OCCASIONAL NOTES OF THE QUARTER.

Lunacy Acts Amendment Bill.

To many, especially the proprietors of private asylums, the Lunacy Bill which the Lord Chancellor introduced on March 26th must have proved a great relief. The decree had gone forth *Delenda est Carthago*. The "tradesmen" in Carthage must have congratulated themselves that even a Radical Government had not found in its heart to abolish a "business," in reference to which, the Earl of Milltown made the uncalled-for assertion that "the proprietors of private asylums are as much in business as the proprietor of a theatre or a gin-palace." The Lord Chancellor's Bill has left them alone. He proposes, indeed, to allow county asylums to take in private patients, not merely, as now, to be treated in the same way as other inmates, but to have special provision made for them in the same building, or one erected separately for their use. In this way he hopes to offer to the public the advantages of a private asylum without the stigma now said to attach to the interested proprietor. But we do not for a moment suppose that the friends of opulent patients will avail themselves of this privilege. It is highly improbable also that the County Justices will fall in with this scheme to any considerable extent. And surely the Medical Superintendent of a large County Asylum has already enough to do without this added charge.

It is true that one clause in the Bill, which is just in principle, may tell hardly upon those proprietors of private asylums who receive paupers, unless compensated, inasmuch as at the end of five years, the practice is to cease. Everyone would regret that any class of men in the profession should suffer by the action of legislation for the insane. We believe, however, that the number likely to suffer injury is very small; that the extent of the damage to this limited class would be decidedly less than is feared, and that taking the whole Bill *as amended* into consideration, the gain is so vastly greater than the loss, to the medical profession itself, that it ought not to be allowed to militate against the safety of the Bill.

It is proposed that no private patient shall be admitted into an asylum, or otherwise deprived of liberty, without the order of a County Court Judge, a Stipendiary Magistrate, or

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a Justice of the Peace. Although this is guarded by an emergency certificate, and, therefore, delay in admission may be avoided in cases where very prompt action is necessary, we fear that the mere fact of its being necessary to call in a magistrate will sometimes deter the friends of patients from placing them under care in the early stage of the disorder.

It is impossible, however, to deny that in principle it is only right that a man shall not be deprived of his liberty without magisterial authority; and this fact is generally recognised in some form or other in most civilised countries, and already in our own as regards paupers.

It is proposed that the order for a patient's confinement should lapse at the end of three years unless freshly-obtained medical opinion justifies further detention. Whether this is practical or not remains to be seen. In some instances it will create difficulties in families, and tell disadvantageously on the patient.

Again, at the request of any person, two medical men may be authorised by the Commissioners to visit the lunatic in confinement, and if they report in favour of his discharge, they may carry out this decision. The fact is the Commissioners may, under the existing law, discharge any patient of whose detention they disapprove. As the action of the Commissioners upon this petition is permissive, it is doubtful whether they will often act upon the suggestion of outsiders when they can take the initiative themselves; at any rate a great check is put upon the vexatious use of this privilege.

This Bill has been so widely discussed in the medical journals, and has been threshed out so thoroughly by the Parliamentary Committee of the Association, as well as by that of the British Medical Association,* that all that can be now said in regard to its provisions has been said already again and again. It is needful, however, to place on record in this Journal the grounds upon which the major portion of the Association approves of or dissents from these provisions. We consider it desirable also to give a very full abstract of the Bill as amended at the time we write.†

For the first purpose we print a copy of the statement drawn up by the Parliamentary Committee and presented to the Lord Chancellor. In consequence of domestic bereave-

* Subsequently, also, by a Committee of the College of Physicians, appointed on the proposal of Dr. Wilson Fox.

† See "Notes and News"

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ment, his lordship was unable to see the deputation from this Committee, but in his absence Mr. Mackenzie, the principal secretary, received the members, headed by the President, and courteously entered into the objections and suggestions made by the deputation.

Copy of the Address of the Deputation of the Medico-Psychological Association to the Chief Secretary of the Lord Chancellor, 20th April, 1885.

The Committee of this Association, appointed to consider the proposed Lunacy Law Amendment Bill, desires to express the opinion that the existing Lunacy Laws have, on the whole, worked satisfactorily; and that, although they may require amendment in details, they might, with such alterations, continue to work satisfactorily in the future.

The Committee entertains the hope that, in consideration of the fact that the medical profession has rendered such services to society in regard to the care and treatment of the insane, that no single case of *mala fides* was established before the Committee of the House of Commons in 1877, it may fairly ask, that if the Legislature still imposes on the profession the performance of this same duty, care should be taken not to discredit its members in the eyes of the public or of the patients under their care, by any enactments which imply distrust of their character and reputation.

