generous way in which his paper had been received. While many points had been raised upon which he would have liked to dwell, he had only time to answer questions. Dr. McDowall had asked if there were casualties. There was one, and it happened at the time Sir Arthur Mitchell and Dr. Sibbald were visiting at Barnhill. They saw the man, whose case had developed and become maniacal, and he put his hand through a window. Sir Arthur asked if he considered the accident told against his scheme, but he replied that he hoped Sir Arthur did not think so, as it was an accident which could just as easily have happened in the asylum. Dr. Urquhart feared that unsuitable cases might be sent to Barnhill. He would just remind him that a very definite certificate had to be filled up in every case, and every case had to be diagnosed. Dr. Carswell concluded by giving two illustrative cases which had been treated, one in Barnhill and the other at the patient's home.

In consequence of the lateness of the hour the other papers on the agenda were deferred until a future meeting.

Dr. CARLYLE JOHNSTONE moved, "That it be a recommendation to the Council that all examination papers set for Association purposes should be printed in the Journal."

The motion was supported by Dr. TURNBULL, and agreed to *nem. con.*

Dr. URQUHART made a statement regarding the Royal National Pension Fund for Nurses and its apparent suitability to the circumstances of Scottish asylums. He moved for the appointment of a small committee to consider the possibility of joint action on the part of the Scottish asylums in order to provide for aged and infirm officials.

The motion was adopted, having been seconded by Dr. CAMPBELL CLARK, and the following committee was named with instructions to report to a future meeting, viz., Dr. Watson, Dr. Clark, and Dr. Urquhart.

After the meeting the members dined at the Windsor Hotel.

MARIANO WILLIAMS v. BEAUMONT & DUKE.—JUDGMENT.*

Following is a verbatim report of the judgment of Mr. Justice Wills and Mr. Justice Collins, sitting as a divisional court, on Thursday, May 24th, in the Queen's Bench Division.

Mr. Justice Wills said—We have listened with very great care to every word of these arguments, because the points which are raised are very important, but we have come to the conclusion that the application to stay this action ought to succeed. The Court is very much embarrassed indeed by the nature of the pleadings, and the particulars, more especially the particulars which are drawn without the slightest reference to the subject matter of complaint of which they profess to be particulars, and which diverge into a great variety of matters which have nothing whatever to do with the paragraphs in the statement of claim, and one would almost suppose that they were drawn by the plaintiff himself. The complaint, however, as formulated in the statement of claim, consists of two portions, one of which complains of a proceeding taken under the Lunacy Act, and the acts done in discharge of the duty cast upon the defendants, who certified the alleged lunatic under the Lunacy Act, and the other relates to matters which are unconnected with the Lunacy Act. I will deal with these separately. I may also say that a very large portion of the particulars which are given with respect to a paragraph which alleges a detention by the defendants, which has nothing to do with the Lunacy Act, two-thirds of the particulars at least are occupied with a variety of matters which, if they existed at all, are complaints that the defendants did something wrong in the course of the performance of the duty cast upon them, or upon one of

* This trial is of so much importance that we give the judgment in full.—EDS.

