II.—*The Law and the Lunatic.* By George Sigerson, M.D. F.R.U.I.

[Read Tuesday, 19th January, 1886.]

Dr. Sigerson, having given an historical sketch of the subject, noted recent cases of abuse under the present system, and made a detailed analysis of the Lord Chancellor's Bill, proceeded as follows :—

It must be borne in mind, however, that this project of an amended lunacy law must come up again for discussion *de novo* in the House of Lords, and be subject to the searching criticism of the House of Commons before it crystallizes into an Act of Parliament. With a view to the debates which must ensue, and the changes of form which it may have to undergo, I venture here to place on record certain points suggested by a careful analysis of the Bill, and by a studious examination of the lunacy laws of foreign countries.

I. No notice is taken in the Bill of a class of cases which decidedly requires to be brought within the purview of the law. In this category are included those patients who for various reasons have been and are being removed beyond the jurisdiction of the realm, without record, authority, or hindrance. The most praiseworthy motives may guide the course taken by those who have them in charge; but there is nothing to exclude the operation of malicious, or mercenary, or simply selfish designs. There may be two medical certificates, or merely one, or none at all. The common law does not, indeed, authorize a patient being taken out of the kingdom against his will; but neither does it authorize him being so taken to an asylum.* The certificates merely sanction his reception, and can be pleaded as showing that arrest for treatment was a case of necessity. But granting that the patient, taken or enticed abroad, has a remedy at common law, it is clear that he might be detained there long before he could have recourse to it; and that in the end, means might fail him, the parties to his abduction be men of straw, or close relatives or connexions. Practically no remedy exists in case of wrong. Now, it is in evidence that the keeper of a large Maison de Santé, or private lunatic asylum abroad, informed the witness that he would have no hesitation in bringing over a person under a certificate granted in England †—one certificate sufficing. Mr. Wilkes, one of the Medical Commissioners in Lunacy, says that—

> "Of course there are a good many patients who are sent abroad for the purpose of avoiding publicity in England—patients probably of high rank, where the friends have reason for avoiding publicity. They are frequently sent to France and other places."‡

They may be sent to Belgium or to the Channel Islands, over which the British lunacy authorities have as little control. "I do not know how we are to obtain any information about them,"

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* *Minutes of Evidence*, 9753. †9753. ‡791.

said Lord Shaftesbury, for half a century Chairman of the Commissioners,

> "They go across the sea, and then they are lost in the great mass of the population. We have no information or knowledge of them at all."*

Dr., now Sir J. Crichton Browne, one of the Lord Chancellor's visitors, and a most distinguished psychologist, gave evidence that he saw—"two English lunatics confined at Gheel" who had been brought over from England. And, in reply to a question from the chairman, he assented to the proposition that it would be more difficult for the patient, if he became sane, to get away than in England, inasmuch as—

> "Probably from his defective knowledge of the language he is at a disadvantage in proving that he is sane."†

Referring to the French asylums, Dr. Balfour, noting that a patient can be received on one medical certificate (but the prefect must afterwards send a medical commission to examine him), observes that—

> "Granting he was sane, he would naturally be very much excited, and perhaps not have a very good knowledge of the language; and the chances are he would remain long enough in the asylum before he got out."‡

Now there can be no question of the high qualifications of French medical men, whose signal proficiency in psychological research is not a matter of to-day; but, whilst affirming this, it is also pointed out that some such errors might occur in small establishments. In any case, the system of removal, as it stands, is without justification. Possibly, the reason why no reference to this important subject was made in the Bill is because no suggestion was before the Committee, except that a registry of alien lunatics in confinement should be kept and interchanged between the various Embassies. This should be a matter of international agreement, not of the statute law. But while such a registration would give knowledge it would not give power. Yet it is obvious that some mode of control is absolutely demanded, for it would be a marked mistake to barricade carefully all outlets against abuse, and leave this one open and unguarded: the very care taken to ward the others would direct abuses to this outlet. An excellent precedent, formulated in the new lunacy law enacted by the States General of the Netherlands in 1884, might be adapted with benefit. This law decrees that—

> "If a person who was domiciled, or who had resided the previous six months in the Netherlands, is placed in an asylum in a foreign country, notice thereof must be given within eight days by the persons who placed him there, to the Officer of Justice (Crown Advocate) of the district within which the patient had resided."