After a very full and careful consideration of the proposed Bill, we are almost unanimously of opinion that the intervention of the magisterial authority (as provided in Clause 2) prior to the granting of an order for the treatment of a person of unsound mind, is *undesirable*, and will lead, if adopted, to delay in treatment, to attempts at evasion of the law, and other untoward results.

On the other hand, we fully recognize the probability that this proposition for magisterial intervention will pass the Legislature; and, should this occur, greatly as we deprecate such an event, we find it difficult to suggest any officials for carrying out this provision other than those indicated in the Bill, if the powers at present possessed by the Commissioners in Lunacy are deemed insufficient.

We wish specially to direct the attention of the Lord Chancellor to the fact that the justices do not correspond to the officials indicated in the Scotch procedure. The Scotch

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Sheriff and Sheriff's substitute, the Steward and Steward's substitute, are barristers of (? 10 years) standing who exercise other judicial functions, corresponding to those of County Court Judges, Recorders, and Stipendiary Magistrates.

The English Magistrates, on the contrary, may have had no judicial experience, and the class of persons appointed in boroughs are often, we fear, not free from social prejudices, which might influence their action in the matters under consideration.

We are also of opinion that it is undesirable that a Magistrate, even a Judge, should be called upon to decide questions of a purely medical character, and still more undesirable that it should be legally practicable for a newly-appointed Magistrate, destitute of judicial experience, to over-rule the scientific opinions of two medical men who might possibly be the most eminent members of their profession.

We believe that such possibilities would early result in great public inconvenience.

We are of opinion, therefore, that the power of these authorities should be purely "ministerial," and that when any doubt on medical questions arises, these officials should not personally visit and examine the alleged lunatic (as provided in the Clause), but only have power to direct a further medical examination.

We beg to suggest that in any postponement or delay of a petition of insanity, the reason thereof should be definitely stated by the acting magisterial authority, by endorsement on the petition, or furnished on demand to the Commissioners in Lunacy.

We are *specially anxious* that some protection should be given to medical persons signing certificates of insanity.

We consider that in furnishing these documents they are not only fulfilling a professional duty, but are also acting by direction of, and to some extent as the agents of, the Legislature.

We suggest that at least they might be shielded from prosecution, both in obtaining and signing certificates, by being held to be the agents of the petitioner for an order of insanity; and that they should be further protected by a provision that no prosecution should be based on such certificates, except with the sanction of the Public Prosecutor.

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At the present time, as has been recently illustrated in the case of Haskar *v.* Wood and Others, certificates in perfect form, and a perfectly regular admission to an asylum or lunatic hospital, may be made the basis of a prosecution, ruinous to the medical persons concerned. Unless some protection be given, the existing difficulty of obtaining certificates will be increased; medical men of repute will abstain from giving them; and they will consequently fall into the hands of the least worthy members of the profession. The Bill might be greatly hampered in its operation by an extensive refusal of the profession to accept the risks and penalties which might be incurred.

We strongly recommend the consultations of the medical persons signing certificates (Clause 2, s. 8.), and we suggest that "postponement of a petition" (Clause 2, s. 9) should not interfere with the action of an urgency certificate, should necessity for one arise during the period of the postponement. We further suggest that the provision for secrecy in an examination (under Section 10 of Clause 2) should be more extensive, and should include all persons who become officially acquainted with the facts of the petition, as well as all papers and documents relating thereto.

In regard to certificates required for the confirmation of "urgency orders," we can see no valid reason why one of these should not be signed by the medical person signing the urgency certificate, as obtains in Scotland.

The great powers over lunatic hospitals given to the Commissioners in Lunacy (Clauses 38 to 46) are objected to as being likely to check *charitable* effort in this direction, which in the past has done so much for the welfare of the insane.

We are unanimous in requesting the Lord Chancellor's attention to what appears to us the extreme severity of the penal clauses, which in some cases (as in Clauses 5 and 7) appear to be unjust. Penalties under these Clauses may be incurred by medical officers in regard to matters of which they have no power or opportunity of obtaining information. There is practically no distinction made between wilful and criminal infraction of the law, and omissions the result of inadvertence or forgetfulness.

The periods of time throughout the Bill (as in the present lunacy law), we beg to suggest, require definition; such terms as three days, and even three clear days, being somewhat uncertain. Also we would ask whether Sunday is a

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dies non when falling within such periods. The date of the commencement of such periods of time requires to be specified when they involve the sending of a form or notice from one authority to another.