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them, under the Lunacy Act. Now very different considerations apply to the two sets of charges, because under the Lunacy Act it is our duty to stay this action, so far as it relates to matters connected with the discharge of a duty under the Lunacy Act, if we are satisfied there was no reasonable ground for alleging that there was either want of good faith, or want of reasonable care, in the proceedings on the part of the defendants, and being satisfied, for reasons which I will state presently, that there was no such want, either of good faith or of reasonable care, it is our duty to stay this action so far as it relates to those subject matters. I will proceed to deal with that question, and with that part of the matter, and exhaust it before I come to what I may call the Common Law part of the case. Now I may say at the outset that I do not propose to discuss the question as to what the foundation of this action is, or whether in its nature it will lie. We have had no assistance from the learned counsel on that important part of the matter. We endeavoured yesterday to get such assistance, but we could get none, and we asked in vain to have it pointed out what particular statutory duty, if the action was founded on a breach of a statutory duty, was relied on, or what the foundations of that particular duty, which is alleged to have been violated, rested upon; and however eloquently we may be addressed in general terms as to want of reasonable care, and so on, it is absolutely necessary in a matter of this kind to be a little more definite, and to see, before we decide that an action will lie, what the alleged foundations are. I do not propose to discuss that question. I only propose to guard myself against being supposed, by the nature of the judgment which I am going to pronounce, to give any foundation, or any colour, to the notion that an action of this kind will necessarily lie, especially with regard to the part of the case which relates to what I will call the Common Law claim, set up in the statement of claim. The medical officer is the servant of the Guardians; he is not, as far as I can see, a person constituted with a specific duty towards the persons under his charge, but his duty is a statutable duty as far as it rests upon the Statute. It is a duty to those who employ him. If that be the true nature of his position, an action, if it would lie at all, would lie against the masters, and not against the servant, and would lie against the Guardians, or whoever appointed him. I do not decide this. I only wish to point out that the matter is of extreme consequence, because if a medical officer of a Union is to be exposed to an action at the suit of every inmate of a workhouse who chooses to fancy that he has not been treated with adequate skill (and generally, or very often, people of this class take very exaggerated notions), if an action is to lie at his suit, especially on the allegation that the medical officer has not treated him with proper skill, and with proper attention, it would be impossible to get any gentlemen of position or character to hold the office, and great mischief would be done to those who are to be served by such medical officers, as well as to the medical officers themselves. I cannot see myself, if such an action will lie, why in the case of a prisoner convicted of misdemeanour (and I say misdemeanour in order to avoid the possibility of an argument that a person convicted of felony is deprived of civil rights), why every person convicted of a misdemeanour should not have an action against the gaol surgeon, because he thinks the gaol surgeon has not treated him with proper attention or with adequate skill. Therefore the proposition contended for by Mr. Herbert Smith is one of very alarming magnitude, which, if it could be established, would be fraught with exceedingly serious and lamentable consequences. But it seems to me unnecessary to discuss this matter, because it seems to me that there is a complete justification for the application which is made to us, assuming that the action is maintainable in its nature and character. Now I proceed to deal first with these matters which arise under the Lunacy Act. In the first place, what are the complaints which are made? In the statement of claim, they are, that the defendants wrongfully and improperly and without reasonable care, and without making any proper enquiries, agreed together to certify the plaintiff to be a lunatic, and thereupon

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illegally and improperly confined and imprisoned him in the said workhouse or its precincts as a pauper lunatic until his removal therefrom on the 20th of October. Now, in substance, the charge there is that of improperly signing a certificate which was signed by one of them and not by the other. I cannot see myself how the other can be made legally responsible for the act of his colleague in signing a certificate even if there was anything wrong in it. All that appears was that he gave him the benefit of his advice, and if an action such as this would lie, no medical man would venture to go and talk over with his colleague the bearings of the information received, and the facts which had been observed, in a case like this. But granting, for the sake of argument, that the claim properly applies to both of them equally, the protection must apply to both of them. The paragraph goes on to assert that they confined or imprisoned him in the workhouse; as far as that is concerned, it seems to me a mere flourish. We have had the facts most elaborately alleged in the very voluminous affidavits, every word of which I have read, and read carefully, in which no pains have been spared to say everything that could possibly be said against these gentlemen, and there is no trace of their having interfered in any way, or done anything except by having signed their certificate, and having, when the plaintiff applied for admission, probably (although that is not stated) indicated their opinion that the part of the workhouse where he should be placed would be the lunatic ward. The subject, therefore, of the complaint is that of improperly signing the certificate. There is no trace in the evidence, and there is no allegation in the affidavit—and I am quite sure the plaintiff has put his best leg foremost—that they did anything more than in the ordinary course of business indicate their opinion that the man was of unsound mind; the rest was a mere matter of routine, which would follow, as a matter of course, for which they were not responsible. If there is anything wrong it is the master of the workhouse, or the guardians, who are responsible, and certainly not the defendants. Now the next part which relates to the lunacy matter is paragraph four, which says that one of the defendants, Mr. Beaumont, wrongfully, and with the consent and knowledge of the other defendant, signed a medical certificate under the provisions of the Lunacy Act, 1890, alleging that the plaintiff was a person of unsound mind. In substance it is the same thing as has gone before. The rest of the statement of claim which follows is a mere allegation of consequences which ensued from signing the certificate. Therefore, so far as the statement of claim was concerned, and so far as that portion of it is concerned which alleges mistaken or erroneous conduct under the Lunacy Act, it relates to the signing of the certificate. There is a part of that paragraph three which relates to a totally different matter, a matter for which the defendants appear to me in no sense responsible, namely, for the plaintiff's detention in the workhouse during the period which elapsed between his admission and his removal to the asylum. When ordered to give particulars under that paragraph, a great number of particulars have been given, most of which have nothing to do with it at all. The first states that they did not examine him in a proper manner, that they put him under examination for too long. It is now said it was too short. One complaint which is made to-day is that the examination of an hour and a quarter was too cursory. Under their particulars it was alleged that it was too long. Then they say that there was so little skill displayed as not to have discovered that he had heart disease, and so on, and a number of other things which have absolutely nothing to do with it—the confinement in the workhouse between the period of his examination and the period of his removal to the lunatic asylum. It then goes on with regard to one of them, Mr. Duke, that he relied exclusively on the statements of Mr. Beaumont as to the plaintiff. That again has nothing to do with negligent treatment by medical men, as medical men, while he was in the workhouse. All that ought to have been struck out as being an abuse of the privilege given to him to deliver particulars under paragraph three. Then he goes on to say as against both de-

