REMARKS ON THE LUNACY LAWS OF THE
STATE OF NEW YORK, AS REGARDS
THE PROVISIONS FOR COMMITMENT
AND DISCHARGE OF THE INSANE.

BY STEPHEN SMITH, M. D.,
State Commissioner in Lunacy, New York.

The history of lunacy legislation in the State of New York shows a remarkable change in its policy of treating the insane. During the first half-century of the existence of the commonwealth, viz., from 1777 to 1827, the insane were treated as dangerous persons, and the policy was to protect society against their acts of violence by arresting and incarcerating them in jails and prisons with criminals. The justices were empowered to chain them in safe places, if necessary. During this period, there were many evidences of a growing sentiment in the public mind favorable to the insane. This was stimulated by the exciting agitation over the condition of this class in England, and by the successful management of the department for the insane in the New York Hospital. The tendency of these combined influences was to create a public sentiment adverse to the previous policy of the State which regarded and treated the insane as vagrants and dangerous persons. In 1827, public opinion found expression in the action of the legislature, which enacted a law, effectually and, it is to be hoped, forever, separating the insane from the criminal classes in this State. It was as follows: "No lunatic shall be confined in any prison, gaol, or house of correction, or confined in the same room with any person charged with, or convicted of any criminal offense."

During the next half-century, terminating 1877, the progress of the State was steadily in the direction of improving the public care of the insane, and especially of the insane poor. As early as 1830, the question of the duty of the State to provide means for the proper treatment of the insane, with reference to their restoration to health, began to be agitated. From that time, it became more and more apparent that the public policy was in the direction of regarding the insane poor as sick wards of the State who required hospital care, with adequate appliances for their treatment as well as custody. The interest of medical men continued unabated, but without affecting legislative action, until 1836, when, through the united efforts of the medical profession,* an act was passed which established the first curative State institution for the insane, viz., the State Lunatic Asylum, at Utica.

* A petition to the legislature, in behalf of the insane, from the Medical Society of Oneida County was drawn up by Dr. C. B. Coventry, January, 1836, and Dr. John M'Call, delegate, presented it to the State Medical Society, and it went as a memorial from the members of the State Medical Society to the legislature, February 4th, 1836, urging immediate action in regard to the establishment of an asylum.

After quoting from a report of a former Committee, it continues: "the time has arrived when we are called upon to discharge the uncanceled obligations of religious, moral, and social duty to that portion of our fellow-citizens, whose appeal to our sympathies, justice and humanity, is the strongest which can, under any circumstances, be made by any portion of our population," the memorialists conclude: "Your memorialists would therefore respectfully request that your honorable body would make such adequate provision for their support and medical treatment (by the erection of a proper asylum), as in your wisdom you may deem best calculated to restore that unfortunate portion of our population to reason, their friends and the community." This petition was signed by twenty-seven members of the State Society, as follows:

John M'Call, T. Romeyn Beck, A. G. Benedict, John H. Steel, Richard Pennell, David Ayres, Simeon Snead, H. Maxwell, James McNaughton, Joel A. Wing, John James, Robert G. Frary, James M. Gardner, Samuel White, Hiram Corliss, Samuel P. Bishop, A. Coleman, Samuel McClellan, Jona. Eights, William Bay, John F. Gray, A. Willard, E. B. Burroughs, L. J. Tefft, John P. Higgins, D. H. Bissell, C. W. Smith, Ferris Jacobs.

The institution was commenced, and by 1842 was so far completed as to justify its organization, and on the 7th of April, 1842, an act of organization was passed embodying the humane and liberal sentiments upon which the care of the insane has been based in this State. This act authorized the reception and treatment of the insane whether at private or at public charge, as sick persons.

By this act, the policy of the State towards the insane became fixed in favor of regarding insanity as a disease which required prompt treatment, and the insane as dependents of the State. From that date to this, nearly half a century, the State has steadily advanced in the direction taken by this step, and to-day she ranks among the first of civilized peoples in munificence of her expenditures of money upon her institutions for the insane. Curative hospitals have been multiplied to meet the increasing numbers of acute cases, and asylums have been established for those whose disease has become chronic.