We beg permission to take this opportunity of drawing the attention of the Lord Chancellor to the following matters, which we regard as of the greatest importance in relation to the welfare of the insane, and which, we trust, will have the early consideration of the Legislature:—

The most important of these matters is the desirability of applying the present Government capitation grant (to pauper lunatics) to the maintenance of the asylums, and the payment of the salaries of the officers, &c., as suggested in a series of resolutions passed by our Association and printed in the "Journal of Mental Science" for 1883.

Also that the superannuation allowances of the officers and servants of pauper asylums should be placed on a more satisfactory footing, and should no longer be merely permissive. In relation to this matter we beg to submit a list of resolutions passed by our Association, in 1879.

And lastly, that provision should be made for giving clinical instruction in insanity in the county and borough asylums by the medical officers of those institutions.*

In conclusion we beg to thank his Lordship for having given us this opportunity of bringing our opinions under his notice.

HENRY RAYNER, M.D.,
President.

While we believe general consent will be given to the action taken by the Committee, a belief confirmed by the approval expressed at the very large Meeting of the Association, May 8th, there will no doubt be differences of opinion on certain points. Thus, not a few think that the working of the Scotch system in regard to the Sheriff's order prior to admission will, if introduced into England, be accompanied by serious consequences. On the other hand it is hoped by others that good may come out of seeming evil; the endorsement of the magistrate lessening to a large extent the responsibility of the physicians signing the certificates. Dr. Yellowlees's opinion was quoted at the above meeting to the effect that the Sheriff's order removes responsibility from the shoulders of the medical signatories, except as regards

* The numbers of Clauses, &c., refer to the unamended Bill.

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the accuracy of the facts stated and the soundness of the opinions expressed.

Whether the magistrate's order would relieve medical men as much as that of the Sheriff is alleged to do, has been much discussed. That it will have the same effect, is asserted by Lord Shaftesbury in his letter to the "Times" on his resignation of the Chairmanship of the Lunacy Board. Dr. Urquhart spoke strongly at the aforesaid Meeting in favour of the operation of this feature of the Scotch law which the Lord Chancellor desires to introduce into England. Dr. Hayes Newington, who has had experience of both English and Scotch law, spoke favourably of the latter in this respect, and doubted whether the serious consequences would flow from its introduction into England which some feared. To have the disadvantages arising from the delay and publicity involved in judicial or magisterial action, and no compensatory benefits in the direction of safe-guarding medical certificates, would be extremely unfortunate. If, then, we must have a legal functionary called in to determine whether an alleged lunatic shall be confined in an asylum or not, let his decision place the responsibility upon his shoulders. Two medical men have examined the patient and expressed their opinions, but here their duties end. They are of a purely professional kind. That this is a growing view cannot be denied, and it is quite certain that in proportion as it comes to be adopted and embodied in lunacy legislation, medical men will be willing to sign certificates. Be it always understood, however, that it is as impossible as it would be unjust to shelter our profession from wilful mis-statements or culpable carelessness in the examination of lunatics.

We had written so far when we became acquainted with the opinion of counsel on this point, obtained by the Committee of the British Medical Association. Of the medical men signing certificates he says, "If they take care to fill up their certificates in the manner provided by the Bill, they will, I think, be in the position of witnesses, and liable for the statements in their certificates, just as witnesses are liable for the evidence they give; that is, they will be criminally liable for making wilfully false statements, but not civilly liable for damages caused by statements given by way of evidence, though untrue, if given *bonâ-fide*. If the medical practitioner do not comply with the directions given as to his certificate, the document may fail to be what is

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required by the Act, and so not be protected; but even then it would only be shown to the judge or magistrate in private; and I doubt whether this would amount to a publication, so as to render the signer liable to an action for libel. The protection afforded, therefore, seems to be sufficient, if the medical practitioner takes care to fill up his certificate in proper form."

In the opinion of Counsel the order of the judge or magistrate for detention in an asylum is "a judicial act" under this Bill. It will be seen, on reference to the 13th section of the 2nd clause, that "Every judge, magistrate, and justice, and all persons admitted to be present at the consideration of any petition for an order under this section, shall be bound to keep secret all matters which may come to his or their knowledge by reason thereof, except when required to divulge the same by lawful authority." Hence if the magistrate or judge decide that the certificates do not justify detention, the alleged lunatic cannot make use of the physicians' statements. They are to be kept secret. This fact has been strangely overlooked by some who have asserted that the Bill makes the position of physicians signing certificates ten times worse than it was before.