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fendants that they made no inquiries of the plaintiff's friends except Mrs. Williams, that they made no inquiries to test the credibility of Mrs. Williams' statement, and then it goes on to allege that the doctor did not supply him with adequate diet and nursing suitable to his condition within a reasonable time, and did not ascertain whether any special diet was ever supplied or given to him. Paragraph four says they did not visit him with sufficient frequency and ascertain his true physical condition, and so on. Those two may be particulars under paragraph three, and I will deal with them presently. But the fifth paragraph is: "In keeping the plaintiff in the receiving ward of the workhouse until 4.50 p.m. on Monday, 16th of October, 1893, without any care or attention, and in then removing him to the lunatic ward." That really again has nothing to do with paragraph three; and paragraph six, as to not ascertaining whether he was fit to be removed, is the same. Paragraph seven is not being properly acquainted with the provisions of the Lunacy Act. That is a very wide subject of complaint, and one which has absolutely nothing whatever to do with the paragraph under which it is given. Now, treating all those matters which I have so particularized as constituting an alleged cause of action, although I do not think they ought to be so treated, because nothing can be more embarrassing, either for the court or for the defendants, than such a mode of dealing with the same, but assuming all those to be stated as specific causes of action, they are all matters which relate to the performance of the duty of the medical officer under the Lunacy Act, and, therefore, they are all governed by this question of whether we see there are any reasonable grounds for alleging want of *bonâ fides* and want of reasonable care. I now proceed to say why I think there is no ground whatever for alleging either of those matters. First as to good faith. It has not been questioned, there is not a single fact that can be pointed to which has the slightest tendency to indicate that there was any want of good faith. If there was no want of good faith it carries us a very long way towards the solution of the next question, namely, whether there was want of reasonable care. Of course if there had been any want of good faith it would be more likely that there would be a want of care in the proceedings of these gentlemen, but as it seems to me their proceedings were marked by humanity and by deliberation, and anything but a hasty or impatient consideration of the case. Mr. Lockwood has just said that we ought to infer want of reasonable care on the part of these gentlemen, because whether the patient was admitted into the asylum three or four days later, under the order of the Justices, he was found to be perfectly in his right mind. Mr. Lockwood, I have no doubt, with his enormous and varied avocations, is not likely to have had either the time or the patience to read the affidavits with that care which it has been my duty to bestow upon them, or he would have found out in the inquiry which took place before the Local Government inspector, the doctors, who, in the asylum, came to the conclusion that there was nothing the matter with his mind at all, said that it was perfectly consistent with that at the time the certificate was given, which was on the 16th of October, he should have been perfectly properly certified. The patient was suffering from alcoholism, there is no doubt about that. It has not been controverted; it is alleged in the document, not in the certificate, but in the particulars attached to the order. The sister-in-law, Mrs. Williams, stated before the inspector that he was a man given to drink, and suffering much from drink, and it is notorious that persons who are in a great state of depression at one moment from alcoholism may well be in a condition in which they may be properly described as being unable to take care of themselves, if not of unsound mind, especially after long exposure to weather and distress, such as this man had suffered just before he was admitted into the workhouse, when, under more favourable conditions, they would recover oftentimes very rapidly. I cannot see that, because three or four days after the certificate was given, this man was free from such symptoms, that we are to disregard the evidence of what took place when he was admitted, and come to the

