

BIBLIOGRAPHY

- BIRNBAUM, K., 'Geschichte der psychiatrischen Wissenschaft', in O. Bumke (ed.), *Handbuch der Geisteskrankheiten*, I, Allgemeiner Teil I, Berlin, Julius Springer, 1928.
- CRICHTON, A., *An Inquiry into the Nature and Origin of Mental Derangement—Comprehending and Concise System of the Physiology and Pathology of the Human Mind*, London. Cadell Davies, 1798.
- GREDDING, J. E., *Saemtliche medizinische Schriften*, ed. by C. W. Greding, vol. 1–2, Greiz, 1790–1791.
- HUNTER, R. and MACALPINE, I., *Three Hundred Years of Psychiatry 1535–1860: A History Presented in Selected English Texts*, London, Oxford University Press, 1963.
- KIRCHHOFF, TH., *Deutsche Irrenärzte*, vol. 1, Berlin 1921.
- ZILBOORG, G., *A History of Medical Psychology*, New York, W. W. Norton, 1941.

MILOS BONDY

DOCTOR VERSUS PATIENT: TWO FOURTEENTH-CENTURY LAWSUITS

THE medieval medical practitioner, like his fellows in every age, was vulnerable to accusations of negligence. The least fortunate, or perhaps the most negligent, might find themselves liable to public prosecution,¹ despite some recognition that treatment was hazardous anyway.² More commonly, the doctor might face a private lawsuit by a dissatisfied patient; a cursory glance through Talbot and Hammond's *Biographical Register* reveals more than a dozen cases.³ It is small wonder that in at least one instance a surgeon arranged indemnity before undertaking an operation,⁴ and the contemporary textbook insistence on obtaining fees in advance is at least partly explained.⁵ For the most exalted practitioners, however, the major sources of professional income were the annual retainers paid by magnates or by institutions; in the event of apparent negligence, the retainer could be withdrawn. Although the doctor probably had ecclesiastical as well as professional income, it is not surprising that two attempts to regain such annuities have left traces in the legal records which throw some light on the services expected of the medieval physician.*

The traces are to be found in two types of legal source. In the first place there are the records of the court of Common Pleas, which embraced the bulk of civil litigation in the later medieval period.⁶ These court rolls were definitive; despite the vagaries

* These cases were kindly brought to my attention by Mr. L. C. Hector and Mr. Paul Brand.

¹ In 1395 a jury presented William Leech of Newark for taking fees without affecting cures (B. H. Putnam, *Proceedings before the Justices of the Peace*, Ames Foundation, 1938, p. 130, no. 7); also, a coroner's jury found that Gerard Goss had caused the death of a patient by operating, and he was prosecuted for felony (Public Record Office, London: Just[ices Itinerant] 2/156, m.3 d; K[ing's] B[ench] 27/527, Rex m.7).

² Thomas and Pernel de Rasyn were pardoned for their negligence (*Calendar of Patent Rolls 1348–1350*, 561).

³ C. H. Talbot and E. A. Hammond, *The Medical Practitioners in Medieval England: A Biographical Register*, London, 1965: Balthazar de Gracys, John Harwe *et al.*, John Barbour of Colchester, John of Cornhill, John Isyng, John Luter, John West of Leicester, Matthew Rellesford, Matthew Rutherford, Richard Cheyndut, Peter Blank, William Forest of Exeter, and Thomas Butolf.

⁴ John Catlew, in 1394 (*ibid.*).

⁵ E. A. Hammond, 'Incomes of medieval English doctors', *J. Hist. Med.*, 1960, 15, 154–69, especially 155–58.

⁶ See M. Hastings, *The Court of Common Pleas in Fifteenth-Century England*, New York, 1947.

of medieval spelling and the stilted formulae of law Latin, the interests of the litigants and the professionalism of the clerks ensured a high degree of consistency and accuracy. The record, however, epitomized the claim and the defence, without setting forth the detailed discussion of legal niceties, and without necessarily indicating the particular grounds for the judgment, if one was eventually reached. This want was felt by contemporary lawyers, and supplied by the reports known as Year Books. The origins and purposes of the Year Books have yet to be defined exactly;⁷ essentially they were reports, standardized if not official, of the pleadings in perhaps two or three dozen of each year's cases. Like the pleadings, the reports were in law French. Since they were collected for the benefit of lawyers, the reporting was selective and uneven; some cases were treated at length, with all the details needed for understanding the arguments, while others consisted of little more than a witticism from the bench, devoid of context. Names of persons and places, and similar details of fact, were not wilfully corrupted, but they were secondary to the legal points involved, and were often reduced to initials, changed in error, or omitted altogether. Thus a Year Book report, if compared with the record, complements rather than reflects it.

