JARVIS (ED.)

THE LAW OF INSANITY,

AND

Hospitals for the Insane in Massachusetts.

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233
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LAW OF INSANITY,

AND

HOSPITALS FOR THE INSANE IN MASSACHUSETTS.

In legislating for the Insane and Insane Institutions, it is necessary to hold in view the precise character and condition of the classes and persons for whom the law is to be made, and also the kind and objects of the provisions which are to be created for, and offered to them.

The law, when written, should be so carefully adapted to the conditions, circumstances and wants of the classes and persons for whom it is established, it should so clearly and completely describe them, that by no imperfection of description, in principles or in detail, should any, who ought to enjoy the provisions made, be deprived of their advantages.

Having created the institutions and described the classes who should enjoy them, the law should then create such suitable channels and means for the entrance of patients into these hospitals, by the selection and appointment of the proper authorities, to decide their several cases, that no hindrance be placed thereby to their free and proper use.

The officers entrusted with this authority to admit patients into, and commit them to these places of cure and of custody, should be men of such position, personal character and qualifications, that they command the entire confidence of the community in their decisions concerning the insane, and the public assurance that these are safe in their hands.

They should be men of such intelligence and such patient habits of investigation and analysis, and such discriminating power, that by no error, neglect, or hasty judgment, any patient needing the hospital care, should be deprived of it, that no unsuitable persons should be sent to those institutions, and no sane persons deprived of their liberty, under the ill-founded plea or unestablished suspicion of mental disorder.

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Moreover, these officials should be so accessible, that every insane patient, however disordered, may be able to reach them or obtain from them due opportunity and facility of removal to the hospital, whenever their malady may require it, however suddenly; so that none may be made to suffer unnecessarily by needless delay, or prevented from reaching these places of protection and restoration, by the difficulty of access to, or unavailability of the channels provided.

CLASSES OF THE INSANE.

Most of the insane need other care than they can receive at home. These are, —

1. The violent, the furious, who are dangerous to the public safety, and disturbers of the public peace.

2. The uneasy and the restless, who, though not dangerous, nor even public disturbers, yet are troublesome at home, and cannot there be restrained and controlled sufficiently for their own good, and the comfort and even the peace of their families.

3. The mild and curable patients, who have delusions, incoherences and depressions, and who cannot receive that attention in private houses which their condition requires.

The first and second of these classes need to be restrained for their own and for the public good. They need the custodial guardianship of the hospitals, and many of them may be restored to health.

The third class needs the influence and the care of the hospital for their restoration. A fourth class, who are mild, harmless, and incurable, may remain with their friends.

The State of Massachusetts has created three public hospitals for the insane, and the law offers their accommodations and care to the first of the foregoing classes, and, on various conditions, to a part of the second and third classes.

The law provides and describes four ways or channels through which the insane may be committed to, or admitted into these hospitals.

1. The higher courts, — Supreme, Common Pleas, and Probate, — are authorized to send any person who is "so furiously mad as to render it manifestly dangerous to the peace and safety of the community that he should be at large." *

* Rev. Stat., ch. 48, § 6. Commissioners Report, 1858, ch. 73, §8.

2. Two Justices of the Peace, one being of the quorum, may commit to one of the State Hospitals, any insane person who has no known settlement in this state.*

3. The Overseers of the Poor are authorized to send town paupers, whatever may be the form or degree of their insanity, provided the trustees consent to receive them.†

4. The trustees may admit any poor patient whose case is recent,‡ whether violent or mild, dangerous or harmless.

These four classes, *first*, the furious and dangerous, *second*, State paupers, *third*, town paupers, *fourth*, poor patients, whose insanity is recent, comprise only a part, perhaps not half, of the insane in this or any other State. But these are so clearly described, in such precision of language, and this repeatedly in respect to the first, as we shall see, that it would seem that that maxim of law, "*that the mention or inclusion of one or of several things in a category, for any purpose, is to be taken also as an exclusion and prohibition of all the others in the same category*," should be applied here.

This, then, would exclude all mild cases, indeed all who are not dangerous and furious, and who are not *town* or *State* paupers, and whose insanity is not recent.

It would prohibit the courts from sending any cases not furiously mad and manifestly and publicly dangerous.

It would prohibit the overseers from sending any *State* paupers.

It would prohibit the trustees from admitting any who are not poor, or whose insanity is not recent.

It would prohibit the Justices of the Peace from sending any but State paupers and foreigners.

It would exclude nearly three-quarters of the members of the families of the farmers, mechanics, merchants, and professional men, indeed, of all the independent or self-sustaining families of the Commonwealth.

ORIGIN AND CHARACTER OF LAWS ON INSANITY.

The earlier and the principal part of the laws of this State in respect to the insane were enacted, and the first hospital was established when the general and popular idea of insanity was that of danger to the public, and the world believed that it was unsafe for an insane man to be abroad. Hence many

* Acts 1856, ch. 108, § 1. Com. Rep., 1858, ch. 73, § 19.
† Rev. Stat., ch. 48, § 8. Com. Rep., 1858, ch. 73, § 22.
‡ Rev. Stat., ch. 48, § 8. Com. Rep. 1858, ch. 73, § 22.

were confined in jails, and many more in strong rooms at poor-houses, and at their private homes. The probability of restoration was then apparently so small, that little or no provision was thought needful for this purpose.