It was not, however, until 1874, that the lunacy laws were collated and so amended as to fully carry out the now-established policy of the State. In that year, the Senate directed the Attorney-General and the State Commissioner in Lunacy to revise and codify the laws relating to the insane, and report them to the legislature. This Commission* was well adapted for the task it had to perform. The antecedent legislation was reviewed and revised, and the present body of lunacy laws was the outcome of the Commission's work.

At this point, the inquiry may be raised, viz., is the policy of regarding the insane as simply the victims of

*Hon. Daniel Pratt, Attorney-General; Dr. John Ordronaux, State Commissioner in Lunacy.

disease the correct one in the light of modern science? The answer from every intelligent authority, the world over, is in the affirmative. Insanity is a disease, in whatever form it appears, and, like other diseases, is susceptible of cure. In that view, the policy of the State is correct and commendable. She has established and organized her hospitals for the insane in the same manner as she has established and organized her hospitals for fever and small-pox. This view of insanity, and the duties of the State towards its victims, especially among the laboring and dependent classes, is in the highest sense humane and just. As a class, the insane poor have peculiar claims upon the State. They live upon the border-line between self-dependence and pauperism. When a member of the family is stricken with insanity in any form, the family too often proves entirely unable to meet the strain made upon its resources. The sufferer can never recover, as a rule, at home, amid the influences which may have caused the attack, and which certainly will greatly aggravate it. Unless the State makes provision for his treatment, the family must sink under the load, or the poor victim of insanity must find a residence for the rest of his life in the poor-house.

The first question which the revisers had to answer was: Is any additional legislation required for the better protection of the insane? Under the humane provisions of the Statute of 1842, persons were admitted to the State institution as private citizens, paying their own expenses; or they were sent at county charge under the orders of county judges or superintendents of the poor, with or without the certificates of physicians. Admission to other than State institutions was by more rigid legal provisions. It is apparent that the older statutes contemplated the protection of society,

and that the insane participated only incidentally in its benefits. All the early decisions of courts prove this fact. It is still maintained by high authority (Dr. Bucknill) that the English lunacy laws, from which ours are modelled, have but a single purpose, viz., "the safety of the public and the individual." He continues: "The purpose of the law, as expounded by the judges of the law without exception, looks not in the slightest degree to the treatment of disease as authorizing and justifying the confinement of an insane person." The English Commissioners in Lunacy, however, take strong grounds against that position. In their letter to the Lord-Chancellor they say: "The object of the Lunacy Acts is not, as Your Lordship is aware, so much to confine lunatics as to restore to a healthy state of mind such of them as are curable, and to afford comfort and protection to the rest." More recent decisions of English courts seem to sustain the position of the Commissioners.

Whatever may be the final course of English legislation in regard to the confinement of insane persons in asylums, both the courts and the statutes sustain the practice in this country of commitment of the insane for medical treatment as well as for the protection of the public and of the individual. Chief-Justice Shaw held that: "The question must arise, in each particular case, whether a person's own safety, or that of others, requires that he should be restrained for a certain time, and whether *restraint is necessary for his restoration, or will be conducive thereto*. The Superior Court of New Hampshire held that, "if it is proper that an insane person should be placed in an asylum because his case required treatment, with a view to cure, his relatives and friends may place him there."

As the present agitation in regard to the amendments of our lunacy laws is concentrated upon the method of commitment, and as most of the proposed methods go back to the methods in vogue a century ago, it is well to review the reasoning of the commission appointed to revise the laws in 1874, as expressed in the subsequent work of Dr. Ordronaux (*Legal Aspects of Insanity*).

First, as to the question, "Must a lunatic be dangerous to justify his confinement?" he says, referring to the old laws requiring that a person must be "furiously mad," etc., before he can be confined: "This would seem to imply that the law recognized no other form of insanity than such as was accompanied by violence. If the common law could take cognizance of no other class of insane persons save those who are violent in demeanor or destructive in propensities, it would certainly fail to protect a large portion of insane in every community, and the most helpless class would receive neither recognition nor protection, no hospitals or asylums would be open to them, because if insane they would not voluntarily commit themselves to their keeping, and if not violent and dangerous, there would be no legal right to confine them," etc. The revisers remark, very properly, that "the imputation of violent propensities should not be affixed, through a legal record, to sick persons who are only exceptionally and not permanently violent, making it an established fact as a condition precedent to commitment." Commenting on this subject, Dr. Ordronaux continues:

It is manifestly a perversion and misinterpretation of the spirit of the common law to allege any such inconsistencies in its philosophy. An insane person is like every person under guardianship, deemed incapable of self-guidance, and if it be necessary for his better treatment and recovery that he should be sent to an asylum, the question of its expediency is one purely of fact, and

not of law. It is to be decided, therefore, by those to whom the law of the land has intrusted that duty, and without reference to any arbitrary rules, based upon the outward demeanor of the party alone. * * As to how dangerous a man should be to justify his confinement is a question which should not be put in that form. It is too vague in itself, has no proper limits, and expresses little or much, according to the ideas of the individual judge who decides it. The only proper way in which to put it is to ask how dangerous to the present and future mental welfare of the individual his insanity is; in other words, whether he *needs* such treatment as is afforded alone in an asylum, and is, therefore, *a proper person for care* and treatment therein. If so, then no matter *whether* he be quiet and harmless, it is still the duty of society to protect him against the consequence of a disease both *dangerous to him and to others*. The proper test in all cases is the dangerous nature of his disease, not the dangerous character of his demeanor alone. Hence the right to confine him, if necessary, is an incident in the treatment of his malady which the State may permit in virtue of that discretionary power of guardianship which arises by implication of law from the *capitis diminutio* of the citizen.

Basing their action on such well digested arguments as these, the revisers wisely gave to the new law a form of commitment in which the initial step was the determination of the existence of insanity by qualified medical men. But that the personal liberty of the citizen should not be restrained without judicial sanction, the certificate of the medical examiner can not commit the insane person to an asylum, and compel his confinement there. The certificate of the existence of insanity by the physician is the justification for the commitment made effectual by the approval of the judge. But it is also to be considered that "an insane asylum, whether State, county, or private, is not an ordinary hospital nor a reformatory, though partaking in a measure of both characters." * * "It is not simply a remedial, but also a custodial institution, having an original jurisdiction granted to it by law,

and admitting in consequence to its care only those who have judicially been recognized as lunatics." In other words, an insane asylum is a "judicial hospital," and "no one can be committed to it save by due process of law."

With these explanatory statements, we may proceed to examine the several steps by which the revisers proposed to accomplish the act of commitment. In this analysis of the law, we shall not take the sections in their order, but rather examine the provisions with reference to the end to be attained.

As the commitment of the insane has its justification, therefore, in the testimony of legally qualified medical examiners as to the actual existence of insanity, the first step in the act of commitment must be the selection of qualified medical examiners. The following is the legal provision for that purpose:

It shall not be lawful for any physician to certify to the insanity of any person for the purpose of securing his commitment to any asylum unless said physician be of reputable character, a graduate of some incorporated medical college, a permanent resident of the State, and shall have been in actual practice of his profession for at least three years, and such qualifications shall be certified to by a judge of any court of record.

This requirement of qualification implies the following: 1. That the physician is at least twenty-four years of age. 2. That he had studied medicine at least three years, and had attended two full courses of lectures before he graduated. 3. That he passed a successful examination in all branches of his medical studies. 4. That he is of reputable character, and a permanent resident of the State. 5. That his qualifications have been certified to by a court of record, thereby constituting him an examiner in lunacy.

The advantages of this provision are that it supplies every district of the State, however remote and inaccessible, with medical examiners who have the competency of physicians who have passed through the forms of a medical education as established by the laws of the State. It is in imitation of the English laws, which require that the examining physician shall be registered, but the registration requires nearly the same qualifications as this law. The criticisms upon the law are chiefly that the three years' clause admits a class of inexperienced examiners who are liable to commit very grave blunders which may lead to the commitment of sane persons. The law may now, however, be tested by its practical operations. There is no proof that the younger examiners have made the mistakes referred to. So far as the records of alleged commitment of sane persons prove anything, they show greater laxity on the part of the older than the younger medical examiners. An examination of hundreds of certificates of medical examiners has invariably proved that the younger physicians are not only much more careful in their examination of cases, much more cautious in their diagnosis, but much more accurate in the statement of the facts on which they have based their opinion. This difference in favor of the younger members of the profession is probably due to the fact that, in nearly all of the medical colleges of this State lectures on mental and nervous diseases now form part of the course of study. In practice, this provision has undoubtedly worked well, and it is exceedingly problematical whether it can be improved in this State, in the particulars mentioned. There is one feature that might very properly be added, and that is the filing of the certificate of qualification in the office of the clerk of the court over which the judge presides who granted

it. At present, the courts of record throughout the State, with very rare exceptions, keep none of these proceedings of the judges.