A penalty not exceeding 600 florins (£50) may be inflicted on infraction. Now it would be obviously better that notice should precede the removal, and that some care should follow the patient. Hence I would suggest the insertion in the Bill immediately after

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* 11597-9. † 1535. ‡ 3156.

section 23, relating to removals for health, or on trial, and transfer, of a section to this effect, namely :—

> "24 (1) The consent in writing of one Judge in Lunacy, countersigned by his registrar, in the case of a patient under the care of the Court of Chancery, or of one Commissioner countersigned by the Secretary of the Commissioners, in the case of a certificated lunatic under confinement or control, or of a county court judge, countersigned by his registrar, in the case of a lunatic so found at the time before him, be required at least eight days previous to the transfer or removal of any such lunatic beyond the limits of this kingdom.
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> "(2) Information of the circumstances shall be forwarded to the Commissioners by the judge of the county court when granting the order.
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> "(3) The order for transfer beyond the limits of the realm shall determine after the lapse of one month from the date.
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> "(4) If any person or persons having charge of a lunatic, removes or remove him without having obtained such an order, or after its term has expired, he or they shall be guilty of a misdemeanour."

There is as much reason that the law should have a continuing care of such lunatics, as of those detained within the realm ; and since it is proposed to enact stringent guarantees against undue detention, as regards the latter, something similar should be done with respect to the former. It is quite true, as the Chairman of the Select Committee put it that—"An Act of Parliament of this country, would not be able to alter the law of France." Though agreeing with a witness who considered it—"A very dangerous thing to have the power of looking up English subjects in France on one certificate," he believed that "we are quite powerless in this country," without a convention* with other countries. Now I venture to submit that though powerless in one direction, we are not powerless in another, inasmuch as we can hold to account the person or persons within the realm who removed the lunatic, and compel them to furnish authenticated annual reports, such as are required for patients at home. This may be provided for by such clauses as the following—

> "(5) The person signing the petition for an order of removal of a patient abroad, shall, not less than seven days before the expiration of each year, furnish to the Commissioners the certificate of a physician, who shall be nominated by the ambassador or consul of the district in which he is detained, which certificated shall be countersigned by the secretary of the embassy, or legation, or by the consul.
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> "(6) Any petitioner who makes default in sending such notice to the Commissioners shall for each week the default continues forfeit any sum not exceeding ten pounds.
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> "(7) At the termination of three years, or for cause shown at any time, the Commissioners may require the petitioner to produce the alleged lunatic before them and, if the petitioner refuse or fail in so doing, he shall be guilty of a misdemeanour."

The last clause would not, of course, be enforced unless the Commissioners had reason to believe that the patient had recovered his sanity, or was suffering by reason of absence—or unless they considered his property was neglected, and that the Court of Chancery

should take control of his estate and person. Without some such clause they would be, as they are, powerless; with it they would practically possess similar power to that which the Bill confers on them, in relation to patients confined within the realm.

II. Considering the pre-eminent position occupied by medical certificates in the matter of the confinement and detention of patients, some reference as to the special qualifications of the grantors might have been expected in the Bill. Its omission is probably due to a twofold cause—a distrust of experts, and a belief that the guarantees given suffice to prevent mistakes. Lord Shaftesbury, in his evidence, gave full expression to the feeling of distrust. He relates that a doctor, an excellent man, came seeking his influence for a medical appointment:—

> "To show his extraordinary knowledge of the subject, he gave me a sheet of paper, as big as that, with a list of the forms of insanity. I counted them up, and they were forty in number. 'My dear sir,' I said, 'this will never do; if you reduce your principles to practice, you will shut up nine-tenths of the people of England,' and so they would. You may depend upon this; if you ever have special doctors they will shut up people by the score."*

His lordship declared himself afraid that the eccentricities of men perfectly sane, would by the minute refinements and discriminations of science, be put down as symptoms of incipient insanity. And there is, in truth, no doubt that some would call within the category of disordered intellects men as illustrious as Socrates, Pascal, or Napoleon. Genius itself is made a matter of suspicion. Owing to the existence of such notions probably, Dr. Blandford considered the inexperience of the practitioner a safeguard, because he would not sign except in plain cases. But we are not bound to accept the verdict of Dullness as against Genius. And, with a wider knowledge of psychology, it must become recognized that there are "more things in heaven and earth than are dreamt of" in the Philosophy of the Commonplace. The existence of hallucinations even, which to the half-educated may seem a certain sign of lunacy, is not necessarily so regarded by the medical man of wider and deeper knowledge. On the other hand, inexperience is only to be relied on if united with diffidence; but inexperience is often the reverse of diffident. It may present itself, and often does, with much more confidence than experience. Facts illustrative of this, as showing the defects of the present mode, can be found in the evidence published. Dr. Harrington Tuke gives an instance where two medical men in England, acting in good faith, certified that a passionate and violent but sane man was insane, and the proprietor of the asylum, "who really knew nothing about whether the man was insane or not, kept him through ignorance."