The statements, arguments and pleas of those who first proposed the Worcester Hospital, the inquiries and reports of the commissioners who were directed by the government to investigate the condition of the insane and the necessity or propriety of establishing a hospital, the reports of the legislative committee in favor of this measure—all were based upon these facts and these views. They said that there were enough of our people insane and confined in prisons, cages, &c., to fill a hospital, and although their confinement was necessary for the public safety, yet humanity demanded that they should have a better and more comfortable place of custody than they then had, and more skilful guardians than jailors and poor-house keepers to take charge of them.

The Worcester Hospital was therefore made, primarily, a custodial institution, and the law of the time corresponded to this purpose almost exclusively.

Since that time, the ideas of insanity have been very materially changed, and from year to year various laws have been enacted in respect to this disease and its subjects, based upon the different notions of the respective legislators who supported them.

These laws were scattered through the many volumes of the revised statutes, and of the yearly acts and resolves of the General Court, even down to 1858.

For the first time, they are now gathered together by the commissioners on the revision of the statutes, and incorporated into one code, in chapters 73 and 74 of their report.

It being their work, not to make nor correct law, but to arrange the materials already created, they have brought all the existing enactments into one whole, and made, as was unavoidable, a singular piece of incongruous mosaic, with various defects, imperfections and inconsistencies. It is now proposed to re-enact and establish these as a code of law, that probably finds no parallel in the statute book.

Although it purports to be the rule, it differs materially from public practice, in respect to insanity and insane hospitals. It has not been entirely and exclusively regarded for twenty-five years, and no community enlightened like ours, nor authorities intelligent as those appointed in Mas-

sachusetts will or can regard it as their exclusive principle and rule of action in respect to these matters.

LAWS FOR ADMISSION OF INSANE TO STATE HOSPITALS.

It will be well to examine this code of laws more minutely, and see the nature and bearing of its various provisions.

The law allows the judges of the Supreme, Superior and Probate Courts to send patients to the hospitals, but it hedges them about with the straitest conditions in regard to their action. It limits their authority to those, "who in their opinion are so furiously mad as to render it manifestly dangerous to the peace and safety of the community that they sohuld be at large." * Observe the strictness of the language.

The law is not satisfied with trusting to the judgment of the court in simply finding the patient insane, but the judges must find him mad — a maniac. They must find him not merely mad, but furiously mad; not merely furiously mad, but so furiously mad as to be dangerous to the peace and safety of the community to be at large; not merely dangerous to their own families, but to the peace and safety of the community, to society and the world abroad; not merely dangerous, but this dangerous condition must be manifest, clear, unmistakable to the court.

As if the law delighted in this restrictive language, it repeats it over and over, in almost every place, where it allows the higher courts to determine the condition and dispose of one whose mind is disordered.

When an appeal from the decision of the judge is made to a jury, or when a jury, under the direction of the judge is called, the same restriction is given in the same terms.†

When one is brought before the grand jury, but not indicted, by reason of insanity, the court may commit him to the hospital, on the same condition, and on that only, that is, "if the discharge or going at large of such insane person shall be deemed manifestly dangerous to the peace and safety of the community, otherwise he shall be discharged." ‡

Here it seems the law intended there should be no doubt. It is not a matter of inference nor of implication, but there must be a plain, unequivocal manifestation of the maniacal fury and danger.

But the law, which takes so much pains to limit the juris-

* Rev. Stat., ch. 48 § 6. Com. Rep., ch. 73, § 8.
† Acts 1837, ch. 228, § 1. Com. Rep ch. 73, § 11.
‡ Rev. Stat., ch. 136, § 15, Com. Rep., ch. 171, § 15.

diction of the courts of the highest dignity and intelligence o a single and rare form or phase of mental disorder, and is so careful to protect all the other insane from any interference or power of these judges, seems to forget its anxiety and fear, when it authorizes other and lower and less responsible officials to send patients to the hospitals or places of detention.

The overseers of the poor, in any town or city may commit "any lunatic who is supported by any place to the hospital," that is, all town and city paupers of every form of mental disorder, provided the trustees consent,* without any question of his form of insanity, whether mild or furious, harmless or dangerous.

"The trustees may, in their discretion, receive into the hospital any poor persons suffering under recent insanity."†

Any two justices of the peace, one being of the quorum, may commit to the hospital a person who has no known settlement in the State and is insane.‡

In all the last three proceedings, there is no question to be raised as to the form of disease.

These overseers, trustees, and justices of the peace can commit or admit the insane of every form of mental malady.

Moreover, any two justices of the peace, one being of the quorum, can send any insane person, not furiously mad, to the county receptacle, which, in eleven counties, is a part of the House of Correction.

If a patient be brought before the higher courts to be examined as to his fitness for the hospital, and he or his friends are dissatisfied with their decision, he can have a jury summoned, who shall take the question of his disease out of the hands of the judges.§

No such appeal is allowed to a patient who is in the hands of the police courts, or justices of the peace, or overseers of the poor. They have exclusive and conclusive jurisdiction of the case.