The law, however, excepts a certain class of otherwise qualified physicians from the right of becoming examiners in lunacy, as follows:

It shall not be lawful for any physician to certify to the insanity of any person for the purpose of committing him to an asylum of which said physician is either the superintendent, proprietor, an officer, or a regular medical attendant therein.

This provision is copied from the English statute, which, indeed, goes much farther by exempting those physicians who are near relatives to the person alleged to be insane from the right to make out a certificate.

The next step in the process of commitment is the preparation of the certificate. The law is as follows:

No certificate of insanity shall be made except after a personal examination of the party alleged to be insane, and according to forms prescribed by the State Commissioner in Lunacy.

By this provision all certificates must be made according to a uniform plan, except as to the statement of facts on which the conclusion of the existence of insanity is based. The important feature in the method is the personal examination, which applies both to the examiner in lunacy and the party examined, so that, though two physicians examine the patient at the same time, both must participate in the examination.

Two criticisms have been made upon this provision. The first is that each of the physicians ought to be required to make his examination, as under the English law, "separately from the other." It is difficult to determine in what respect this would increase the value of the certificate. If it is the truth, as to the

fact of insanity, which it is to be elicited by this examination, the physicians ought to examine and consult over the case together, as they would in a consultation in the ordinary practice of their profession. Dr. Bucknill very justly and pertinently remarks of this provision of the English law:

When, in any other form of disease, it is desired to confirm the opinion of one medical man by that of another, what would be thought of the wisdom of a proposal that each man should examine the patient separately? When medical men examine a patient together, they usefully check each other, and are of the greatest mutual assistance in observing correctly and estimating rightly the symptoms of a disease, a consideration of the greatest importance in cases of mental disease, whereof the main symptoms are words spoken by the patient, which often convey a different meaning to the minds of different people. * * Rather would they have enacted that the examination should be a joint one, the opinion concurrent, and the report thereof, or certificate, mutual.

The second objection is that the form of certificate prepared by the State Commissioner in Lunacy is defective in that it does not separate the facts obtained from others from the facts obtained by personal examination of the patient. There is no doubt that the form of certificate might be usefully improved. Not only would there be greater precision secured by separating the classes of facts above mentioned, but also, if definite questions were put in the blank which the examiners must answer. It would give more value to the statements of friends or relatives, as to the peculiarities of the person alleged to be insane, if the examiners were required to be very specific in taking their testimony. The question of changing the present form of certificates has been the subject of much consultation on the part of the present Commissioner and those most familiar with the operations of the law, and if finally deemed necessary, a new certificate will be issued.

The certificate of two physicians, made out as above described, and sworn to before the proper officer, is a legal warrant for the removal of a person to an asylum for the insane. The following is the provision of the statute:

No person shall be committed to, or confined as a patient in any asylum, public or private, or in any institution, home, or retreat for the care and treatment of the insane, except upon the certificate of two physicians under oath, setting forth the insanity of such person.

The criticism upon this provision is made by superintendents of asylums, who occasionally have to deal with insane persons brought to the asylums without certificates, under the pressure of great emergencies. In such cases, as an act of humanity, the person has been received, but not as a patient, until the certificates were properly made out and approved.

While the certificates of two physicians, thus made out and sworn to, are sufficient warrant to admit the alleged insane person to an asylum, they have no effect to detain him beyond five days, unless they are subjected to an examination and approval by a judge of a court of record.

The law provides that

No person shall be held in confinement in any such asylum for more than five days unless within that time such certificate be approved by a judge or justice of a court of record of the county or district in which the alleged lunatic resides

This provision finds its sanction in the fact, already stated, that an insane asylum "is not simply a remedial, but also a custodial institution, having an original jurisdiction granted to it by law, and admitting, in consequence, to its care only those who have judicially been recognized as lunatics." The medical certificate is designed to certify to the court the facts of insanity, as a basis for the final action of the judge.

The criticism made upon it is that it works a hardship in remote townships, and hence there has been a disposition to return to the old law which empowers justices of the peace to approve certificates. But after much inquiry, it appears satisfactorily that what is lost by inconvenience is more than gained by the character of the approval.

