The Housing of the Insane in Victoria, with special reference to Licensed Houses and Border-line Cases.(1)

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WHEN the Australasian Medical Congress met in Melbourne, in 1889, I dealt with "The Housing of the Insane in Victoria, with Special Relation to the Boarding-out System of Treatment." Since then I have had ample opportunity of satisfying myself that such a method of caring for and treating the harmless insane is not suited to our colonial life. Much personal attention was given to this matter, and I was not satisfied with the results, the majority of the patients being in the care of officials of the various hospitals practically as servants. This was given a trial, as the official staff were practically the only applicants, not that I believed in the advisability of granting them patients. I ceased doing so, because it was evident the cases were taken for what could be got out of them, a circumstance which existed also with other applicants. This method of caring for our accumulated insane population being demonstrated unsuitable, we perforce fell back upon institutional accommodation for the chronic harmless cases.

The Government still treats the insane as wards of the State almost regardless of social distinction, and provides no more for those paid for at a higher rate of maintenance than was available twenty years ago. At that time no licensed houses existed, and such being the case I was fully of opinion that public institutions alone should be recognised, and that they should have proper reception wards in the shape of an acute hospital with all necessary appliances for observation and treatment, where new patients may be apart from chronic, or at all events advanced cases. These public hospitals should each be so arranged as to admit of providing for the treatment of patients of different classes, whether socially or mentally, and that segregation be the point to be arrived at. Those receiving sentence and committed to gaols, as well as King's pleasure cases, should be treated in an establishment by themselves, and preferably so by gazetting a portion of a gaol as a hospital for

insane under penal administration, but medically supervised by the Inspector-General of insane and dealt with by him.

As in my former paper, so now I would divide the State into districts, and arrange that each should have its reception wards with laboratory attachments, for observation and treatment, its convalescent wards or pavilions, its wards for chronic cases requiring skilled supervision, and some accommodation for the chronic harmless insane, the epileptic being for the most part treated in a hospital specially set apart. No scheme, however, would be complete without a pathologist, whose whole time would be devoted in a central laboratory, with facilities for visiting the hospitals and engaging in the live pathology of clinical work, and so training the assistant medical officers in scientific work at their separate laboratories. Such pathologist must be paid as a higher official.

Until quite recently this State neither properly cared for those who could be paid for at a higher rate of maintenance, nor would it license anyone else to do so, and this brings me to the treatment of the mentally afflicted in private practice—houses for the care of those under certificate now being licensed.

First and foremost, then, we must recognise that many mental cases are certifiable which should not be certified, and still more are not certifiable and yet need definite treatment. When we recognise that incipient insanity is that condition occurring between the first manifestation of mental disorder and the development of certifiable insanity, and that it also includes cases where the insanity, though obvious, is of recent origin, but not yet permanently established or confirmed, we find we have a big field to work upon. Such cases require removal (for the most part) from their usual surroundings; they require experienced nursing, rest, proper food, curative companionship, and skilled medical attendance. For such cases arising in the less well-to-do and in emergencies we have now a receiving house, which is under the jurisdiction of the Inspector-General of the Insane and in charge of a physician skilled in diagnosis, and acquainted with the clinical significance of the conditions presented; we have some provision made for those presenting perverted function or disease of the brain, which either impairs or destroys mental integrity. Such cases are admitted on fairly elastic certificates and private request, or by magisterial order on remand from court with one medical certificate, and there

they remain until hallucinations, illusions, or delusions governing conduct towards self, others, or property are sufficiently demonstrated to warrant the further certificate that disordered mental function and diseased want of self-control demand that they should be passed on to the general mental hospital. We, however, are no further on in the treatment of those who are able to be paid for at the higher rates of maintenance and with greater privacy, because the treatment of gaol remands in association with others is not desirable. Until the advent of licensed houses five years ago we had in our midst a few homes where such cases were cared for, and for the most part well cared for, in the same way as now under licence—albeit against the law. Let us now consider what that law was, and the chronological order of events from the year 1867 and Act No. 309.

Notes on Licensed Houses and Border-Line Cases.

At common law there is no prohibition against harbouring or taking the care of a lunatic for reward or otherwise, and prior to 1867 there was no statutory prohibition in this State. In that year the Act No. 309 provided, Sec. 24, that licences to receive a "certain" number of lunatics might be granted, providing that where the house covered by the licence contained over one hundred patients a resident medical practitioner was required, where there were over fifty and not more than one hundred, a daily visit was necessary, and where it contained fifty patients, or less, a visit three times a week was prescribed.

A licence might also be granted under Sec. 44 for the reception of a single patient only.