The justices are authorized to send the insane, not furiously mad, who have a known settlement in this State,‖

* Rev. Stat., ch. 48, § 8. Com. Rep., ch. 73, § 22.
† Rev. Stat., ch. 48, § 8. Com. Rep., ch. 73, § 22.
‡ Acts of 1856, ch. 108, § 1. Com. Rep., ch. 73 § 19.
§ Sup. Rev. Stat., p. 50. Acts 1837, ch. 228, § 1. Com. Rep. ch. 73, § 11.
‖ The law of 1836, ch. 223, gives the magistrates power to commit any insane persons, not furiously mad to the receptacles. The law of 1856, ch. 108, limits their jurisdiction to those who had *no* known settlement in the State, and allows them to send the insane to the State Hospitals, (§ 1) and the idiots to the State Almshouses. (§ 2) The proposed law of the Commissioners transfers this jurisdiction and allows the justices to send only those having a known settlement in this State, to the county receptacles an entirely different class of persons and places from those specified in the original Statute.

almost always natives (and no others) to the receptacles and to the houses of correction to be confined.*

The same magistrates are authorized to send the insane, not furiously mad, who have no known settlement in this State, almost always foreigners (and no others) to the hospital to be cured and restored to health.†

In regard to the condition of one who is so furiously mad as to be manifestly dangerous, there can be no doubt. It is so plain that any one of common understanding can discern it. Yet the decision in this case is committed to the highest courts, and even then the patient may have a jury and a thorough investigation and trial.

But in regard to the mild cases, there is frequently a doubt. Indeed this is often one of the most difficult cases, for courts, juries, physicians, and even such as are the most practised in, and familiar with, these disorders of the mind, to determine. Yet this class of cases is entrusted to any two justices of the peace, without appeal for farther inquiry.

The receptacles were established exclusively for the confinement of insane persons *not* furiously mad.‡

All persons removed by the trustees from the hospital to the jails or houses of correction, are ordered by the proposed law to be confined in said receptacles.§

The trustees of the hospital, if it be over full, can send to these receptacles or parts of jails, and houses of correction, insane patients under their care, whatever may be the form of disease, whether furiously mad or not furiously mad.‖

The justices of the peace can send to the receptacles or parts of jails and houses of correction, the insane who have a known settlement; that is, generally natives and no others.¶

The hospital trustees are directed, in sending patients from the hospital to jails and houses of correction, to select foreigners, who are generally State paupers, and have no settlement in the State,** before any other.

* Com. Rep., ch. 74, § 4

† Acts of 1856, ch. 108, § 1. Com. Rep. ch. 73, § 19.

‡ Acts of 1836, ch. 223, § 1. Sup. Rev. Stat., p. 4. Com. Rep., ch. 74, § 1.

§ Com. Rep., ch. 74, § 3. The law of 1846, ch. 154, which is referred to in the Reports was a special act for the receptacle or asylum at Ipswich, in Essex, and only authorized the patients belonging to that county to be sent to "said asylum." The Commissioners report makes this a general law applying to all the counties.

‖ Rev. Stat., p. 382, ch. 48, § 15. Com. Rep., ch. 74, § 3

¶ Com. Rep., ch. 74, § 4.

** Rev. Stat., p. 382, ch. 48, § 15. Com. Rep., ch. 73, § 28.

The trustees can send to the jails, &c., foreigners, unconditionally.*

But they can send only such citizens "as are least susceptible of improvement."†

The judges of the higher courts can remove an incurable patient after he has had a fair trial of the hospital treatment, and deliver him "to the agents of any place in which he has his legal settlement, or to his friends, when it appears that it would not be to his injury, and that he would be comfortably and safely provided for, by any parent, kindred, friend, master, or guardian, or by the place of his legal settlement."‡

"The trustees may remove any idiot or other patient, whenever in their opinion he ceases to be dangerous and is not susceptible of mental improvement by remedial treatment at the hospital,"§ and they are not to consider or care what may become of him afterward, whether he will be well provided for or not.

In the former case, § 31, ch. 73, Com. Rep., although the court has ascertained that the patient will "be comfortably and safely provided for by any parent, kindred, friend, master, guardian, or place of his legal settlement," and therefore could not suffer by the removal from the hospital, yet he or his friends may have a jury to aid or direct the judges, or reverse their decision.‖ But the trustees are authorized to discharge the same patient without regard to his future condition, whether he has family, friends, or poor-house to care for him or not. They may turn him out a homeless and houseless vagabond upon the world, and neither he nor his friends have any right of appeal to a jury, to see whether it should or should not be so.

When a man is charged with an indictable crime, and is imprisoned therefor, but "not indicted by the grand jury, by reason of insanity," "thereupon, if his discharge or going at large is deemed manifestly dangerous to the peace and safety of the community, the court may order him to be committed to the State Lunatic Hospital, otherwise," that is, if he be not a dangerous maniac, but merely insane, "he shall be discharged."¶ Previous to 1849, the same was directed to be done by the courts, to any insane person

* Rev. Stat., p. 382, ch. 48, § 15. Com. Rep., ch. 73, § 28.
† Rev. Stat., p. 382, § 15. Com. Rep., ch. 73, § 28.
‡ Acts of 1839, ch. 149, § 1. Com. Rep., ch. 73, § 31.
§ Rev. Stat., p. 382, ch. 48, § 14. Com. Rep., ch. 73, § 30.
‖ Acts of 1839, ch. 149, § 1. Com. Rep., ch. 73, § 31.
¶ Rev. Stat., p. 758, ch. 136, § 15. Com. Rep., ch. 171, § 15.

indicted, tried, and acquitted by reason of insanity. He, too, could be sent to the hospital, provided he was a furious or dangerous maniac. Otherwise he was commanded by the law to be discharged.*

But since 1849, if the indicted person is brought before the court for trial, and is then found to be insane merely, without restriction, but suffering from mental disorder of any kind or degree, the court is allowed to remove him to one of the hospitals for such term and under such limitations as they may direct.†

As the law now stands, if the accused get no farther than the grand jury, and is merely insane, but not furiously and dangerously mad, the court shall have nothing more to do with him, but shall discharge him.

But if he gets one step further into the court, and before the traverse jury, and is merely insane, then the court may commit him to the hospital, and establish the conditions of his being there.

