THE BURNING ACCIDENT AT AN ASYLUM.

BARANOWSKA *v.* CAMBERWELL HOUSE, LIMITED.

KING'S BENCH DIVISION. BEFORE MR. JUSTICE SANKEY.

IN this action Miss Maude Baranowska claimed damages from Camberwell House, Limited, the proprietors of a private asylum, for personal injuries received while she was a patient there, through the alleged negligence of the defendants or their servants.

The plaintiff was an actress. In 1919 she developed suicidal tendencies, and in August of that year she was placed in the defendants' home for treatment. Eventually she left the home, cured, on March 3rd, 1920.

Mr. Disturnal, K.C., and Mr. A. F. Clements appeared for the plaintiff; Mr. Hogg, K.C., and Mr. Robert Fortune for the defendants.

Mr. DISTURNAL said that the plaintiff had been trained as an actress in Sir F. R. Benson's school, and owing to the burns she had been unable to follow her profession. She must, of course, prove a breach of duty, but in a case like this a patient was detained for the express purpose of receiving the care and protection from her own infirmity which she was not able to give herself. To leave a ward—especially an observation ward for dangerous cases—without supervision showed a gross dereliction of duty by the nurse, and was a direct breach of the printed instructions to nurses, one of which read: "No ward must at any time under any pretext be left without a nurse so long as there are patients in it." Further, the kitchen door should have been kept locked. The rules required nurses to lock all doors. The authorities of the home knew of the plaintiff's tendencies, as it was not the first time that she had been an inmate. Moreover, a few weeks before the burning she had been moved into an ordinary ward, but after she had hidden herself for some hours in a cupboard she was put back in an observation ward.

Mrs. BARANOWSKA, the plaintiff's mother, mentioned earlier attempts at suicide, and three previous visits to Camberwell House. After her previous illnesses she had taken up her profession again, but since the burns she had not been strong enough. Moreover, she usually played parts which required the wearing of evening dress, but that was now impossible as the burns would show.

THE PLAINTIFF'S EVIDENCE.

The plaintiff also gave evidence. She said that her first illness of this nature was in 1911. She described the observation ward, in which she occupied a bed between the fireplace and the door leading to the kitchen and lavatories. She remembered getting up in the early morning and going and looking in at the kitchen door where she saw the light. The nurse was not near. When her clothes caught fire she rushed into a linen cupboard, and stayed there until the pain became too acute, when she rushed back into the ward and the nurse threw a blanket round her and extinguished the flames. The kitchen door was usually kept locked. She was still unfit for anything but a very quiet life.

CROSS-EXAMINED: She had not tried to get any stage engagement since March, 1920. When she first went to Camberwell House she was placed in the infirmary; she was then suffering from a wound in her throat. It was not true that that was still being bandaged after the burning episode. She was moved to the terrace, which was supposed to be for convalescent cases. After the cupboard incident she was moved to another ward. It might have been called Orchard House, but she had heard the term "observation ward" from the nurses themselves. Several of the patients in her ward were "ticketed" as requiring special observation.

Medical evidence of the plaintiff's injuries was given by Dr. Gervis, who said that the scars would be permanent.

CROSS-EXAMINED: He had sent several mental cases to Camberwell House, which had a good reputation. The colour of the scar might alter in time from red to white.

Mr. HOGG: Could she not cover it with make-up—grease-paint or whatever actresses use?

Dr. GERVIS: That is not much in my line. (Laughter.)

In reply to the JUDGE, the witness said that the anxiety of this case might be a cause of the witness's making a slow recovery.

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Mr. HOGG: It is a question on which medical men might honestly hold different opinions.

The WITNESS: I believe a good many are to be called this afternoon and I am looking forward to reading their views in the evening newspapers. (Laughter.)

Dr. F. S. TOOGOOD gave corroborative evidence. He said that two of the burns were of the fourth degree, that was, the whole skin was destroyed—and in such cases there was some risk of a malignant growth.

The WITNESS agreed that mechanical restraint was prejudicial to a cure; he did not altogether agree that there was sometimes a choice between a cure and prevention of all risk.

In re-examination Dr. Toogood said that in no case should a suicidal patient be allowed anywhere near a naked flame.

Dr. BENJAMIN JONES, a specialist in skin diseases, said that there was a possibility that the scars would get worse and even malignant.

THE DEFENDANTS' CASE.