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conclusion that the doctors must necessarily have acted without proper care in coming to the conclusion which they then did. Now, he being in this condition was examined. There is no complaint that the regular course of procedure indicated by the Act (I mean the general course of procedure) was not followed, except with regard to one matter which has nothing to do with what I am now dealing with. One of these gentlemen appears to have been properly called in by the Justice of the Peace, to whom this matter was referred, and the Justice of the Peace so certifies in his certificate, and in pursuance of the direction from the Justice of the Peace Mr. Beaumont made his examination. Now, the Act provides that the statements which are contained in the certificate by a doctor shall be taken as if they are statements made on oath for the purpose of evidence. Therefore we have that which is equivalent to the oath of Mr. Beaumont that the man was very depressed, that he said he had nothing to live for, that self-destruction always haunts him, that he has impulses to destroy himself, and he states all people are against him, and make remarks about him in the street. It is also true and an undoubted fact that this man sent for his sister-in-law, and sent to her by a letter which indicates that he was on extremely friendly terms with her. The letter begins "Dearest Bec," and he writes in affectionate terms evidencing confidence in her. That being the state of relations between the parties at the time the certificate was given, she was seen by the doctor, and she said that he had threatened to murder her, and several times threatened self-destruction. Now, it is said that we are to consider that there was reasonable ground in alleging that there was want of proper care in accepting that statement because the plaintiff denies it. There is no statement of Mrs. Williams, who does not appear to have been at all unfriendly to him, when she was called before the inspector; Mrs. Williams does not deny it, and it is obvious that it is perfectly true that she had said so. We have no reason whatever to suspect that Mrs. Williams was anything but a good and affectionate friend to this man. He had been living in Mrs. Williams' house for a considerable time, and she was the person with whom he had last lived before his admission into the workhouse. It must be remembered that in matters of this kind prompt action is necessary. It is very often necessary, and certainly necessary in the case of a suicidal man, and I cannot conceive that there is any want of reasonable care, or any reasonable ground for alleging want of reasonable care, in the fact that a doctor who had observed Williams himself, and received this information from Mrs. Williams, himself acted upon it, and took it as the groundwork for giving his certificate. It was said that the doctor ought to have made a sort of almost judicial investigation, that he ought to have written to this man, that man, and the other man, and Mr. Herbert Smith even went so far as to suggest that he should have written to the father, with whom the man had not been living, to correct the information he had received from Mrs. Williams that he had threatened to kill her when she had been living with him, and when the statement had been made to her. That only shows that when people get an idea into their heads that they have been ill-treated, how every act, of the simplest and most *bonâ fide* character, may be tortured into evidence of want of *bonâ fides* and want of reasonable care. I do not propose to go further into this question of evidence now, excepting to say that, having read the affidavits from beginning to end with the utmost possible care, I am satisfied, satisfied from the tone of the plaintiff's own evidence, and from the tone of his solicitor's affidavit, that there is a disposition to make the worst of everything—that the plaintiff's statements are not those upon which one can place implicit reliance, or any great reliance. I should be exceedingly sorry to come to the conclusion (although I should do it if it were necessary, and I was satisfied that it was a right conclusion) upon a matter of this kind at variance with that which was come to by the Local Government Board after an investigation which lasted twelve days, and upon a report of the inspector who had had the infinite advantage, which we have not had, or hearing these people, seeing them, and