PRACTICAL OPERATION OF THE LAW.

These are some of the provisions of the law in respect to insanity and the insane hospitals, and all the provisions of the law for the admission of patients into those public institutions. It is plain that they must fail to meet the wants of all of that class for whom they are made, and for whom the hospitals were established. These legal descriptions do not include all, perhaps not much more than half of those who should enjoy, and who are really sent to enjoy, the benefits of the hospital treatment.

Fortunately for the insane, the hospital was early considered a curative, as well as a custodial institution; and the custom was soon begun, and gradually established, of sending all insane patients of every kind, the mild as well as the violent, the harmless as well as the dangerous, to Worcester, for their restoration as much as for custody, for their own personal good as well as for the public security.

For many years the peculiar limitations and restrictions of the law, as applied to the courts, have been, as they should be, entirely disregarded; and they allow all proper subjects of hospital care and treatment to pass through

* Rev. Stat. p. 762, ch. 137, § 12.
† Acts of 1849, p. 40, ch. 68. Com. Rep., ch. 172, § 13

their hands, and to enter these institutions by their authority.

Here arises a difficulty. The law yet remains in its original imperfection and unfitness. It is hard to reconcile the interests and demands of humanity and the indications of science with the language and the manifest primary intentions of the statutes.

In view of these facts and conditions, the mild and harmless state of a large portion of the insane, the necessity of getting them into the hospital, and the expectation that they will be offered, and, also, the rigid terms of the law, it becomes necessary to interpret the latter very freely, and depart very widely from its original meaning. The friends of the patients are obliged to accommodate their testimony to the requirements of the law, and often to swear, in form and in language, to that which they know is not true, and the courts to admit and decide in accordance with that which is manifestly false.

But there are some who will not swear that one is furiously and dangerously mad, when he has only harmless and quiet delusions. Most of these patients are first directed to the State hospitals by the physicians, and, when the case corresponds with the description of the law, they go readily before the courts, and testify accordingly. But when the disease is mild and harmless, some refuse to go before the court with such testimony as they have to give, but go to the judge privately, and state the case as it appears to them, and the real necessity of the aid of the hospital for the patient's restoration, and then leave it to the friends to shape their public testimony in accordance with the strict letter and requirements of the law.

The liberality, high intelligence and humanity of the courts, and of the trustees of the hospital, as the late Dr. Woodward stated — in a letter to the writer of this article about a dozen years ago — early began, and have ever since continued, to interpret and administer the law rather in accordance with the spirit and principles of those friends who proposed, and the legislature who established that institution, than in strict conformity with the letter of the statutes. Thus, by expanding the action of the law beyond its language, they have kept pace with the progress of science, and the growing demands of the time, and entirely satisfied the people. Consequently few, probably none of the proper subjects of the hospital care or treatment,

whether mild or violent, whether harmless or dangerous, whether they needed the means of restoration or of custody, have been deprived of an opportunity of entering and enjoying the advantages of these institutions, when their friends have sought for them through the legally appointed authorities.

Nevertheless, there may be, and probably have been, some insane persons, in this State, whose disorders of mind were mild and harmless, but removable, whose friends could not conscientiously carry them before the courts, in face of the strict requirements of the law, or could not testify before those tribunals in such form of language that, by any freedom of interpretation, they could be considered as furiously and dangerously mad, and therefore legal candidates for admission into the hospital. These are consequently deprived of the means of restoration, which were really provided by the Commonwealth for them, but not offered to them by the law; their disorders remained uncured, and became permanently fixed, and they and their service were lost to their families, their friends, and the State.

Under the liberal and honorable administration of the law of insanity, by our higher courts, immeasurable good has been accomplished, and no evil produced, and no needless suffering caused. During the twenty-six years since the first hospital was opened, I know of no case of undue restraint commanded, and of no man nor woman improperly deprived of liberty by this free exercise of judicial authority, although six thousand six hundred and eighty-seven had been admitted up to the date of the last reports, September 30th, 1858, into the three State institutions for the insane, and more than two-thirds, four thousand six hundred and sixty-six of these, were committed by the courts.

Yet it is plain to every one familiar with those institutions, that a large part of their patients were not, at the time they were sent, nor have they ever been, "furiously mad," still less were they or are they "so furious as to be manifestly dangerous to the peace and safety of the community to be at large." These were confined, and are held in custody contrary to the letter, at least, of the statutes, although in conformity with all the spirit of the time.

If then any discontented patient, in either of the State hospitals, whose condition is not described in any of the laws authorizing the courts to commit to these institutions, should apply for a writ of *habeas corpus*, and ask

that the superintendent should be brought before the court to show cause why he is held in custody, he, the superintendent, might find some trouble in sustaining himself by the law. He could readily produce the authority of the court, which was mandatory, and not to be refused or questioned. The patient might then show that the order of commitment was founded in error; it was based on the assumption or supposition that he was furiously and dangerously mad, but he was neither furious nor dangerous. Moreover, it could be clearly established that he merely had mild and harmless delusions; that he thought he had committed unpardonable sins, and would be forever punished; or he imagined himself made of glass, and could not stir for fear of breaking; or he supposed he and his family were to endure intense suffering from poverty; or he was downcast from some loss of property or of friends; or he was cataleptic and could not move body or limb, or from some cause he had lost all motive of action, and desired to be left alone to mope and dream. So far from being dangerous to others, he was in overwhelming fear of being hurt by them; so far from being a disturber of the peace of the community, he stayed in his own chamber, as long as his friends would let him, and was there and elsewhere almost as quiet as the dead.