These differing qualities of the plea rolls and the Year Books are illustrated in the first of the cases under discussion. The Year Book manuscripts refer variously to 'Master Geoffrey', 'Geoffrey of C.', and 'Master Harry Daman';⁸ since the modern editor failed to trace the record of the case, the physician involved has achieved two entries in the *Biographical Register*.⁹ In fact, as the editor suspected,¹⁰ the report is misdated, and the case is to be found on the roll for Hilary term, 1303.¹¹ Master Geoffrey Dauratus, *phiscus*, sued the abbot of St. Peter's, Gloucester (at that time John de Gamages),¹² for twenty marks arrears, and ten marks damages, in respect of an annuity granted in June 1298. Master Geoffrey proffered in evidence the contract under which the annuity was granted; it stated that a sum of four marks would be paid twice yearly 'for the service of the said Geoffrey in medical treatment [*labore medicinali*] for the said abbot, which he will carry out faithfully whenever so requested by him in case of urgent need, reasonable expenses for the journey to and fro being paid by the abbot'. The defendant abbot acknowledged the document, but claimed that the contract was void by default of the plaintiff, namely, that when the abbot was taken ill at Northleach in November of the same year, he sent a messenger for Master Geoffrey, who at that time was at 'Morton', 'which is only eight leagues [*per octo leucas*] from Northleach', but that Master Geoffrey did not bother to attend (*ad ipsum Abbatem venire non curavit*). The plaintiff contradicted this defence; and with this the record lapses into adjournments, without reaching a traceable verdict. Although the Year Book does not supply this verdict, it gives rather more evidence of the factors taken into consideration. The most complete and most accurate

⁷ G. J. Turner, in *Selden Society* vol. 26, ix-xxviii; T. F. T. Plucknett, *A Concise History of the Common Law*, 5th ed., London, 1956, 268-73; A. W. B. Simpson, in *Law Quarterly Review*, 73, 492-505, and 87, 94-118.

⁸ *Year Books of Edward II: 6 and 7 Edward II*, ed. W. C. Bolland, *Selden Society*, vol. 36, 80-84.

⁹ Talbot and Hammond, *op. cit.*, under 'Geoffrey of C.' and 'Henry Daman'.

¹⁰ *Year Books 6 and 7 Edward II*, 82 n.1.

¹¹ [Common] Pleas 40/146, m.85 d.

¹² Abbot 1284-1306 (W. Dugdale, *Monasticon Anglicanum*, new ed., 1846, i, 536).

of the three texts available¹³ shows that the defence was countered on two points: firstly, and rather half-heartedly, whether or not a request for help had been sent, and secondly, the question of expenses. The plaintiff's counsel argued that expenses had not been sent with the messenger (the defence said they had, but the submission was too late to be allowed),¹⁴ and that the request was therefore not made properly in accordance with the contract. On this point Hengham, the chief justice, said:¹⁵ 'We have heard that Morton is only eight leagues away from Northleach, and so we think that, by reason of the shortness of the way, there was no need for the Abbot to send the charges.' There are three Moretons in Gloucestershire: Upper and Lower Moreton, over thirty-two miles from Northleach, and Moreton-in-Marsh, thirteen miles away. The distance of eight *leuce* fits the latter well.¹⁶ The most reliable report suggests that the verdict went to the plaintiff, but the rights of the issue remain unclear.

Except for the nature of the speciality, this case was little different from numerous other examples of retained advisers, usually lawyers, whose annuities had been cut off. The reasons for such withdrawal were, most frequently, the failure of the annuitant to fulfil his obligations;¹⁷ disloyalty might also be alleged;¹⁸ and the issue of travelling was raised again by a defendant who expected the plaintiff to travel abroad if need be.¹⁹ The second of the cases involving physicians, however, explicitly distinguished the duties of a medical adviser from those of other professionals.