Again, this doctor was asked to certify the lunacy of a young lady in Charing Cross Hospital, that she might be removed to an asylum: it was a case of typhoid fever. The hospital physician thought it

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* 2438–2441

acute mania, but a consultation with more specially qualified men and the result, showed the disease to be fever. To the mind of the patient, the shock, as well as the stigma, had she been removed to the asylum, would have been terrible. Dr., now Sir J. Crichton Browne, observes that—

> "Even in the most pronounced cases, it is possible for a man not very expert to mistake drunkenness, a fever, or pneumonia for insanity. I have known patients sent to asylums labouring under inflammation of the lungs, and that is unfortunate, as it perhaps inflicts a stigma on the patient."*†

Again :—

> "In my own county asylum, I have admitted patients labouring under inflammation of the lungs and consumption, who were delirious from the disease."‡

Dr. Balfour relates that—

> "A woman was certified to the asylum because she was anxious about her soul's salvation, and asked for a Bible: these were the sole facts indicating insanity observed by the doctor."§

Dr. Crichton Browne mentioned that medical men knowing very little about insanity were constantly signing certificates.‖ Dr. J. M. Granville, with an experience of twenty years, and having made a special investigation of the conditions of lunatic asylums, assented to the proposition that the certificate of a medical man, not specially qualified, given after an interview, is little better than an illusion. No medical man he knew would stake his reputation on the diagnosis of a case of measles or scarlet fever on the first visit.

> "9003.—The law, he said, requires him actually to express an opinion in writing on the existence of mental disease, and does not even require that he should have read a page of any book on lunacy, that he should have seen a single case, or been asked a question in examination. In my own case, the first certificate in lunacy I signed, now nearly twenty years ago, I signed, not having seen a lunatic, read a page on the subject, heard a lecture, or been asked a question, and of course the opinion was valueless. What makes it more important is this: in the case of a pauper, the magistrate is generally guided by what the medical man says; and in that case the medical man was guided by what the relieving-officer said.
> "9004.—Neither of them knowing anything about it? No."

The projected law, as represented in the Bill, will doubtless diminish, but not annul this danger. It adopts the Scotch and French principle, with a magistrate to represent the State. But, there was a magistrate in the case of the pauper cited. In Scotland, Dr. Balfour states he himself received into one of the Royal asylums a young gentleman, on medical and emergency certificates of insanity, and that :—

> "He showed no signs of insanity. The case was reported to one of the Commissioners in Lunacy as one in which the patient was not insane. They ordered his discharge."¶

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* 2498–2500. † 1539. ‡ 1586. § 3293. ‖ 1489–90. ¶ 3139.

Even France can furnish an instance of a similar kind—Dr. Legrand Du Saulle, a distinguished psychologist, relates that:—

> "M. Renaudin has known a highly respectable man who, as a consequence of intellectual work, became delirious. A physician but little familiar with the knowledge of mental disease considered it a case of general paralysis, and declared it incurable. The patient was interdicted (found insane), and then placed in a lunatic asylum. Some months after, his cure was complete, but what was not his mortification when he discovered, on returning home, that his guardian had sold off his library and the valuable collections which he had gathered together with such life-long perseverance."*

There are here surely ample grounds why the statute law should recognize in one way or another the desirability of some knowledge of lunacy in the giver of a certificate of lunacy. A Bill brought into the Italian Chamber of Deputies by Signor Depretis in 1884 stipulated that:—

> "Medical directors and doctors must prove that they have made a special study of the therapeutics of lunacy, and are of irreproachable morality."

It would certainly not be too much to require such knowledge of all superintendents and medical attendents in connection with asylums, whether public or private; but as regards professional men in general it might suffice if, recognizing the standing of those already in practice, a suitable stipulation were inserted in the certificate. The obligatory nature of the knowledge required for asylum physicians would probably be sufficient inducement to cause medical students generally to seek for a course of mental pathology, and licensing bodies to give it a place in their curriculum. This would certainly happen if a knowledge of mental diseases (attested by examination in the cases of graduates and licentiates passing after 1886), were made a requisite for all Government medical appointments.

III. The adoption of the Roman and French principle of assuming the care of a man's property only, if he be found incapable of managing his affairs, but capable of managing himself, is of high importance and great advantage. The procedure specified in section 39, shows, however, that the case must be brought under the care of Chancery, inasmuch as the special finding and certification take place after an inquisition, and shall be brought before the judge in lunacy, for the making of orders and appointment of a Committee of the estate.