Mr. HOGG said that Camberwell House, Limited, had carried on the asylum for a great number of years. Actively suicidal patients were put in the infirmary, where elaborate precautions were taken. As they improved they were of necessity gradually put in conditions of greater freedom. Short of mechanical restraint, which modern ideas did not tolerate except as a very temporary measure in extreme cases, it was impossible to be sure that a person bent on self-destruction could not effect his purpose. It was said that an asylum which had no suicides would have no cures. In this case Miss Baranowska was seemingly well on the road to recovery. The kitchen was put in at the request of Sir Frederick Needham, one of the Board of Control. It was not usually kept locked. On the day in question the nurse was engaged in washing a patient and Miss Baranowska slipped out and set herself alight. It was right to add that there was no such thing as an "observation ward," but in the case of actively suicidal patients a "caution ticket" was issued, which was signed by each nurse who took charge of the patient to show that she had had her attention drawn to the case. When Miss Baranowska first came to the infirmary she was "ticketed," but when she was moved to the terrace as convalescent the ticket was withdrawn, and was not restored when she went to Orchard House, but through some misapprehension the nurse was under the impression that she was "ticketed," and she actually received the supervision appropriate to a "ticketed" patient.

Nurse CLAMP, the nurse on duty at the time of the accident, said that she was the night nurse, and was alone on duty except for visits from the head nurse. During the night she usually kept the kitchen door locked, as patients had to pass it in going to the lavatory. In the daytime it was usually left unlocked. There was no rule on the subject. About 5.45 in the morning she began getting hot water for the patients to wash themselves. She was washing an infirm old lady and she noticed that Miss Baranowska seemed to be asleep. Two or three minutes later she saw Miss Baranowska in the doorway in flames. She had not left the ward while she was on duty.

CROSS-EXAMINED: She had no special orders about Miss Baranowska, but at her own discretion she exercised special vigilance for a few nights. She knew that the plaintiff had been concealed in the cupboard for nine hours. As nothing happened for the first few nights she did not watch the plaintiff with the same vigilance. Her reason for locking the kitchen door at night was that she thought that patients might get into mischief. There was china in the kitchen as well as a gas ring which might be dangerous. It was the practice to have only one nurse on duty while the patients were being washed. She had never heard any suggestion that Miss Baranowska had run into the linen cupboard when her clothes caught fire.

The hearing was adjourned.

Dr. EDWARDS said that he had been on the staff of Camberwell House for twenty-eight years, and medical superintendent for twenty-two years. They were bound to take risks every day, as it was essential to give patients some liberty to see how far they were fit for return to civil life. At the present time about 10 *per cent.* were allowed out alone. That was a risk, as there might be a suicidal impulse and

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a tragedy at any time. It was a great anxiety and responsibility for the staff, but, on the other hand, there would be no cures if patients were not allowed some freedom. He had never heard the phrase "observation ward" until it was used in Court yesterday—as the name of a ward. They called the ward for actively suicidal cases the "infirmary." It would be prejudicial to a patient to be told that she was in an "observation ward." The phrase was used to distinguish the wards which were under night supervision. The rule as to locking doors applied to outer doors. To lock the interior doors would be undesirable, as it would make the place like a prison. He had himself authorised the occupation of patients in the kitchen: it was constantly left unlocked, with his approval. It was quite a proper precaution for the nurse to lock it at night if she thought fit, but the omission to do so would not have exposed her to reprimand. He thought that there was no danger: whether there was danger in leaving it open when the gas was alight would depend on the patients in the ward.

The Cupboard Incident.

Dr. Edwards said that he was on his holiday when the plaintiff was admitted, and on his return he found that she had been removed to "The Terrace." There patients had a good deal of liberty. Describing the cupboard incident, the witness said that the terrace houses were eighteenth century houses with various unused cupboards. There was one in the plaintiff's bedroom, but her bed was pressed against the door, and as far as he (the witness) knew it had never been opened. On the day in question the maid moved the bed from the wall to sweep behind it. and she was called away. The plaintiff slipped up and got into the cupboard, The maid returned and placed the bed back in position, not knowing that Miss Baranowska was inside the cupboard. No one had any reason to suspect her presence there, and it was thought that she had escaped. She made no attempt on her life. She laughed when she came out at the fright which she had given them. His personal opinion was that Miss Baranowska's illness took the form of a desire to figure in the limelight, and that both the cupboard incident and the setting fire to her nightdress were due rather to that motive than to a desire to take her life.