The plaintiff in this case was Master Simon Bredon, who is undoubtedly to be identified with the medical practitioner and writer of that name.²⁰ His career was one of prosperity and distinction, if devoid of original contribution, and he may be regarded as one of the leading physicians of his day.²¹ After some years as a fellow of Merton College, Oxford, ecclesiastical preferment took him to Sussex, where he held various benefices, including a canonry of Chichester.²² There were thus good local reasons for his appointment as medical adviser to the priory of St. Pancras at Lewes. The deed of appointment, which is quoted in full in the record of the subsequent lawsuit,²³ shows that an annuity of twenty pounds, plus free residence if desired, was granted by prior Hugh (de Chyntriaco)²⁴ to Bredon 'for his good and praiseworthy service and counsel to us and our monastery, performed and to be performed henceforward' (*pro bono et laudibili auxilio et consilio suo nobis et Monasterio nostro impenso et imposterum impendendo*); the document was dated 18 August 1361. On

¹³ Version II in Bolland's edition.

¹⁴ Westcote, for the defence, suggested that, in submitting that the request was made 'according to the tenor of the deed', the defence had already implied that expenses had accompanied the messenger.

¹⁵ Version III attributes this sentence to Westcote.

¹⁶ The medieval league was usually about one and a half miles: see W. H. Prior in *Bulletin du Cange*, 1925, 1, 146.

¹⁷ *Year Books 33–35 Edward I* (Rolls Series, 1879), 404–5; *Y. B. 16 Edward III* (R.S., 1900), ii, 477–81; *Y. B. 19 Edward III* (R.S., 1906), 412–15; *Y. B. 5 Edward II*, (Selden Society, vol. 33), 1–9.

¹⁸ C. P. 40/169, m. 153, where a lawyer was alleged to have accepted a hostile brief.

¹⁹ *Y. B. 17 Edward III* (R.S., 1901), 334–37.

²⁰ See the accounts in Talbot and Hammond, *op. cit.*, and in A. B. Emden, *A Biographical Register of the University of Oxford to A.D. 1500*, Oxford, 1958.

²¹ For an assessment of Bredon's unproductive erudition, see C. H. Talbot, *Medicine in Medieval England*, London, 1967, 198–200.

²² Emden, *op. cit.*, warns against confusion of the physician with his namesake in the Chichester chapter.

²³ C. P. 40/426, m.433 and *d.*

²⁴ Prior 1349–1362 (details of the priors are supplied from *Victoria County History: Sussex*, ii, 70).

20 January 1365, Master Simon took out a writ against the then prior, John (de Caroloco),²⁶ claiming thirty pounds arrears and one hundred pounds damages. The defence claimed nonfeasance by the plaintiff. It was stated that Bredon had been and still was a practising physician (*exstitit doctor de fisico et huiusmodi sciencia et artificio adtunc usus fuit et adhuc utitur*). In January 1364, Gerard (Rothonis),²⁶ then prior, was ill (*languidus et gravi infirmitate detentus*) at Lewes, and sent for Bredon, who was at the time fit (*ad laborandum in corpore sanum et potentem*) and practising at Mayfield, twelve leuce away,²⁷ asking him to attend (at the prior's expense) and treat him. Bredon refused to attend, and declined to send either advice or physic, for which reason the annuity was cancelled.

From this point the discussion of the defence follows rather formally, in the record, but rather more fully in the reports, which, although unpublished since the early black-letter editions,²⁸ survive in a number of manuscripts.²⁹ After a comprehensive but purely formal denial by the plaintiff, two extrinsic objections to the defence were raised. Firstly, it was claimed that the plaintiff had for a long time suffered from *gutta* (possibly, but not necessarily, gout), which came in the form of frequent and acute attacks (*ipsum . . . subito, sepius, et graviter capiebat*); while the infirmity lasted, he was immobile, and any attempt to work might prolong the attack for as much as a year. This point is not debated in the reports; since the prior's counsel did not trouble to contradict it, it may have been discarded as irrelevant. Secondly, it was argued that the annuity was not granted for medical services at all, but for resigning the living of East Grinstead; this living, worth upwards of forty pounds a year, pertained to the prior and convent of Lewes, who wanted it vacated for reasons unspecified, and had responded 'unasked' with a generous annuity when Master Simon unconditionally and voluntarily (*pure et sponte*) complied. According to Thorpe, one of the judges, the resignation was thus supposed to constitute 'aid', while any subsequent advice on the matter would amount to 'counsel', in fulfilment of the contract.³⁰ This point was pressed by Belknap, Bredon's counsel, and was seriously entertained by the judges, although Cavendish, for the prior, was content to consider it irrelevant to the contract (*'ceo ne poet estre entendue par tiel cause come vous avez allege'*).