Now, there can be no question about the propriety of this mode of procedure in the case of large properties; but in the case of small properties the burthen will be great. Hence, the relief given will accrue to the wealthy—scarcely at all to those of small incomes. This is evidently the reverse of desirable, for it is above all to be hoped that the law will now extend its protection to families for whom the incapacity of the unrestrained heads may mean irreparable ruin. Why not, in the case of small fortunes, with a standard at a certain annual revenue if deemed necessary, allow a minor tribunal to decide? The county court judge, selected justice, or magistrate,

* *Agenda Médical*, 1866. *Code Médical et Professionel.*

are to be empowered, under the Bill, to hold an investigation, and take evidence on oath, the result of which may be that the patient's insanity is declared, and his person committed to the custody of an asylum. It is certainly not endowing this tribunal with a greater degree of power, though enlarging its scope, if it be enabled to commit the estate to the custody of a Committee, leaving the individual free. In practice this would have the merit of simplifying procedure and greatly avoiding expense. Let us suppose, for instance, that a petition is presented, accompanied by the necessary medical certificates, in relation to the patient, A. The county court judge, justice, or magistrate, is not satisfied; and, holding a formal investigation, sifts the matter thoroughly, taking evidence on oath from witnesses in the locality itself. The result may be a clear and indisputable conclusion, that the alleged lunatic is capable of managing his person, but utterly incapable of managing his affairs.

What can the judge or justice do in such an event? He must dismiss the case (s. 3, c. 13), for his power is limited to granting the order, dismissing it, or adjourning for further evidence. The consequence will be that the incapable man will be turned loose to ultimate ruin, unless another petition, with other certificates be sent to Chancery, which entails the holding of another investigation and the calling together of the witnesses anew. Thus, all the expenses of a double investigation are involved, at great inconvenience, when the first investigation should suffice. As for various reasons, financial or others, it might seem a lesser evil to commit the patient than to let him run riot, the decision which might otherwise have set him at liberty may now confine him. Very slight changes in the Bill would serve for its amendment. This clause, for instance, might follow clause 13, section 3 :—

> "3 (13)—If, after an investigation, with evidence taken on oath, the judge, justice, or magistrate, should be of opinion that the alleged lunatic is of unsound mind, so as to be incapable of managing his affairs, but capable of managing himself, and is not dangerous to himself and others, it may be specially so found and certified.
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> "Every such finding shall be forwarded to the judge in lunacy, with an account of the property and circumstances, and the name of the person recommended as committee of the estate."

Correspondingly, section 39 might be thus modified by the insertion of the words between brackets, thus :—

> "39.—If, in any case of an inquisition [or of an investigation held with sworn evidence before a judge of the county court, justice, or magistrate] it shall appear that the alleged lunatic is of unsound mind so as to be incapable of managing his affairs," etc.

By this amendment protection would be extended to small fortunes, without the deterrent tax of double expenses, whilst the oversight of the property would rest in the court. The patient might have power to appeal to the judge in lunacy (and jury) in case the property were considerable. In any case, it might be well that the county court judge, not any justice, should be the deciding authority.

IV. For many years, it has been my conviction that the adoption of the French principle of a *conseil de famille* would be of the highest possible service in all suitable instances. Two notorious cases occurred, separated by no long interval, in England and France, which

showed the contrast between the working of the systems of these countries. The individuals concerned were in both instances young men of large fortunes, who were recklessly squandering their wealth on ignoble aims. In England an effort was made to restrain the extravagant young gentleman (Mr. W.), by the only means available—that of declaring him mad, and incarcerating him in an asylum. The effort failed; he was not mad: being freed, he ran the road to ruin all the more recklessly for the attempt—wasting his substance in riotous living, and probably dying prematurely of provoked disease.

In France, the friends of the wealthy youth (M. Duval) took another legal method, which was open to them—they obtained the establishment of a judiciary council, or *conseil de famille*, which, being duly so empowered, took charge of his property, and made him an allowance suited to his position. The French law, removing from him the freedom he had abused, placed him under guardians, and by this means saved himself, his property, and society, from more serious injury.

To the former case, the chairman of the select committee, the Hon. Stephen Cave, apparently referred, when he asked a witness whether it would not be for the security of the liberty of the subject if the control of his property could be taken away from one who was mismanaging it, leaving himself untouched.* Dr. Robertson considered it would be a great advantage; but was unable to say whether there was any such system in France. The report embodies the chairman's suggestion, and the Bill adopts it, substituting a Committee of the estate for the *conseil*. Now, when incorporating into the law of the realm a new principle and practice, of which no precedents are to be found to guide decisions, it cannot fail to be of service to quote the results of foreign experience. Nothing relating to the matter is found in the Report from Her Majesty's representatives abroad, furnished to Parliament in 1885, as these reports refer only to the working of the lunacy laws.

This omission, however, I am enabled to supply in the translation which follows from the observations of Dr. Legrand Du Saulle, one of the physicians to the hospital of La Salpétrière, Paris.

It should be premised that the term *conseil de famille*, which Dr. Du Saulle does not explain, is a legal term designating an assembly of relatives, presided over by a magistrate *(juge de paix)*. Its function is to regulate and control the interests of a minor, or an "incapable," to further which object it may appoint Curators of the person or of the property. It is most important to observe that considerable powers may be left in the hands of the ward, the exercise of which, under due supervision, must tend to improve his faculties.