Cross-examined: He spoke in his letter of an "attempt at suicide" because he was not going to enter on a psychological discussion with a solicitor, and in common parlance it was an attempt at suicide, but his own view was that it was not. He was not deceiving the solicitor. He was familiar with the regulation requiring a case-book to be kept. He might look at it occasionally.

Counsel: Why is the cupboard incident not recorded in the case-book?

The Witness: I am a physician treating patients, not a clerk writing in records.

The Witness said that if he had known that the plaintiff had strong suicidal tendencies on September 29th he would not have allowed her to be in a ward with only one nurse at night, or in any ward where she could have access to a naked flame. Dr. Nuttall would be responsible for the case-book.

Counsel: Are we to have the pleasure of seeing Dr. Nuttall?

The Witness: If you release me to go back and take charge.

Miss Waller, head sister in charge at Camberwell House, said that it was her duty to receive instructions from the doctors as to each patient and pass them on to the nurses in charge of the ward. When a patient was put "on ticket" she (the witness) handed the ticket to the nurse in charge of the ward. When the ticket was withdrawn it was brought to her (the witness) and destroyed. The plaintiff's ticket was withdrawn when she was sent to The Terrace.

Dr. Norman, Assistant Medical Officer at Camberwell House, said that he had had charge of Miss Baranowska on each occasion when she was a patient, and arranged for her admission in August, 1919. Dr. Nuttall issued the caution ticket. He did not regard the cupboard incident as suicidal.

Cross-examined: He had doubt whether Miss Baranowska was suicidal; the episodes were so very histrionic.

Dr. R. H. Cole, the holder of numerous appointments connected with the care of the insane, said that he had inspected the ward and kitchen, which were of the usual type in institutions of the sort; he had passed similar arrangements as an official visitor under the Mental Deficiency Act. He agreed with the other medical witnesses as to the need of relaxing control.

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Dr. W. H. B. STODDART said he had known Camberwell House for many years and sent patients there. The ward was quite a usual one. The cupboard episode was of the nature of a practical joke.

Dr. PORTER PHILLIPS, Physician Superintendent of Bethlem Hospital, gave evidence approving of the treatment given to Miss Baranowska. Before the accident he would not have thought that there was any risk in putting her in to the ward.

CROSS-EXAMINED: Miss Baranowska had been twice in his charge. She had not been suicidal. On paper her suicidal tendencies in August, 1919, were serious.

Mr. HOGG said that finished his case unless his Lordship desired to have Dr. Nuttall called.

Mr. JUSTICE SANKEY said that he thought Dr. Nuttall had better come. He would resume the case at 2 o'clock on Tuesday, and, if necessary, would sit late to finish it.

The hearing was adjourned.

COUNSEL having addressed the Court,

Mr. JUSTICE SANKEY said, in giving judgment, that the cause of action was a peculiar one. The plaintiff complained that after she had gone into the defendants' institution during an attack of insanity, they failed to discharge their duty of looking after her, and allowed her to set fire to herself. There was no dispute on the law; both parties were agreed that it was the duty of people in the defendants' position to take reasonable care of those in their charge; if they did so they were not liable even though a patient should suffer some injury; if they did not exercise reasonable care they were liable. The plaintiff's case is that she was placed in a ward called Orchard House, where she was able, while the sole nurse's back was turned to wash some old lady, to leave the ward and get to a kitchen where there was a hot-plate and a lighted gas-ring. The plaintiff set herself alight. The kitchen was placed there with the approval of the Board of Control. Had the plaintiff discharged the burden of proving that the defendants failed to take reasonable care? It was said on behalf of the defendants that it was impossible under modern conditions of thought to avoid some risk. He entirely agreed that there must be some liberty for the patients if they were to have a chance of cure. No doubt the maxim that had been quoted, "An asylum which never has a suicide never has a cure," went too far. The difficulty was to put himself in the position of the doctors before the accident. It was easy to blame them afterwards, but a mere mistake was not sufficient; there must be more than that. It did not follow that a man who was held liable was unreasonable; he might yet fail on one occasion to reach the usual standard of care. He (His Lordship) did not think that the leaving of a kitchen open by itself amounted to negligence; he did not think that the lighted gas by itself was negligence; he did not think that leaving the ward under one nurse by itself was negligence; but these things must be read in connection with each other and with this particular patient.