It would be hard in such cases as these, and in many others of similar quietness and harmlessness, to prove that they come within the description of any law that authorizes the courts to commit patients to the hospital, except such as may have been indicted for crime, but not tried because they were found insane. And yet these, and such as these, constitute a very large proportion of the patients that, here and everywhere, are sent to insane institutions.

Perhaps no such case as this, just described, has ever been presented to the courts, with the petition for a writ of *habeas corpus*. Perhaps no case of the kind will ever arise; yet the way is open for any one who should desire to avail himself of it. But it is not probable that any one will find encouragement to do so, for the State hospitals are, and have been, managed with so much skill, discretion and humanity, and in such harmony with the general and popular notions, and with the well established and accepted principles of medical science, that they are secure in the confidence of the people, the government and the medical profession, and will be sustained, as they have been, by all.

PROPOSED REMEDY AND AMENDMENT.

The principle that those insane hospitals shall be open to, and used by, all classes of the insane, whether for healing, or for custody, being universally acknowledged, and being established by the practice of all that have anything to do with the patients; by the courts, when they grant orders of admission; by the trustees, when they suffer patients to remain; by the physicians and other officers of those institutions when they treat them there, and by the legislature, when they grant money for the support of these establishments; and, also, by the universal opinion and approbation of physicians, philanthropists and political economists, it would seem not only reasonable but necessary that the law, the rule of action, should be so altered and amended as to conform to the practice and the custom which the State, the government, and the people, the judicial and the hospital authorities have established, sustained and followed, with so much unanimity among themselves, and advantage to the insane patients, for whom these institutions were built and are kept in operation.

For this purpose, it is necessary that the words, "so furiously mad as to render it manifestly dangerous to the peace and safety of the community, that he should be at large," be stricken out from the 6th sec., 48th chapter of the Revised Statutes; the 8th sec., 73d chapter of the Commissioners' Report; the 1st sec., 228th chapter of the Laws of 1837; and from the 11th sec., 73d chapter of the Commissioners' Report; and the word "insane," substituted instead thereof, in each of these sections and chapters; and that the words "if the discharge or going at large of such insane person shall be deemed manifestly dangerous to the peace and safety of the community;" and also the words, "otherwise he shall be discharged," be stricken out from the 15th sec., 136th chapter of the Revised Statutes; and from the 15th sec., 171st chapter of the Commissioners' Report.

That the words "for such a term and," be stricken out from the 1st sec., 68th chapter of the Law of 1849, and the 13th sec., 172d chapter of the Commissioners' Report.

That the words, "under such limitations as they may direct," be added to the 15th sec., 136th chapter of the Revised Statutes; and also to the 15th sec., 171st chapter of the Commissioners' Report, after the word "Hospital," in the 7th line in each.

These alterations would give the courts the power that should be entrusted to them, nnd which they really and properly exercise now.

The alteration of the Law of 1849, and the Commissioners' Report, chapter 172, sec. 13, by striking out the words, "for such a term and," would relieve the courts of the responsibility of determining the length of time requisite for the patients sent by them to remain in the hospitals, which the superintendents alone can determine, from their observation of each case.

It is necessary, also, that the word "for," in the 5th line, and also the 6th and 7th lines of the 8th sec., 48th chapter of the Revised Statutes; and also the words "for a less sum any poor," in the 6th line and the 7th and 8th lines of the 22d sec., 73d chapter of the Commissioners' Report, be stricken out, and the words, "any insane persons, and they may make such deductions of payment as their circumstances may seem to require," be substituted in their place.

This alteration would legally open the hospitals to all of our citizens who may need them, and to all to whom the State really intends to offer them.

NEED OF MORE CHANNELS OF ADMISSION TO HOSPITALS.

The authorities that are and ought to be entrusted with the power to commit patients to the lunatic hospitals, merit still farther consideration.

Privation of personal liberty is justly considered one of the greatest sufferings that can be inflicted on man, and among the greatest infringements of his rights. This privation, even in a case of insanity and for personal or public good, ought not to be permitted without certain cause and the most cautious investigation of the circumstances and conditions that demand it. Of course, there is, in every case, some question as to the facts, and sometimes it is a very difficult question to answer, whether the person to be examined is insane or not, and whether it is better for him or for the community, that he be sent to the lunatic hospital. Such questions as these should be submitted to, and decided by only the most competent and trustworthy tribunals.

No men are better qualified, by their character and occupations, to hear and determine these cases, than the judges of the courts. They are accustomed to investigating doubtful and intricate questions, to weighing evidence, and to

deciding the value and bearing of testimony. Their discipline and their habits of cautious deduction in matters that relate to the conduct and condition of men, give a peculiar weight and authority to their opinions. No class of men command the confidence of the people so largely as they do, and to none does society entrust its interests and its privileges, its weal and its woe, so extensively and so willingly, as to these judicial officers.

It was then both natural and proper, that the people should first look to these magistrates to take cognizance of these cases of insanity and determine whether persons, supposed to be mentally disordered, are really insane, and whether they ought, for that cause, to be deprived of their liberty. But the law assigns to these high and intelligent functionaries for their adjudication only a part, perhaps only a small part of these insane cases, and those are the most discernible and most easily distinguished and determined; they are the least doubtful, and stand the least in need of great sagacity, experience and acuteness to recognize and understand them. But on the contrary, the larger part of these cases, the least evident, and most difficult to be understood and decided, are assigned to the overseers of the poor, the justices of the peace, and the trustees of the hospitals, for their examination and decision.