Dr. Du Saulle writes:—

> "The *conseil judiciaire* (or judiciary council) is a species of middle term between the free exercise of all rights and interdiction, which is the absolute deprivation of them. *It leaves to the individual concerned the enjoyment of his property, the disposal of his revenues, and even commercially a more or less considerable sphere of initiative.* It takes away the perilous faculty of alienating his property of himself alone, that of displacing funds, of contracting important engagements. All who are aware of the snares

* 1166.

laid for age and debility of mind must acknowledge that the measure is one of sovereign utility. On making a search through the records of jurisprudence it will be seen, for instance, that the grant of a judiciary council has been pronounced, when the individual, from old age, has suffered from a somewhat considerable enfeeblement of memory and idea, though still preserving his common sense and reason (Rouen, 8 Floreal, year II.; Lyon, 2 Prairial, year 12). A natural weakness of intellect, conjoined with accidental attacks of epilepsy, may cause the nomination of a council (Colmar, Prairial, year 13). Weakness of intellect, when arrived at a high degree, may occasion the grant of a judiciary council, although not a cause for interdiction (Angers, 23rd April, 1806). Defective memory, great weakness of vision, much carelessness in business matters, and answers failing in correctness, were considered motives sufficient to justify the nomination of a judiciary council in the case of a woman aged 88 (Paris, 22nd May, 1822). A disease which at intervals deprives the patient of his intellectual faculties, may be, if not a cause of interdiction, a reason for nominating a judiciary council (Montpelier, 25th August, 1836). A judiciary council may be provided for a deaf-mute, especially if he himself asks for it, who cannot read nor write, though he shows some marks of intelligence in the management of his business (Lyon, 14th January, 1812)."

This enumeration of precedents is valuable, showing, as it does, that in France it was judged proper to include in the category, not merely those who formerly in England would have been found "unthrifts," but also some, such as illiterate deaf-mutes, who in England, would have been found *non compos mentis*. It is questionable whether there is any need of making the finding one of unsoundness of mind, which involves a stigma, when the term "incapable," or "incompetent" would serve the purpose.

It is more important still, however, to consider whether it is advisable that this finding should run indefinitely, without provision specified for testing the patient's mental condition from time to time. This is to be done periodically, in the case of lunatics in confinement; *a fortiori* it should be done in the case of unthrifts, and of others where there exists any prospect of recovery. It would be an incentive to the former, at least, to exercise whatever power of self-control they possess, in order to emancipate their property from perpetual wardship. Nor must it be forgotten that where considerable properties are concerned, and large sums pass through the hands of the Committee, temptations to misrepresentations will arise, and suspicions will be excited, such as have assailed the keepers of private asylums. The Lord Chancellor's Visitors will, of course, take cognizance of the individuals in question, but an annual report from the attendant physician, countersigned by the justice, or magistrate of the locality, might not be superfluous.

V. The power of the Visitors and their number require to be increased, according to the evidence. The number of chancery lunatics had increased, and continues to increase, but the number of Visitors had not augmented in proportion. Nor were the number of visits stipulated for chancery patients in asylums sufficient, being but one in the year, whilst for private patients one in each quarter safeguarded them enough.

> "It is possible," said Dr. Crichton Browne, "that a chancery lunatic might remain in an asylum one year and eleven months without seeing a visitor."

And Dr. Robertson, who notes the failing, observed :—

> "We have to look very sharp to get patients who are getting better moved out of asylums into private dwellings."

The patients complained, but without avail. The Commissioners and justices, who visit oftener, do not like to interfere as regards chancery patients. The Board of Visitors (composed of two Masters in Lunacy, one legal, and two medical visitors) represented the facts in 1875 to the Lord Chancellor. They also pointed out that in 1870, on a similar representation, Lord Chancellor Hatherly brought in a Bill to legalise a change, giving half-yearly visits to all chancery patients.

> "Lord Hatherly," the memorandum continues, "added to his Bill further clauses on the treatment of persons of weak mind (copied from an Irish chancery Bill, which at the time passed into law unopposed), to which clauses the Lord Chancellor, on the introduction of the Bill, took exception, and which ultimately proved fatal to it success in the House of Commons."*