The approval of the medical certificate by a judge is not a ministerial act. It is only to be done after an examination of the form to its correctness, and the evidences of the existence of insanity, as to its reliability. It is left entirely to his discretion to determine the value of the certificate and whether he will approve it or not. The law provides :

And said judge or justice may institute inquiry and take proofs as to any alleged lunacy before approving or disapproving of such certificate, and said judge or justice may, in his discretion, call a jury in each case to determine the question of insanity.

The final decision of the question, therefore, of committing any person to an asylum is remitted to the courts. The judge may accept the medical certificates as sufficient evidences, or he may institute other inquiries and take proofs, or finally, he may call a jury to determine the question of insanity. It would seem possible to provide a method of verification of certificates more simple and yet surrounded with more ample safeguards than that above detailed. Its success in practice must of course depend upon the faithfulness of the justice who is called upon to approve the certificate. If he approve without examining it as to its form and facts, his approval, though it gives legal effect to the commitment, is in fact, worthless, if not a fraud. A very extended examination of the approvals of certificates establishes the fact that they almost universally bear evidences of having been carefully considered in

all essential particulars by the justices. Still it might be well to require the judge to certify to the fact that he had read the certificate before approval, as follows:

And every approval shall state that he has read the certificate, and that in his opinion it is in proper form, and constitutes *prima facie* evidence of insanity.

Finally, to provide against the contingency of an improper commitment, the right of appeal from the final decision or order of a county judge is granted as follows:

If any lunatic, committed under the provisions of this article, or any friend in his behalf, be dissatisfied with any final decision or order of a county judge, special county judge, surrogate, judge of the Superior Court or Court of Common Pleas of a city, or police magistrate, he may, within three days after such order or decision, appeal therefrom to a justice of the Supreme Court, who shall thereupon stay his being sent out of the county, and forthwith call a jury to decide upon the fact of lunacy. After a full and fair investigation, aided by the testimony of at least two respectable physicians, if such jury find him sane, the justice shall forthwith discharge him, or otherwise he shall confirm the order for his being sent immediately to an asylum.

There is one defect in our method of admission to asylums which ought to be remedied. There is no provision whereby a person standing on what is called the border line of insanity can receive the benefits of asylum treatment, without actual commitment as an insane patient. And yet there are within the knowledge of most medical men persons who are in those conditions as to health and surrounding circumstances, that insanity is an inevitable result, if they do not have the isolation, discipline, and treatment which an asylum alone affords. Many such persons are compelled to seek the asylums of neighboring States, owing to the failure of our laws to provide for their special needs.

An amendment somewhat like the following would be a most salutary improvement of our lunacy laws :

Any person, competent to his own support, may be admitted to any institution for the care and custody of the insane in this State, on his written application, accompanied by a certificate of his family physician showing that, though the mental condition of the applicant is not such as to render it legal to grant a certificate of insanity, yet, in the opinion of said physician, he would be benefited by treatment in such institution.

The method of commitment, now detailed, was adopted largely from the English statutes, which it has taken more than a century to perfect. The most marked difference between our method and the English is in this, viz., that the English system discards the intervention of the magistrate, and gives to the medical certificates full weight and authority, while with us the medical certificates are only the basis and justification of the final act of the judge in giving validity and legality to the commitment. When questioned on this point, the Earl of Shaftsbury, the distinguished head of the English commission of lunacy, replied as follows to the questions put to him :

Q. Would you consider that the prospects of cure derived from placing a patient under early treatment would be considerably interfered with if the law were altered so as to necessitate the intervention of the magistrate in this country ?

A. Most undoubtedly; the great fear in England of so many people is publicity, and anything that tends to bring the patient before the public and to make the case of a patient notorious, would induce people to keep that patient so long as they could before they submitted him to the treatment of an asylum or of a single house. It would interfere very materially with it.

Q. On the whole your opinion is most decided that the intervention of the magistrate would be injurious to the person, as regards his recovery, and no protection to him as regards his liberty ?

A. None, whatever; I think it would take away nine-tenths of the protection he now has. I can not conceive anything which to

my mind would be worse. I will do anything that I can in the world to protect the patient, but I know if I were to assent to what is proposed, I would assent to that which would be irreparable injury.