Notwithstanding the deficiencies of the law,—its unfitting requirements, its rigid and exclusive conditions, and its singular distribution of authority for the purpose of committing patients to the State hospitals,—yet custom, which in this matter is a great improvement upon the law, has remedied its defects and errors, and thrown most of the work and responsibility of opening the hospital doors to those that should enter there, upon the higher courts, and principally upon the Probate Court, in all the counties except Suffolk. This duty has been performed by those magistrates so faithfully and so acceptably, that no other kind of authority is wanted, and none would be sought, if there were enough of these officers, and they were distributed in smaller districts than the counties, and were sufficiently near and accessible to the insane patients and their families.

The supreme and superior judges are so much occupied in their courts abroad, that they are but little at their homes, and therefore can be and are but seldom relied upon, and resorted to, for the examination and decision of

cases of candidates for the public hospitals. Practically, then, there is but one judicial officer in each county, except Suffolk, who can grant permission to enter these institutions. He is the judge of probate.

In some of the counties the rule of the courts and the custom require that these insane parties be brought before the judge in person, for his examination.

In most cases of insanity, the sooner the patients are removed from home to the place of custody and healing, after they are attacked, the greater is the probability of their restoration to health. They need to be sent to the hospital as early as possible after their disease is discovered. Some of the insane are violent, some are dangerous, and some are suicidal, and require immediately a kind and degree of influence and power to control them, that are found only in these institutions.

The last class cannot wait, and the first ought not to wait at home until the judge of probate shall hold his court in their respective neighborhoods, but they must be carried at once, if required, as in some counties, to the residence of the judge for examination; or, if his presence is not requisite, the patient's friends must go immediately to this magistrate, with the proof of his disease, and obtain an order of commitment to the hospital.

Every one the least conversant with diseases of the mind, knows that it is troublesome, often painful, and sometimes dangerous, for an insane person to travel abroad; and some cases are made worse and less curable by the fatigue and exposure and excitement of a journey.

If the judge reside in the part of his county nearest to the hospital, it may be convenient for most of the patients in his district, to call on him on their way thither; but if he reside in the part of the county the most distant from the hospital, as he has in Middlesex and in Norfolk for many years, then his travel is very greatly increased, and often much inconvenience is experienced, and much suffering endured in consequence.

In some instances this travel is increased very greatly beyond what would otherwise be necessary to reach the hospital. A patient residing in Foxboro' could reach Taunton by going twelve or fifteen miles; but being obliged to go first to Quincy or Roxbury, his journey is multiplied four-fold. A patient living in Hopkinton may reach Worcester by a journey of fifteen miles; but if required to go

first to Lowell or Cambridge, his journey is increased in the same proportion.

A more marked, yet possible, and not improbable case, may be that of an insane man belonging to Mansfield, who must travel, not merely to Taunton, ten miles, but twenty miles farther to New Bedford, to obtain his leave of entrance, and then go back to Taunton, his place of destination.

There have been instances of great suffering in consequence of this protracted travel by the insane. Sometimes, in order to meet the judge, it has been done partly, or even entirely, in the night, when the insane are the most easily disturbed, and when they bear agitation with less impunity, and require repose more than persons in sound health.

Of course this extension of travel and unavoidable disturbance increase their mental disorder and the difficulty of recovery, and consequently the length of residence in the hospital necessary for their restoration.

None of the insane are *certain* to recover, although more than three-fourths do get well, if early and properly treated. Some are of very doubtful issue; some are on the very turning point between hope of restoration and certainty of life-long disease. In these, the least addition to their disturbance or excitement fixes their malady past all removal. No judicious friends would do any thing voluntarily that would increase their disease, and thereby the difficulty and uncertainty of their recovery. No trustworthy manager would allow this to be done. No wise government would establish any conditions, or weave any circumstances, that would make the insane hospital less easy of access, or increase the burden of mental disorder, and the chance of permanent insanity in any of its people.

Even in those counties where the candidate for the hospital is not required to appear personally before the courts, but an order of admission may be obtained by an agent, with proper proof, there is still the trouble of sending a messenger, and perhaps other witnesses, to the residence of the judge. This is generally an inconvenient matter, and especially on these occasions, when all the strength of the family is absorbed in the care of their deranged member, while he is waiting at home for leave to go to the proper place of healing. There is then, also, a delay in sending the patient to the

hospital, which is often injurious to him, and always burdensome to his friends.

These evils are not necessary. They have no inseparable connection with the disease that is to be managed, nor with the patient's future welfare. A remedy may be found in the increase of the channels through which the insane may pass to the State hospitals, and in distributing these in smaller districts through the State than they now are, and more accessible to the families and friends of those who need their aid.

Of course there need and can be but one judge of probate in each county; and the judges of the other courts cannot be multiplied for so small and incidental a purpose as the investigation of those cases of insanity that need the care and protection of the hospital. Although these officers are perfectly satisfactory, as far as they go, yet others can perform their duty as well as they. These examinations are not legal, but medical and scientific. It is not a civil, nor a judicial, but a pathological question that is to be answered in the case of insanity. This can be determined by the physicians alone, by men who have been educated and trained to investigate and discern the various phases and manifestations of human health. No legal learning, nor judicial acumen, nothing but familiarity with disease enables a man to discriminate the conditions of mental health. The courts, in most cases, necessarily rely upon the evidence they receive from the medical profession; for they have no more skill to discern the shades and degrees of cerebral disturbance, and decide the questions of mental disorder, than they have of discerning and deciding the presence and character of physical disease. Except in marked and palpable cases of mania, they can no more determine whether a man is insane, than whether he has pleurisy, pneumonia or fever. There are many cases where even the ordinary physician cannot detect the disease of the mind, and where nothing short of the practised skill of the expert can detect its presence or absence. The decisions of the courts in these cases are founded generally upon the evidence brought to them by the medical witnesses, rather than upon any thing which they can elicit by their own investigation, or from any other testimony that may be offered to them.