The new Bill of 1885 embodies the principle of this fatal (Irish) clause, but not the recommendation of the English Board of Visitors. Nor does it take notice of the urgent complaints of the medical Visitors, as to their powerlessness to promptly rectify any evil they may detect. They are deferred to very readily if the great matter of the mental state of the patient be in question ; but in the matter of his physical treatment, be it unsuitable, indifferent, or bad, they have no effective power. The Board of Visitors is composed of two Masters in Lunacy (who do not visit); of one legal and two medical Visitors. The reports of the medical visitors as to the mental question go through the board to the Lord Chancellor or the Lord Justices as representing him : and are invariably acted upon. But their reports upon improper treatment, sent to the board, are referred to the Masters, ex-officio members of the board. These reports deal with the unsuitable accommodation or ill-treatment of the patient, whether in an asylum or private house, and consequently with the unsatisfactory action of the committee of his person. They are dealt with by Masters who appointed the Committee.† The Masters inform the solicitor of the Committee (and any other branch of the family), and the solicitor brings up the committee to give evidence on oath.‡ The evidence of the visitor is not further taken, nor is he communicated with : the decision of the Master may not even be sent to the board.§ The Master is, of course, above all suspicion of partiality ; but the committee and his friends have a very strong financial interest in making out a good case. Manifestly, if the testimony of the official and impartial Visitor be not worth taking, the testimony of interested parties must count for less than nothing. Yet it is in evidence that the reports of the medical Visitors have been ignored or set aside, under this system, than which anything more calculated to discourage

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* Memorandum. Appendix No. 2 to Report from the Select Committee.
† Dr. Bucknill, 1717. ‡ Master Barlow, 11029.
§ Dr. Bucknill, 1717-1726.

action in correcting abuses cannot well be conceived. Dr. Lockhart Robertson, Lord Chancellor's visitor, says :—

> "838. The Committee of the person has entire control over the person in every way. He may place him where he likes, and may move him about as frequently as he pleases. He may set the recommendations of the medical Visitors at defiance, if he pleases."

The committee may, as the chairman pointed out, make a livelihood out of the large allowance granted him for the patient. He is then not financially interested in quickening his cure, but the contrary; thousands of pounds annually may pass through his hands, so long as the patient is insane, which would vanish on his recovery. Yet, according to Dr. L. Robertson, the reports of the medical Visitors "are frequently put aside," whilst the evidence of the accused is allowed to pass muster.*

> "941. (Chairman.) In fact, the independent testimony of the Visitors, who have themselves had opportunities of seeing the patients, and of judging for themselves, is set aside on account of the statements of the interested parties? Exactly: that is the case, certainly."

The chancery Visitors (differing in that respect from the commissioners) have no control whatever over private asylums,† and if they cannot remove the patient, they are quite powerless to prevent wrong or injury.

> "951. If the Committee of the person disagrees with you, a patient may be kept in a private asylum, and treated in a way detrimental to his cure, may he not? Certainly."

Dr. L. Robertson proceeded to give an instance where two years previously he had recommended a patient to be removed from an asylum : "he felt sure he had been too long detained there." The committee entirely refused; but, fortunately a new committee was appointed, the patient was moved, and had very much improved. For two years, however, he was detained to his detriment. Take also this evidence, Dr. Bucknill, F.R.S., being the witness, in reply to the chairman :—

> "1758. Can the keeper of the asylum defy unfavourable reports of visitors for any time practically in these days? Oh, dear yes.
> "1759. Do you think it possible for him to detain the people too long? Undoubtedly."

That it should be possible to detain in an asylum a man whose sanity is declared by the Visitors seems startling, yet such is the evidence of what may occur under the present system.

> "1761. If a Chancery lunatic were found on the visitation of the Visitor, to be of sound mind in an asylum, the course he would adopt would be to make a report that so-and-so was, in his opinion, of sound mind, which report he would make to the board. The board would then direct that the man who had been a lunatic, would be informed of the opinion of the Visitor, and similar information would be given to his friends; but if the friends did not act, and the man was incarcerated, he would be helpless, so far as being able to act on the report of the visitor. He might still remain in the asylum, although he was of sound mind.
> "1762. That is, if his friends did not act? If his friends did not interfere.
> "1763. Then there is no power of summarily discharging a patient, under these circumstances? No."

* 938–9. † 950.

The conclusion from the evidence is irresistible. If the function of the Lord Chancellor's Visitors is to be made efficient for the prompt protection of chancery patients, their powers should be extended and strengthened. They are now only reporters. They have been termed the eyes of the court. But often, it appears, the court does not trust or believe its eyes, and the result is that wrongs persist. They should manifestly be not merely eyes to see, but hands to rectify wrongs. If they are worthy of confidence in matters of greater import, they should be worthy of trust in those of minor moment. Let these gentlemen, whose office guarantees their impartiality, have the power of ordering financially interested keepers and committees to do what they deem right and necessary, leaving to the latter, if it be thought proper, the power of appeal to the board of visitors, or to the Masters, sitting together. The advantage of this system would be this : The rectification would be made at once : the appeal seldom. It would be the converse of the present mode, where all the delays precede, and sometimes prevent, the rectification.