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seeing what sort of impression their manner and character created, and upon whose report the Board have satisfied themselves, and have come to the conclusion and reported that these gentlemen acted with due care, with proper professional skill, and with humanity and good faith. I have come, independently and with much less satisfactory materials to judge from, to the same conclusion, and, therefore, I think that, so far as this is an action relating to a matter under the Lunacy Act, it ought to be stayed. Now, there remains the portion of the action, which is comprised in paragraph three, which says that while the plaintiff was so wrongfully and improperly imprisoned, that is to say, after he was transferred to the lunatic ward, and confined in the said workhouse and its precincts, the defendants in their capacity as medical officers of the said workhouse acted negligently and improperly towards him, and did not give him due and proper care and attention. Now, that is not a charge of having detained him, and there is no foundation for such a charge. It is no use putting statements of this kind into a statement of claim when we know now that there is absolutely no foundation for them. The defendants never, either of them, detained him, they gave their certificate, they made their medical examination, and they expressed their opinion. The authorities detained him, and not they, and if the man did not receive proper diet and proper medical comforts, it is clear from the affidavits, and from the report of the Local Government Board, that that is the act of the people in the workhouse and not of these gentlemen. The Medical Officers of Health do not feed the paupers. The medical officers of the union do not feed the inmates of the workhouse. It is not their duty to do so. As for the complaint that they had not discovered that proper attention was not being paid to their orders, the plaintiff himself does not allege that he ever complained to them that anything of the kind had taken place, and if he did not complain I should like to know how they were to know it. The complaint therefore is one of a general want of careful medical skill and attention during the time he was in the workhouse. I have already expressed my opinion that it would be a most alarming thing to lay down that such an action would be maintainable in its nature, but, assuming it to be maintainable in its nature, there must be some grounds for it, and something beyond mere allegation, and when the matter is now before us on affidavit the whole circumstances, and everything that could be possibly said by the plaintiff has been argued and stated in his affidavits. I am bound to say I can find no fact whatever which indicates anything of the kind. It seems to me that this part of the action ought to be stayed under the inherent jurisdiction of the Court to prevent a gross and really cruel abuse of its process. These gentlemen, who seem to me to have done their duty in a very difficult matter with care, skill, and humanity, are now to be ruined by an action of this kind taken by a person who was admittedly (and does not deny it) in a state brought about by his own intemperate habits in which he might very well be mistaken, by persons much more skilled in matters of this kind than the defendants were likely to be, for a person of unsound mind, which, fortunately, he turns out now not to be. I have no hesitation in coming to the conclusion that this action ought to be stayed, both as to one part and as to the other.

Mr. Justice Collins—I am of the same opinion, and as we are differing from the learned Judge in the court below, I will add a few words. I find on the statement of claim three causes of action. They are not very scientifically alleged, but I think that on analysis you can extract at all events an intention on the part of the pleader to set out three causes of action. The second paragraph states that the defendants illegally and improperly confined and imprisoned the plaintiff. That is an action of trespass. He also says, looking partly to the second paragraph and partly to the fourth and others, the defendants wrongfully and improperly signed a medical certificate under the Lunacy Act. That is a cause of action under the Lunacy Act. Then there is also another charge that during the time when this person was confined in the

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asylum they failed to give him that degree of attention which he thought fitting and desirable. Those are the three causes of action. Now Mr. Justice Kennedy, as far as I can gather from the statement of the learned counsel, does not appear to have had much doubt as to the cause of action under the Lunacy Act. I gather that his opinion there was the same as that at which we now arrive, that the plaintiff had not shown reasonable ground for alleging want of good faith or reasonable care. Now his difficulty seems rather to have arisen on what may be called the Common Law part of the case, therefore I will deal with that first. Now as to what may be called the Common Law part of the case, it is, as I have said, trespass and want of care in looking after the plaintiff when he was in the pauper ward. As to this trespass there is absolutely no evidence whatever of anything like trespass on the part of the defendants, therefore we have clear power to strike that claim out as far as it rests upon that. Then as to the second suggestion, namely, that these gentlemen acted negligently and improperly towards the plaintiff and did not give him due care and attention; I asked in vain Mr. Herbert Smith to point out the legal foundation of that duty, and I am bound to say that Mr. Herbert Smith has not relieved my difficulty on that part of the case. There is nothing on the face of the statement, and that is all that I have to go upon in the matter, for it certainly states up to the high water mark everything that is alleged in the particulars. I find nothing approximating to any suggestion of misfeasance on the parts of these officers. I find a suggestion of negligence, the pith of which is stated in the two last lines, namely, that they did not give him due and proper care and attention. It is not necessary to decide that point, but I certainly do not wish to be taken as now forming an opinion that an action will lie at the suit of any pauper against the person who happens to be a medical officer employed under the Poor Law Acts who thinks that more skill and attention ought to have been given them by the medical officer. The cause of action there is that the officer did not give him due and proper care and attention. In other words, if the pauper, feeling himself ill, was not visited by the doctor, from this statement of claim it would appear that an action would lie against him, but I guard myself against expressing any opinion that such an action could be maintained. No doubt where a medical man is paid by one person to give advice to another that other person can maintain an action for misfeasance. That was decided in the case of Gladwell v. Skeggall in 5 Bingham's New Cases, page 733. Whether short of misfeasance he can maintain an action for mere negligence is another matter upon which I pronounce no opinion. So much for the Common Law aspect of this case. There is no foundation in fact for the first suggestion of imprisonment, and if there is no foundation in law there is certainly no foundation in fact of alleged negligence on the second head. Now I come to the question under the Lunacy Act. There does not appear to be sufficient allegation on the face of the claim to found a cause of action. There, to a certain extent, the difficulty that was felt as to the Common Law duty is met by the Lunacy Laws, because the Lunacy Law, as interpreted by Mr. Justice Crompton in the case of Hall v. Semple (and I do not think there is any difference as to this particular part of the case between the two Acts), is that the effect of the Lunacy Law is to cast the duty direct upon the doctor who examines the patient—to create a direct duty between the one and the other, and that therefore the doctor who fails in the discharge of his duty is liable to an action at the suit of the person who is examined. But the measure of the breach of that duty, according to Mr. Justice Crompton, is culpable negligence. He expressly lays down that nothing short of culpable negligence will, under those circumstances, make the doctor responsible. He does seem to draw a distinction between a malicious act and culpable negligence, but at the same time he says it is no mere ordinary negligence—it must be something more than ordinary negligence—although it falls short of malice in order to found liability. Now judging this case on the facts presented to us in the particulars,