Moreover, it has already been shown that the law sub-

mits only a small proportion of the insane — only the furious and manifestly dangerous maniacs — to the jurisdiction of the courts, in regard to their going to the hospitals. The other patients, for whom the law offers these institutions, are entrusted to the justices of the peace, the overseers of the poor, and the trustees of the hospitals. These are neither judges nor lawyers. They have not the skill in eliciting and analyzing evidence that belongs to the judiciary. They, even more than the courts, are dependent on the medical profession for what knowledge they obtain of the condition of the supposed or real insane that are brought before them.

Through about forty years, the McLean Asylum has admitted patients on the authority of the trustees alone, aided by the evidence of the physicians, and at the request of the family or friends of the insane candidate. Within this period, four thousand four hundred and fifty-one have been received and treated in that institution, without the intervention of the courts, yet no injustice has been done. There has been no reasonable ground of complaint, on the part of the patients or their friends, that they were unnecessarily or improperly restrained or deprived of their liberty. The community is as well satisfied with the management of the trustees of the McLean Asylum, and those of the State hospitals, in respect to the admission of patients into their respective institutions as they are with that of the courts in respect to the commission of the insane to those establishments that come within their authority for this purpose.

Seeing, then, that the courts are not the only safe and reliable depositories of this power to commit or admit insane persons to the institutions designed for them, and seeing that others are needed for this purpose, in most if not in all of the counties, and that several are needed in the largest counties, it is manifest that the legislature should provide for the appointment of other officers, who shall be authorized to examine and admit or commit patients to the State lunatic hospitals.

Dr. Ray, superintendent of the Butler Hospital, for the insane, at Providence, Rhode Island, in an excellent article on the legal relations of the insane, printed in this journal, in September, 1850, proposed, that the judges of the law courts be authorized to appoint a "commission of not less

than four nor more than six persons, one of them a lawyer and another a physician, who should have the party brought before them, hear the testimony, and render a decision accordingly." Dr. Ray proposes, that this commission be an extemporaneous and temporary one, to be appointed anew for each case, and to terminate when the case shall be disposed of. In every case, then, the judge must be sought out, and a statement of the facts made to him, with the request that he exercise his authority, and appoint the commissioners. Next, these must be waited upon, and persuaded, if possible, to attend to the work assigned to them. Here, then, arises not only the same difficulty that already exists in Massachusetts, but that is doubled, and perhaps trebled, in the labor imposed upon the family and friends of the patient, at a time when they are the least able to bear and attend to it. There are the delays and the trouble not only in sending to the judge, and having at least a partial hearing before him,—which is now required, — but also in the appointment of the commission, in the searching for the four or six persons so appointed, and obtaining their consent to serve, before the investigation could be commenced. In this respect, the plan would be worse than that now in use here.

Nevertheless, the idea of Dr. Ray, in regard to a commission, is a good one, and, with some modifications, could be adopted with great advantage. But the commission should be standing and permanent, and not extemporaneous and temporary. It would be well, then, for the legislature to authorize the governor and council to appoint commissions for this purpose, in such parts of each county, or all the counties, except Suffolk, Nantucket and Dukes, as the judge of probate does not reside in. These should be distributed in districts so small that they may be easily and readily accessible to the insane or their friends.

Thus, in Norfolk county there should be one commission in Dedham, one in Randolph, or in that neighborhood, one in the south, and one in the south-west part of the county, and perhaps one in Roxbury. The judge of probate resides in Quincy, and has an office in Boston. He is willing to go, at any time, when requested, and not otherwise engaged in judicial duty, to Roxbury and Dorchester, and probably to Brookline, to attend to, and decide upon, cases of insanity. If so, the commission in Roxbury may not be necessary.

In Middlesex, the judge of probate resides in Lowell. There should, then, be one commission in the north-west part of that county, one in Cambridge or Charlestown, one in Stoneham, one in Concord, and one in Framingham, or in the vicinity of these places.

These commissions should be distributed in a similar manner throughout the other counties, so that they may be within an easy travel from every family, and any one attacked with mental disease, however suddenly or violently, may, without much inconvenience to his family or friends, and without increase of suffering on his own part, or a diminution of the chances of restoration to health, obtain a hearing and a license to enter the State hospital.

These commissions should each include a physician and a magistrate, — justice of the peace, — who should be authorized to hear the evidence, and decide the question of insanity, and, if the case require it, grant permission to enter the hospital, in the same manner as the courts now do. If need be, their decision and order should be mandatory and compulsory so far as regards the patient and he be compelled thereby to go to the institution designed for his protection or his recovery.

As experience renders the investigations of the cases of insanity more easy and reliable, these commissioners should be appointed for a term of years, — five, perhaps, and may be re-appointed at the expiration of their terms. But a removal from the district for which they may be selected, or engagement in business which must occupy them elsewhere, shall be deemed as a resignation of their office. They should receive a small compensation for their services — say two dollars each for every case — as the judge of probate now does, and also the usual fee paid to public officers, for travel from their homes, if that be necessary.

COUNTY RECEPTACLES FOR THE INSANE.