Such an amendment will become the more necessary and urgent, under the proposed Bill, inasmuch as the Judges in Lunacy will be enabled to take control over the properties of certificated lunatics and others, not so found by inquisition. If but a small proportion come in, there must yet be a great number of Committees of estates appointed, with the result of more heavily encumbering the Masters' offices. Hence, a manifest cause of increased delays which cannot fail to still further hinder the operation of the Visitors, unless their hands be unbound.

VI. With respect to the heavy costs incurred in chancery cases, the Senior Master in Lunacy made a proposition which should not be ignored. He stated that the chancery patients pay more by fees than the official expenses amount to, and added that they would pay still more, as the percentages had been raised in 1876. Small fortunes under £100 were exempt from fees, and formerly there was a graduated scale, which ought to be retained. An apparent injustice is done where the fortune in Ireland, remitted to England or *vice versa*, has to pay a percentage in each country. The Master considered that a great deal might be done to facilitate the transaction of business and so diminish expense ; but, being greatly occupied at the time, the only suggestion he made was the following : "I think if we had some power to appoint a Committee by our signature, taking care that we did what was right, instead of as now making a report and then it going to the Lord Chancellor, it would be an immense saving." There seems no reason why this simplication should not be adopted, with any others that might be judged suitable, in order to avoid all needless and costly circumlocution.

VII. More than this, however, should be done if small properties are to be drawn within the protecting pale of the law. Master Barlow indicated a difficulty, but not its solution, when he referred to "the trouble and expense of going down to hold a commission in the country when the matter is self-evident when you get

there." On the other hand, he recognized that a local investigation is requisite; "but then," he observed, "it is a great protection that the Master should have seen the patient, and also that it is convenient or satisfactory to the family to have seen the Master, and to know what the future proceedings will be." He also admitted that these local investigations do contribute to the security of the liberty of the subject. Doing business by letter was not sufficient; yet the cost and loss of time troubled him still, as he said, "Whether the benefit justifies the expense and consumption of time, it is for the consideration of others."

Here, then, are two things which clash under the present system, and which are destined to come into more violent collision if the Bill of 1885 become law. For, in 1885, the number of chancery lunatics was comparatively few, being only 1,300 in England; whilst (taking Lord Milltown's figures) the number of certificated non-pauper lunatics was 7,000. Now, if the law be not effective in bringing the properties of these patients under the court, it will fail in its object; but, if it be efficient, the trouble and costs of the court must become four-fold or five-fold what they are, involving a corresponding increase in the number of Masters in Lunacy, seeing that the present Masters are over-worked.

Now, the clear solution of this difficulty is to empower local tribunals to act. This is what I already contended for (sec. iii.), when urging that the county courts should be allowed to decide when a patient is an unthrift, or incompetent to manage his estate but not himself. I am the more fortified in the conviction that the jurisdiction of such local tribunals should be extended, because I have, since writing it, come upon a cogent speech of my late esteemed and regretted friend, Lord O'Hagan, urging the extension of county court jurisdiction in Ireland, as regards small estates in lunacy. In this will be found the solution of the existing difficulty—a difficulty which was perceived by Master Barlow, and which must enormously increase if the Bill become law as it stands.

Lord O'Hagan, as Lord Chancellor of Ireland, in moving the second reading of the County Courts Jurisdiction in Lunacy (Ireland) Bill, in 1880, pointed out that it was requisite to protect small properties "at present beyond the control of the Court of Chancery, by reason of the expense which would have to be incurred if they were brought within the jurisdiction of that court." The Amendment Act of 1871 had attracted many to it; but did not reach his class. Only 229 were under the care of the Lord Chancellor, whilst there were 727 patients with means, outside his control. Lord O'Hagan proceeded:—

> "Of that large number, most had property more or less which needed to be preserved and administered, but which was left to the mercy of relatives or strangers, who did with these unhappy people what they would, and gave them what care they pleased. Last year, 1,276 were committed to district asylums, and 141 to private asylums; while only 24 were brought within the control of the Lord Chancellor. The sum received from paying patients in the district asylums was £3,189, and from those admitted in the year, £1,144. It appears, therefore, that there was a large class of lunatics who had property, but were left with-

> out any protection. . . . The jurisdiction of the county courts had been most wisely and beneficially extended at the instance of Dr. Ball, his distinguished predecessor, and those courts had now a machinery which would enable them to undertake the duties that would be imposed upon them by this Bill. By the provisions of the measure the county court judges would have jurisdiction in lunacy, within the areas of their districts, and in cases where the property of the lunatic did not exceed a gross sum of £700, or £50 a-year.*

The want had long been felt in Ireland.† In Scotland, also, ten years ago, the Commissioners complained that there was a want of some economic and effective procedure for administering the property of lunatics when of small amount. They would be "glad to see effect given to the suggestion contained in the Fourth Report of the Scottish Land Commission—that, in cases where the funds do not exceed £1,000, the authority to appoint a curator, at present vested in the court of session, should be extended to the sheriff.‡ The Sheriff holds a position equivalent to that of county court judge in Ireland and in England, to which country the observations apply with double force.