These points, however, were secondary to the main focus of argument. At no time was it denied that the plaintiff was a doctor of physic, nor that he had omitted to visit the prior; but the nature of the doctor's obligation towards his patient was debated vigorously. Belknap criticized the defence on three principal grounds: firstly, that in the absence from the terms of the grant of explicit obligation to travel, the counsel and aid need only be given 'in the place where the plaintiff might be found';

²⁶ Or 'Cherlew'; prior c. 1366–1396.

²⁶ Other sources have 'Gerald'; prior c. 1363–4.

²⁷ Actually fifteen miles.

²⁸ E.g. the 1555/6 edition by Tottell, under Hilary and Michaelmas terms, 41 Edward III.

²⁹ The manuscripts are listed by J. Nicholson in the *Register* issued by the Selden Society and the Historical Manuscripts Commission (1956); the Pole-Gell MS. mentioned may now be British Museum 10.B.viii. The text used here is a collation from Lincoln's Inn, Hale 189, 219b–220b and 232a–b; Public Record Office, C.47/34/11, no. 33, 1a–b; Cambridge University Library, Hh.2.5, 28a and 34a; C.U.L., Hh.2.7, 46a–b and 54b.

³⁰ The East Grinstead connexion is clear; see *Sussex Archaeological Collections*, xvii, 105, for his presentation, and F. M. Powicke, *The Medieval Books of Merton College*, Oxford, 1928, 82, for bequests by him to parishioners there.

secondly, that the request for help did not state the nature of the illness, thus precluding advice by proxy; thirdly, that there was nothing in the grant to say that the plaintiff's advice should be medical rather than otherwise. Cavendish, taking the first two criticisms together, pointed out that 'the prior could not have conveyed the nature of the illness, for this is so privy a matter that it depends entirely upon inspection of urine;³¹ this he could not have known how to do, and so could not have notified you'.

On the third point Cavendish instanced the lawyer, to whom any grant *pro consilio suo habendo* was assumed to be for legal services unless otherwise specified; a physician should be treated accordingly. Finchden, interjecting, seized on this parallel; it had been ruled, he said, that under such terms a lawyer was not obliged to travel. Moreover a lawyer could not give advice if his client failed to provide details of the case, and the physician who was not informed of the nature of his patient's complaint was in an equivalent situation. But Cavendish denied that the situations were comparable; 'Illness is so privy that only a physician can diagnose; the physician is bound to counsel and aid his patient; since the patient himself cannot diagnose in order to notify the physician, nor, because of the illness, travel to him, the physician has to travel to the patient.'

Thorpe showed interest in hypothetical questions, when such a plaintiff had other specialist qualifications (*science*), such as surgery or law, or none at all; these were answered briefly by counsel, who argued that no one could be expected to give aid and counsel beyond his competence, and the nature of the services depended on the nature of the grant. It was this last which Thorpe found most perplexing, in the absence of express conditions in the deed, and the case was adjourned. In the following term the prior or his attorney was unable to appear, and after another adjournment the case was discussed again in Michaelmas term; the salient points were reiterated, with Finchden changing his sympathies somewhat: 'If a lawyer were in a situation where it was shown to be necessary, he would be obliged to travel in his client's interests;³² all the more so, then, in the present case'.

There was nonetheless a further year of adjournments before the judges delivered their verdict in favour of the prior. No doubt the chief legal difficulty was the imprecision of the contract, but it was clearly not unreasonable for a physician, and his learned counsel, to disclaim the necessity of attending the patient.

³¹ 'Inspection of urine' was the regular description of Master Marck's services to Norwich Cathedral Priory c.1430 (Talbot and Hammond, *op. cit.*, 209).

³² In one version of this term's report (Hale MS. 189) Cavendish states that the lawyer is not obliged to travel *sil ne[st] pur le Roy*, 'unless it is for the King'; but this is probably a misreading for *soit pur la ley*, 'if it is for [service in] the law', which is the version found elsewhere.

J. B. POST

SOCIETY FOR THE SOCIAL HISTORY OF MEDICINE

ANNUAL CONFERENCE, 1972

The Annual Conference of the Society will be held at the University of Leicester from the evening of Friday 14 July to lunchtime on Sunday 16 July. The theme of the conference will be 'The Social History of Medicine in Victorian Times'. The speakers will