Since the above was written the Bill has gone into Committee, and the Lord Chancellor has introduced amendments which, if adopted, will materially improve the Bill. Indeed, we do not hesitate to say that, should it become law, medical men will stand in an infinitely better, instead of, as was feared, a worse position than they did before. They will be protected to an extent we had scarcely dared to expect. No reasonable man, in fact, can well deny that it is manifestly only right and fair that if any sign certificates in bad faith, they should be liable to an action, with its possible pains and penalties. All we ask is that no action should be commenced without the consent of the Attorney-General, in order to prevent vexatious actions on the part of discharged lunatics. We should also have been glad to see a clause introduced to the effect that the plaintiff should be required to give security for costs he may have to pay in the event of his losing his action. The Parliamentary Committee have suggested that this amended clause should be made distinctly to cover not only those who examine a patient and decide to sign a certificate, but those likewise who examine and do *not* sign. They should be protected from having entered a man's house against his will. The follow-

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ing Clause, which largely meets the suggestions made by the Parliamentary Committee of the Association, is the first guard provided by the amended Bill:—

A medical practitioner who in the manner required by this Act signs any certificate that a person is of unsound mind, shall not be liable to any civil or criminal proceeding for signing such certificate, or for an act done with the view of enabling the practitioner to sign the certificate if the certificate is signed and the act is done in good faith. (Subsection 4 of Clause 8 in the amended Bill.)

It is satisfactory to have reason to believe that the representations made by the Association have been to a large extent the means of inducing the Lord Chancellor to insert this important amendment. We draw especial attention to the fact that it is so framed that not only does it protect the physician from the act of signing the certificate of Lunacy, but it covers, as it ought to do, the proceedings he may have been obliged to take in order to secure an examination of the patient. It is desirable to strengthen this clause by requiring consent of the Attorney-General, but every one who is engaged in lunacy practice ought to be thankful to the Lord Chancellor for the way in which he has met the wishes of the Association and the profession generally. It goes far to lessen, also, the objection so strongly felt to the severe penalties attached to the Bill, because it is clear, that if the amended Bill passes, it will be the fault of medical men themselves if they suffer from them.

There is still another safeguard. Subsection 3 of Clause 16 of the amended Bill* enacts that:—

"No prosecution for a misdemeanour under this Section shall take place except by the direction of the Attorney-General or the Public Prosecutor."

The latter was the proposal of the Parliamentary Committee, and while it is felt that his judgment is by no means infallible, there can hardly be a doubt that it will act as a very real check upon vexatious actions.

Among other satisfactory amendments is one giving full

* Clause 16 of the Bill enacts that "any person who makes a *wilful mis-statement* of any material fact in any *medical* or other certificate under the Act 8 and 9 Vict., cap. 100, or the Lunatic Asylums Act, 1853, or the Acts amending these Acts respectively, or under this Act, shall be guilty of a misdemeanour." To this clause heavy penalties were attached in the original Bill, but in their place the above reference to the Attorney-General, &c., is substituted. No one can complain that wilful mis-statements should be liable to punishment.

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permission to the medical men signing certificates to consult together about the case before the certificates are signed. Others, also very important, such as the delegation of the new functions of magistrates to certain of their number, need not be specified; they will be found in the Bill itself.

The proposed consolidation of the Lunacy Laws will, if effected, be an immense convenience.

Resignation by Lord Shaftesbury of the Chairmanship of the Lunacy Board.

As all our readers are aware, the introduction of a Lunacy Bill by the Government into Parliament, containing certain clauses to which the Earl of Shaftesbury strongly objected, induced his lordship to place his resignation of the Chairmanship of the Lunacy Board in the hands of the Lord Chancellor, by whom it was accepted. There has been but one feeling in consequence of the course which Lord Shaftesbury has deemed it his duty to pursue—that of extreme regret, accompanied by a fresh sense of the value of the services rendered by this philanthropic nobleman.

It will be seen from the report of the Quarterly Meeting of the Association that the proposal to take some definite action in reference to Lord Shaftesbury's retirement was discussed, but was postponed to the Annual Meeting. It was felt to be premature to act as if this retirement were altogether final—a step which might not be recalled—inasmuch as circumstances might happen in the direction of modification or withdrawal of the Bill which would lead his lordship to withdraw his resignation. We have no authority, however, for expecting the resignation to be recalled. We cannot, therefore, pass over so important an event in the history of lunacy in this country without joining in the expression of regret, so universally felt by those interested in the insane, and our appreciation of such lengthened labours in their behalf, in so many ways. It is not merely as the Chairman of the Board of Lunacy Commissioners that Lord Shaftesbury has deserved our grateful acknowledgments. To his success in this character, others immediately associated with him will bear witness. We may more properly refer to his Parliamentary career in relation to lunacy. When Lord Ashley, he took up the question of Lunacy legislation

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