Dr. Edwards had persuaded himself that Miss Baranowska was not suicidal, but merely hysterical and fond of limelight; he had not persuaded him (His Lordship). He would not set up his opinion against that of Dr. Edwards, who had seen thousands of cases, while he (His Lordship) had happily not seen one. The reason why he was not convinced was the numerous entries in the documents referring to her as "suicidal." He did not understand insanity, but he did understand English. In the case-book, the caution ticket, and the letters, the plaintiff was described as "suicidal." The ticket was withdrawn when she went to "The Terrace." He thought that it might be better if tickets were kept and the date of withdrawal entered on them. If the plaintiff had set fire to herself while she was in The Terrace and was regarded as convalescent, he might have had considerable difficulty in finding in her favour. But on September 16th came an incident which evidently startled the doctors somewhat.

His LORDSHIP dealt with the cupboard incident, remarking that it caused him some surprise that it was not in the case-book.

Dr. Edwards had described the plaintiff as "mischievous, unreliable, hysterical, and not to be trusted." It was suggested that that was the case with all lunatics, but he thought that was not so. He had come to the conclusion that Orchard

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House was not a proper place in which to put the plaintiff, bearing in mind her antecedent history. He came to the conclusion (without wishing to express any censure on this large and well-conducted establishment) that to put the plaintiff at that time in that ward with that open door and that gas and the single nurse was not taking reasonable care of her, and she was entitled to damages, which must be reasonable, and he awarded her £450, with costs.

Solicitors.—Messrs. Edwards and Son; Messrs. Dixon and Hunt.

(Abstract from *The Times'* report, March 18th, 19th and 23rd, 1921.)

CORRESPONDENCE.

Ministry of Health (Miscellaneous Provisions) Bill.

To the Editors of the Journal of Mental Science.

Sirs,—As I understand the "Occasional Note" on the above matter in the last issue of the *Journal of Mental Science* is not an official expression of opinion of the Medico-Psychological Association, it is unfortunate that the writer should claim to be voicing the views of the majority of the members of the Association. How he can say that the Ministry of Health Bill, Clause 10, would have been a retrograde step, and that it was "of doubtful efficiency as regards the incipient insane" and "decidedly reactionary as regards the certified insane" it is difficult to understand. It left untouched the treatment of the certified insane, as the Bill was not a Lunacy Act Amendment Bill, and its clauses were to facilitate the early treatment of mental disorder.

The writer of the note seems to have been nettled by certain observations made by some members of the House of Commons during the discussion of the Bill, but although he may have just grounds for his indignation, no branch of medicine can afford to delay its advance merely because the public has not learnt to appreciate the good work that is already being done in it. It is common knowledge that much mental disorder might be prevented if the cases came for treatment at an earlier stage of their illness. Clause 10 was an honest attempt to render this early treatment possible.

It is true that it did not go as far as the medical profession would have wished. The necessity of having a letter signed by the patient before he could be admitted to an approved Home limited and greatly lessened the value of the measure. The Minister himself knew this and appreciated the force of the argument of all of us who pressed for the omission of this letter, but on the other hand he knew also that the legal members of the House would oppose the Bill unless some such protection were included, and finally we had to say that we preferred a half measure rather than none at all. In Committee, Colonel Raw's amendment, that in the event of a patient's being unable to sign the letter the nearest relative should do so, was almost carried, indicating that we might look forward to relief from this restriction at some not distant date.

Some members of the Association were disappointed that the Minister did not bring in a voluntary boarder system for county and borough asylums. Whilst thoroughly in sympathy with this provision, he stated in Committee that it could not be dealt with under the present Bill, but only by a Lunacy Act Amendment Bill.

I find that an idea has got about that the privileges under this Bill were not to be extended to mental hospitals. It is not clear how this idea originated, but I can only say that I personally have always pressed, and the principle has always been accepted, that any concession as to early treatment should be enjoyed by all mental hospitals where special provision may be made for these cases, and by all licensed houses equally with any approved home which might be included under the Act if it passed.

I am not aware of any proposal for a new public department to deal with these cases, nor would such be necessary, while with regard to the writer's comment as to the Board of Control, it is clear that the Minister intended to avail himself of their knowledge and experience, as may be seen from the statement of Colonel Wilson, speaking for the Minister in Committee: "It is proposed by the Ministry that the inspection of these institutions shall be carried out by medical officers on

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