Consequent on these provisions it was (by Sec. 34) rendered unlawful to receive *two or more* "lunatics" into a house unless it was licenced and also (under Sec. 44) the receiving a patient as "a lunatic or an alleged lunatic" was, unless authorised under the Act, also prohibited.

In 1888, by the amending Act, Sec. 34, licences for houses were discontinued except for the reception of "single" patients, the prohibitions remaining as before. Under the Consolidation Act, No. 1113, it was rendered an offence to receive two or more lunatics into any house (Sec. 61) under any circumstances, but a single patient might be taken if the house were licensed or if the person were otherwise authorised under the Act.

Under the amending Act of 1903 (No. 1873) it has become lawful for anyone to receive one or more patients if he obtains authority to do so or does so without deriving any profit from the charge. That authority may consist of:

(*a*) In the case of single patients—

(1) The order of Justices under Sec. 24 (4).
(2) The being the Committee of the person of a lunatic so found.
(3) The appointment by the Supreme Court.
(4) The boarding-out of the patient (Secs. 97 and 98).
(5) The patient being on trial leave from an Asylum (Sec. 93).
(6) The licence (Sec. 56) with certification.

(*b*) In the case of more than one patient to an unlimited number, on a licence (Sec. 56) and certificates.

The new feature is that no patient can be received into a licensed house without certification. The offence as now constituted consists of taking charge without authority of a person "deemed to be insane."

These words "deemed to be insane" in themselves amount to an admission that the person is not actually and demonstrably insane but that for the purposes of the Act he is, under certain conditions, held to be insane.

He may be held to be insane either from his own acts and mental condition where there is no restraint or treatment of him *ejusdem generis* with that applied in asylums, or he may be deemed to be insane when such restraint or treatment is applied to him without its being apparent that he is insane; so that, without entering into an investigation as to the fact of or the extent of his insanity, if the circumstances of detention, seclusion, treatment or conditions usually considered proper or necessary with regard to persons under treatment for insanity, exist, the person will be "deemed to be insane."

In whose opinion is the person "deemed" to be insane? In the opinion of the person having charge of the insane person, so as to raise the question of scienter? Or, is it to be a matter of general repute, or the specific opinion of the Inspector-General or the finding of the Justices?

If a person is "deemed to be insane" the procedure under Sec. 22 must be followed. If he prove to be certifiable he must be sent to a hospital for the insane, or be committed to the

care of a relative or friend. *There is no provision for sending him to a licensed house.*

If the medical practitioners do not agree as to the insanity of the person, he may be sent to a receiving house for seven days and remanded from time to time for two months. But if they concur in refusing to certify there is no course but to discharge, and he will again be taken into an unlicensed house with the same procedure over and over again to be repeated.

Any person may gratuitously and out of affection or friendship take the care or charge of a lunatic without incurring any personal responsibility under the Act, but in such cases if it appears that the lunatic is not under proper care or control or is cruelly treated he may be certified and committed to an asylum.

Where any person "derives profit" from the care of the lunatic he immediately becomes subject to the penalties in the Act.

"Derive a profit" means not necessarily a pecuniary balance of gain over expenditure, for that might depend on the ability and skill of the person to expend his receipts advantageously, and might excuse a person who received inadequate payment and starved the patient, and render liable the person who was paid liberally and treated his patient well. "Derive a profit" means derive any benefit or advantage, and would include enforceable payments as well as voluntary subscriptions, and would cover the case where no money passed at all.

The following are notes of two cases decided in England: The case of R. *v.* Shaw, L.R.—1 C.C.R. 145 arose in 1868, upon Sec. 90 of the Act 8 and 9 Vict., C. 100, which prohibited any person taking a *single* patient in an unlicensed house unless duly certified to, and the question was argued whether imbecility and loss of mental power arising either from natural decay or from paralysis, softening of the brain, or other supervening cause, if unaccompanied by frenzy or delusion of any kind, constituted "unsoundness of mind" so as to be within the definition of "lunacy" in the Act.

The Court held that imbecility arising from gradual natural decay of the faculties constituted "lunacy" under the Act.

The case of R. *v.* Bishop, L.R. 5 Q.B.D. 259, in the year 1880, arose mainly on the question as to whether "scienter" was necessary on the part of the person having the care of an

alleged lunatic. This case was under Sec. 44 of the 8 and 9 Vict., C. 100, which prohibited anyone from receiving *two or more* lunatics without a licence. It was admitted that there was one lunatic in the house covered by a licence, and the point was whether other inmates suffering from "hysteria, nervousness and perverseness" could be deemed "lunatics."

