.

It is directly in conflict with the legal, and is only slightly in harmony with the medical, so far as its influence affects the sensitiveness of the patient; otherwise it is merely a selfish consideration founded upon ignorance. It is the last trace of the ancient and unenlightened aspect in which lunacy was regarded a hundred years ago, when the disease was a thing to be avoided, the sufferer shut away from the eyes of men, and he and his ailment covered with the secrecy of a cell. It has no sympathy with modern thought and research, which regards lunacy as more than a mental disturbance, more than a

mysterious visitation, and recognises it as much a disease and curable as any fever or smallpox. To quote Dr. Ford Robertson:

"The modern theory is that insanity depends upon the action of various poisons upon the nerve cells of the brain that subserve the association or intellectual functions, and those are apparent in inherent predisposition or in toxic action. The first is the most difficult to deal with; in the latter arrest or prevention is possible more easily. Some toxins are introduced from without, as, for example, alcohol; others are generated within, due to bad hygiene, bad alimentation, influenza, etc. When we understand the nature, sources, and causes of the formation of the various toxins and their mode of elimination, most forms of insanity will be curable."

If this statement could be widely disseminated and appreciated the old bogey, the old slur or stigma, would no longer hamper the action of the medical practitioner.

People do not shun the publicity of typhoid, smallpox, or influenza—diseases as common as lunacy, and infinitely more dangerous to the health of the community. Relatives offer no objection to notification (much the same as certification), nor to the removal of the patient to a contagious diseases hospital or to a sanatorium for consumptives.

If they knew more of the true nature and causes of the disease of insanity it would not be so repellent, and the treatment of the ailment in its earlier stages would be greatly facilitated. Its advent would be earlier recognised, its prevention effected, if only the old prejudices, the old ignorance with its accompanying desire to secrete the patient and hide from the knowledge of the world the fact that he has contracted the disease, were destroyed.

The sentimental aspect of insanity should be disregarded and crushed out as a mischievous factor, and with the radiant light of medical research and treatment cast upon the ailment, showing its true character, the community would be educated to recognise the disease without the repugnance it now does, and to feel confidence in the medical practitioner's methods, aided by a wise and carefully guarded legal protection.

(1) Read at the meeting of the Australasian Medical Congress, held in Melbourne, October, 1908.