Q. I think your Lordship is under some misapprehension as to the part that the sheriff acts in the matter: he has the option of acting according to his own discretion, either ministerially or judicially. He may judge, and usually does, of the fitness of the evidence upon which the medical men grant the certificate, or he may not do so. He may judge, and usually does, of the fitness of the persons to give evidence under the circumstances; for instance, relationship, or anything of that kind might be regarded as a disqualifying characteristic in a person signing a certificate?

A. That is what we should object to; we should object to any inexperienced layman taking upon himself to reverse the decision of the medical man.

Q. He would not in that case reverse their decision? He would merely remit it to other medical men who, in his opinion, were competent to grant the certificate?

A. It is all very right that it should be so, but then see what it ends in. It ends, after all, in the opinion of a medical man, for it is only one set of medical men against another set.

When questioned as to whether he had any suggestions to make in regard to improving the method he bore the following emphatic testimony in favor of the English system as it is now enforced:

Q. Has your Lordship any suggestions to make upon that point?

A. No; I have no suggestions to make, because I am very unwilling to say anything that should restrict in any way, more than is now restricted, the person or liberty of the subject; I only wish to call greater attention to these things that people may have their eyes open and then they may put their heads together and see if they can devise something by which a remedy may be applied, but I have no particular suggestion of my own to make; I only give it as a very striking fact and one that should put us on our guard very much against juries, because they never deal with the matter unless there is an overt act, which overt act, in ninety-nine cases out of one hundred is a proof that the disorder is incurable.

In regard to medical certificates his Lordship testified :

It is very remarkable, taking it altogether, that the certificates have been so sound considering the great number that have been given every year; of course, we must admit that they have been signed by medical men who have no very extensive knowledge of lunacy, but it is certainly very remarkable that the number of certificates which have passed through our hands since 1859—the date of the last committee—amounts to more than 185,000, and yet of all those certificates, I do not think so many as half a dozen have been found defective; it sounds very well to say that persons acquainted with lunacy should be the only persons to sign certificates, but the fact is, as matters now stand, that a great amount of scientific knowledge as to lunacy is not possessed by many people; there are a certain number who are well informed, but the great mass of the community know very little about it, and with the large number of insane, dispersed as they are, all over the country, you must trust to the medical men of the several districts; I have a very strong opinion on this point; the certificates hitherto have been very correct, and I am quite certain that out of the 185,000 there was not one who was not shut up upon good, fair, *prima facie* evidence that he ought to be under care and treatment; such is the testimony of all physicians of note who have been summoned before this committee; for what does that arise from—it does not arise from the great knowledge of the medical man of the lunacy that they handle, but it arises in a great measure from the habit of keeping back the patients so long, because the parents and friends do not like to admit to themselves that the patient is affected and so delay to call in a medical man. And then begins, when the medical man is at last called in, the fear and apprehension that the patient may be sent to a lunatic asylum and the whole affair become public; so that when the final examination is made by the medical man, who has to sign the certificate to send them to an asylum, the symptoms are so evident and so pronounced that few people can mistake them. I have very little doubt that such is the case, and such is the reason why we have so few faulty certificates. But, on the other hand, what follows from that course? Why, that the cases are very far advanced and have got pretty nearly in the category of the incurable.

These statements are pertinent and applicable to our own system, and with this remark I pass to consider

very briefly our method of discharging patients from custody. While so much can be said in favor of our method of commitment of the insane, the methods of discharge are open to criticism. Much complaint has been made of the indisposition of the authorities of asylums to discharge patients, and various motives have been assigned for their action. But whatever abuse there may be of this power, the law is certainly radically defective, and in my opinion, is more at fault than the officers of asylums.

The law governing the discharge of patients from State asylums is as follows:

The managers, upon the superintendent's certificate of complete recovery, may discharge any patient, except one under a criminal charge or liable to be remanded to prison, and they may discharge any patient admitted as "dangerous," or any patient sent to the asylum by the superintendents or overseers of the poor, or by the judge of a county, upon the superintendent's certificate that he or she is harmless, and will probably continue so, and not likely to be improved by further treatment in the asylum, or when the asylum is full, upon a like certificate that he or she is manifestly incurable, and can probably be rendered comfortable at the poor-house; so that the preference may be given, in the admission of patients, to recent cases, or cases of insanity of not over one year's duration. They may discharge and deliver any patient, except one under criminal charge as aforesaid, to his relatives or friends, who will undertake with good and approved sureties for his peaceable behavior, safe custody and comfortable maintenance, without further public charge, etc., etc.