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and in the affidavits, is there any shadow of foundation for saying that there is anything like culpable negligence in this case? I cannot find any suggestion of it. On the contrary, so far as we have materials for doing it, I see less than no reason for differing from the report of the Inspector, but on the other hand I am prepared to endorse it. It seems to me upon the evidence before us that these gentlemen used great care, and, according to the best of their ability, discharged their duty in giving an opinion, which they thought was a sound opinion, which may or may not in fact (I do not know) at the time they gave it have been a true opinion. Under those circumstances the Act warrants us and obliges us at the instance of the defendants to put an end to the case, because we are bound to do so if the Court or a Judge is satisfied that there is no reasonable ground for alleging want of good faith or reasonable care. We have had the assistance of the report of the Inspector who had the advantages pointed out by my brother, and I can see no reason whatever for differing from him; therefore, I entirely concur that, as to all points, this action should be dismissed.

Mr. Justice Wills—I should like to add that one reason with me for giving considerable weight to the opinion of the Local Government Board in this matter is that every line of this report appears to me to indicate the perfect judicial impartiality with which it is framed and constituted from beginning to end.

Mr. Herbert Smith—I hope your lordships understand that I make no charge against the Inspector of any improper conduct.

Mr. Justice Wills—I did not suggest that you did; I only say that I think it right on public grounds to say that that is one reason why I have paid attention to it.

Mr. Frank Dodd—Then, my lords, the appeal will be allowed, and the action dismissed with costs.

Mr. Justice Wills—Yes.

Mr. Lockwood, Q.C., M.P., and Dr. C. Herbert Smith were for the plaintiff; and Mr. Frank Dodd (who was instructed by Mr. Thomas J. Fisher, 57 and 59, Ludgate Hill) appeared for Drs. Duke and Beaumont.

(*In the next number will appear the Report of the Judgment of the Court of Appeal.*)

Obituary.

DR. JOSEPH WORKMAN.

(*An Honorary Member of the Association.*)

Dr. Workman was formerly Medical Superintendent of the Provincial Lunatic Asylum at Toronto, a distinguished physician, and the Nestor of Psychological Medicine in the Continent of America. He died on the 15th April last, at his home in Toronto, Canada. He had almost reached the age of eighty-nine years, having been born in May, 1805, the year of the battle of Trafalgar. His birthplace was near Lisburn, County Antrim, Ireland. One of his paternal ancestors had gone to Ireland from England more than two hundred years ago; for the doctor was a descendant of Wm. Workman, who, after serving in Cromwell's army, settled near Coleraine, in County Derry, and who, in his turn, was the son of the Rev. W. Workman, of Gloucester, England, who had been deprived of his

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