Stephen, J., says that the definition of "lunatic" in the Act as "every insane person and every person being an idiot or lunatic or of unsound mind" was sufficiently wide to include every person who is by reason of mental disease, or disease affecting the mind, in such a condition that it is necessary or advisable, at any rate for his own good, to subject him to the restraint of a public asylum. If there is any difference between a lunatic, an insane person and a person of unsound mind, those persons of unsound mind, not being lunatics, must be such that it is necessary for their own good to subject them to that kind of restraint which is exercised in lunatic asylums over persons afflicted with insanity.

In this case the Court held that the "restraint" alluded to meant restraint *ejusdem generis* with that applied in asylums. The jury found the defendant guilty, and the Court determined that it was no answer that the accused did not know that the individuals were lunatics.

In private practice the question which stares us in the face is, What are the rights and responsibilities of medical men to control their patients for the purposes of treatment? In other ailments relatives do their best to carry out instructions. Why they are unwilling to obey advice in mental maladies is difficult to say, though there are many factors which sway them, and in consequence numbers of cases become chronic. Ignorance, want of decision, and failure of application to those skilled clinically in the knowledge of the manifestations of mental unsoundness are largely to blame. The old bogey "stigma" has a deterrent effect in preventing early cure. The disease is the stigma and not the treatment, as common interpretation has it. Commercialism also has its say both in the relatives and the profession. The marriage of other members of the family counts for delayed treatment in addition to the possible spread of mental unsoundness, though I daresay if we got rid of all known heredity and started afresh we should, by-and-bye, be "as you were," that is, acquired neuroses by reason of work,

over-work, no work, environment and habits would soon create a fertile bed for the production of symptoms of perverted function and disease. The answer to the question of medical rights and responsibilities is really simple, the medical man gives advice and grants certificates, but the relatives do the rest. It is incumbent upon the physician, however, to state clearly the risks that are being run and to impress upon the relatives that the responsibility lies with them. If a medical man honestly believes in an early recovery and sends a case for care and treatment to an unlicensed house with skilled attention until the case turns out certifiable and is certified, why should the law come on the caretaker and the doctor? Technically, an insane person has been kept for pay, and the Inspector-General of Insane with his battle-axe of stupid law can prosecute when actually the condition is the same as if the patient had been treated at home without pay, and, perhaps, to his detriment until certified. Something must be done to ease matters in a common-sense fashion. The early treatment and prophylaxis should be under the medical care of those skilled in such knowledge, either under direct Government control or in recognised private houses properly staffed, and under notification, but not certified as insane, the notification being a form of certificate signed by the practitioner as to mental ailment or defect filed in the house, and a copy sent to the Inspector-General of the Insane. Notification and supervision would be the keynotes. This certification would be for a period, and might be renewable on approval. Definite certification for licensed house or hospital would follow or not as the case may be, and would be determined by the Inspector-General in consultation with the medical attendant, no official visitors being permitted to visit. Those cases would be directly under the care of the medical attendant attached to the house in order that no divided control of the staff should militate against the patient, and that a continuity of treatment with the responsibility thereof would be maintained. Where desired the relatives may request the attendance of a medical man of their own selection. By this means we get rid for ever of the wretched expression "deemed to be insane" of the present Act. Thus we may hope to reduce the numbers of occurring insanity, since in all such cases as I have instanced this is the only conservative treatment which is not hazardous. Such form of

certificate from the doctor, together with a request from a relative as protects the house and without which a patient may not enter save voluntarily by his own written request, would sufficiently safeguard the rights of property, and in some measure maintain the peace of families. In this way we shall definitely arrive at the facts whether actual certification is necessary, unnecessary, cruel or injurious. Some form of certification in many cases does affect treatment favourably, absolute control being the first essential to treatment. The more perfect the legal control the more freedom the practitioner has for the treatment. This must be ensured by proper legal methods, since to deprive anyone of his liberty on incorrect diagnosis through insufficient observation is a matter to be studiously avoided, and the admission of such cases to licensed houses receiving the fully certified is not to be thought of. Neither should such licensee be permitted to have a house, separate though it may be, for the treatment of early cases.

The treatment in such sanatorium under notification would be in all respects as vigorously carried out to prevent insanity as for its care on full certification, and with the knowledge of control the case would be better treated. Some such scheme should be made law, because the treatment of the mentally afflicted by the inexperienced and under unsuitable conditions has developed to such an extent that something must be done.

Since legal formulary impedes early treatment, surely some statute law as for the State reception house might be made available for the approved notification sanatorium cases, and thus supersede the common law, alike for the benefit of the patient, the satisfaction of relatives, and the protection of the physician.

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

Receiving Houses. By W. ERNEST JONES, M.R.C.S.Eng., Inspector-General of the Insane for the State of Victoria.

THE use of Receiving Houses, that is to say, houses established specially for the observation of doubtful cases of mental disorder, is almost entirely of Australian origin, although something analogous exists, and has existed for many years in