This law requires the superintendent to certify to the "complete recovery" of the patient before the managers can discharge him. But many patients remain for long periods in a condition which would admit of their going to their homes, and yet they are not completely recovered. Again, superintendents assert that they can not certify that a patient will probably continue harmless, therefore they can not discharge another large

class of patients sent to the asylum by overseers of the poor, or the county judge. Finally the obligation of a bond, with good and approved sureties, is a condition that many can not, and others will not comply with, who would otherwise take their insane friends home and care for them.

A provision like the following would be a great improvement :

The managers, upon the superintendent's certificate of recovery, may discharge any patient except one under a criminal charge or liable to be remanded to prison; and they may discharge any patient admitted as "dangerous," or patients sent to the asylum by the superintendents or overseers of the poor, or by the judge of a county, upon the superintendent's certificate that he or she is harmless, and not likely to be improved by further treatment in the asylum. *They may, in their discretion, discharge and deliver any patient, except one under criminal charge as aforesaid, to his relatives or friends, who will undertake for his peaceable behavior, safe custody, and comfortable maintenance, without further public charge; or may require of said relatives or friends good and approved sureties, and the bond of said sureties shall be approved by the county judge of the county from which said patient was sent, and filed in the county clerk's office of said county, etc., etc.*

Again, the law ought to be amended so as to allow of furloughs being granted. There are large numbers of patients who might be sent home, or elsewhere, on trial, but there is no provision for it, and superintendents do not dare take the responsibility. The following amendment would meet this special defect:

Whenever, in the judgment of the superintendent of any asylum for the insane, public or private, it will be beneficial to any patient residing therein to be sent or taken temporarily to some specified place as a part of the treatment, and that it is prudent to do so, or that it will be conducive to the recovery of any patient to return home, or to his friends, to be absent on trial, the managers or trustees of such asylum may authorize such

patient to be sent or taken to the place designated, or to return to his home, or friends, or to be absent on trial, for such time as the superintendent may recommend, provided such patient is not committed under a criminal charge. The certificates of commitment of persons absent as above shall remain in force until the final discharge.

Finally, it might afford relief to a certain class of insane poor who are harmless, and who can not be improved by longer residence in an asylum, if they were allowed to go to their homes. The family might receive from the county the same amount that it formerly paid to the asylum. The following amendment would meet that class:

Any insane person in any asylum chargeable to any town or county, who shall not have recovered, and who is not likely to be further benefited by treatment therein, or is manifestly incurable, and may properly be taken care of in a private family, but whose family can not support him without public aid, upon the certificate of the superintendent of the asylum to the conditions above stated, the superintendent of the poor may pay an amount per week to such family, not to exceed the weekly cost for the care and support of such insane person in any of the county or State institutions authorized to receive such insane persons. But the superintendent of the poor shall, from time to time, see that in all cases such persons receive sufficient and proper care.

In conclusion, I would say that, after a long and patient study of the lunacy laws of this State, and of other States and countries, associated much of the time with able legal gentlemen, I and they have reached the conclusion that, though our laws need codification, they are in the main among the best on the statute book. If they are to be revised, and in any marked degree modified, it should be done by those who have long been practically familiar with their operations. It should be borne in mind by our legislators that our lunacy laws, like those of England, are the growth of a century, and should not be tampered with by

unskilled hands. The State of New York has advanced slowly but steadily in the direction of providing more and more liberally for the insane as sick wards, who must, if possible, be restored to health, but who if their disease becomes chronic, must be protected and made comfortable. It would be a terrible misfortune to the insane if by any means the legislature should be induced to take a backward step, and again treat the insane as criminals. No one can appreciate the immense improvement which has been wrought in the condition of the insane during the operations of this law but those who were familiar with the condition of this class forty years ago in the poor-houses of the State. Then the alms-houses were crowded with wretched objects reduced to the last extremity by insanity, neglect, and abuse. To-day, in the poor-houses of eleven counties no insane are found, while in many other counties there are but few, and they are well cared for.

Rather ought we to seek to improve the law only where recognized defects exist, as demonstrated by those who administer it. Instead of hedging the entrance to asylums with difficulties, it would be better to open wider the doors both for admission and discharge. If the insane are sick people, and the asylum a judicial hospital, make it more and more possible for the insane patient to have early treatment and early discharge.