The law of 1836, c. 223, § 1, and 1842, c. 100, § 1, requires that "there shall be in each county, within the precincts of the House of Correction, or if, in the judgment of the county commissioners, it cannot be conveniently provided within the same, then in some other building or buildings to be deemed a part of the house of correction, a convenient apartment or receptacle for the confinement of insane persons not furiously mad."

This law was founded originally on wrong principles, and in eleven of the counties it has ever been a dead letter, and is so now in twelve. It was wrong to allow or require the insane — persons diseased, but not criminal — to be confined in jails and houses of correction, or to compel them to live in the same establishments with those who were guilty of crimes.

In obedience to this law, and aided by other legislation especially adapted to this purpose, the city of Boston built a hospital, in 1838, and provided it with a proper corps of officers and attendants, and other means necessary for the cure and the custody of insane patients. This institution is referred to and recognized in the Commissioners' Report, c. 74, § 12.

Essex county built, at Ipswich, a receptacle connected and under the same roof with the house of correction and jail.

Middlesex county, at first, and for some years, appropriated its old jail at Cambridge, which had been disused as unfit for the criminals, but afterward built two small houses, one for the male and one for the female patients, within the jail yard, that was already too narrow for the prison purposes, and these were crowded with the insane.

Essex had very little land or room for out-of-door exercise of the patients at Ipswich, and Middlesex none at all, for the same purpose, at Cambridge. Neither of these had any other means of occupying their insane, nor any physician to give especial attention to their mental disorders. Essex had an excellent superintendent, who was also master of the house of correction and jailer, and made the best of a bad system and unfavoring circumstances.

In all the other eleven counties, no regard whatever was paid to the requirements of this law, save that most, if not all of them, at times, since as well as before 1836, have had insane persons confined within the precincts of their jails or houses of correction. These are placed and kept in some of the common rooms of the prison, which probably, for the time being, are called "receptacles for the insane," according to the terms of the law.

The other main provisions of the law are and have been equally disregarded. According to section first, the county receptacles were ordered to be prepared "for the confinement of insane persons *not furiously mad.*" Section second

authorizes the police courts and the justices of the peace to commit to these receptacles insane persons *not furiously mad*, and no other. Although the law required the counties to prepare these places for the mild and peaceable patients only, and allowed the magistrates to commit only such to them, yet widely different classes and characters of mental disorder are and have been confined in these establishments.

The annual reports of the jails and houses of correction of Massachusetts, describe the condition of each insane person confined in them, or in the receptacles connected with them, and state the authority by which each was committed. Among these are many who are described as being "wild," "violent," "very violent," "excitable," "very destructive."

The law proposed by the Commissioners, ch. 74, § 4, restricts the action of the magistrates under its provisions, and allowed them to commit to the county receptacles only those insane persons who have a known settlement in this State, and are therefore supported by their own estates, or, if paupers, by their respective towns and cities.* But the report of jails and houses of correction, for 1855, states that there were then, in the receptacles of Essex and Middlesex, 180 insane persons who were committed by the police courts and justices of the peace, and of these 153 were supported by the State, and had therefore *no* known settlement within the Commonwealth.

The law of 1836 authorizes the Police Courts and magistrates to commit the mild and peaceable patients, and the hospital trustees to send any incurable insane to these receptacles; it also permits the superintendents, with the consent of the county commissioners, to receive such as the overseers of the poor may send. No others have authority to send the insane to these establishments. But in 1855, there were in them, eight who were committed by their friends, one by the Court of Common Pleas, one by the sheriff, one by the county commissioner.

Since 1855, all of the State paupers have been removed from these receptacles to the State almshouses and elsewhere. The Middlesex receptacle is entirely abolished, and no patient left there. Those in the Essex receptacle were reduced from 118 in 1855, to 48 in 1858, and only 3 were

* See note 1 on page 7.

left in the other prisons. There were in all of these establishments at the latter date less than a fourth of the number in them three years previous.

Considering, then, that the system of county receptacles was originally a bad one, and entirely unsuited to the wants of the time, and repugnant to the received principles of science, and to the general intelligence and spirit of the age; considering that it never has been adopted in eleven counties, that it is abolished in Middlesex, and modified by other legislation in Suffolk: considering, also, that its conditions as to the classes of patients that should be committed are generally disregarded, and as to the persons or authorities who should commit them are overruled, and that most of this law is practically a dead letter, or perverted from its original purpose,—it will be well for the present legislature to strike the 74th chapter of the Commissioners' Report from the statute book, and leave no provision for the confinement of insane persons in prisons or in receptacles connected with them, except, perhaps, for the occasional and temporary restraint of such as may be dangerous, or the more permanent custody of criminal lunatics. The provisions for these may very properly be incorporated in the 73d chapter.

In view of these defects, inconsistencies and incongruities of the law, or the manifold laws concerning the insane and the institutions appropriated to them in this State, and their general but unavoidable neglect or modification in practice, by those who are appointed to administer them, it seems to be incumbent upon the comprehensive and far-seeing wisdom of the legislature, as they are now about to pass upon and re-enact them, to cause the whole to be thoroughly examined and revised, and make a perfect and consistent code of laws upon insanity, that shall comprehend in its provisions, all the varieties of this disorder, that shall be in harmony with the acknowledged principles, and meet all the wants of the time, and shall be in accordance with the scientific, economical and administrative ideas, by which the government, courts, and people—all who administer or have any thing to do with the law, have been, are now, and will be hereafter governed, in their management of the insane, whatever may be the letter or the spirit of the statutes.

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