VIII. The signatory of the order in the case of certificated private lunatics has enjoyed an amount of power more adapted for the meridian of Moscow than for these countries. Nothing but the total ignorance of the public and the press in reference to the subject could have so long permitted what is continually liable to the most gross abuse. A man of straw, or worse still, a false friend who profits by every day of the patient's continuance in an asylum, may have signed the order for his committal; and, as signatory of that order, he may keep him in a state of absolute isolation from his nearest, dearest, and wisest friends. The most eminent physician may be brought to visit him, and the signatory can turn him from the gate. Not only may he refuse entrance to the patient's solicitor, no matter how large the property involved, nor how clear on business matters the patient may be, but he can absolutely refuse to allow the unfortunate patient's solicitor even so much as to see the certificates on which his client is confined. These are not mere possibilities; the visitors in lunacy have testified to their occurrence as facts within their cognizance.§ It is evident that such excess of power, however rare its abuse (and the obscurity is such that none can be certain of the rarity), ought to be promptly restricted. There is no direct provision for this in the new Bill. But, under it, the person who, in the present time, is the signatory becomes transformed into a petitioner for an order. The future signatory of the order of detention will therefore be the county court judge, justice, or magistrate. Logically, the powerful privileges hitherto belonging to the former should fall from him, and invest the representative of the state. There seems no escape from this in logic; but as there may be one in law, it would be probably well that the question should be put beyond doubt. On the other hand, the Bill, by instituting a local medical visitor, and enlarging the official power of discharge, has unquestionably removed another great danger.

**Times*, 21st July, 1880. †Report on Criminal and Judicial Statistics, p. 99, 1875.
‡ Eighteenth Annual Report, Scotland, 1876. § 1740.

The pecuniary interest which a perfidious relative may possess in the irresponsible management of the lunatic's property, is liable to be also invaded by section 40 of the Bill, which extends the jurisdiction of the Court of Chancery to such estates. Here, however, the Bill falls short: it does not profess to amend the chancery procedure, whilst enlarging it. The Committee is to be left in the absolute possession of powers as anomalous as those hitherto possessed by the signatory. In the case of the certificated patient, it is true, the danger of abuse is not so great. The Commissioners keep their control, enlarged and extended, over the person of the lunatic. The Committee can only be appointed to manage the estate. He will doubtless still have an interest in keeping the owner in seclusion, but he will have no power over his person. His power will be over the property, and it will be considerable. Generally about two-thirds of the lunatic's income is allowed to the Committee—say, £2,000 a year, if the revenue be £3,000, of which there are in the chancery section a good many instances already. Once the Master draws up a scheme of maintenance there is no provision for its being revised or remoulded from time to time, so that if any additional comfort or expense is required for the lunatic there must be an investigation, at considerable legal cost, so much so that the expense of the comfort or article required has been doubled by the law costs incurred in obtaining it.* The committee might have an interest in supplying the patient out of his estate as meagerly as possible, for if he were the successor to a lunatic's estate, he would necessarily benefit by all accumulations.† When the fact is discovered, it would involve an application to and an inquiry by the Lord Chancellor, at much cost. The committee of the estate has to pass his accounts yearly before the Master, and "all passing of accounts is attended with expense."‡ The fact of the commissioners having care of the person will not lessen their incidental expenses, but, according to the Registrar in Lunacy,§ there will be "double expense," if they desire to add to the comforts of a lunatic more than the committee of the estate chooses, or the scheme of maintenance allows. It is, however, as regards the Chancery section of lunatics purely that the anomalous character of the office of committee appears in all its plenitude. Dr. L. Robertson testifies that the committee of the person has entire control over the patient in every way, moves him about where he pleases, and as often as he likes. "He is omnipotent." He may "set the recommendations of the medical visitors at defiance if he pleases." He can have his ward "kept in a private asylum, and treated in a way detrimental to his cure." "The committees," according to Dr. Crichton Browne, "are sometimes very obstructive now," and the visitors and masters have not sufficient power to direct the liberation or removal of Chancery lunatics.‖ The committee may have a large financial stake involved in the seclusion or non-cure of a wealthy lunatic.

* 1121–4. † Dr. Browne, 1450–4. ‡ 9457. § Master Barlow, 10993. ‖ 10837. ¶ 1456.

The only check upon him may be that an annual sum, say of £2,000 or £3,000 is handed over to him, and he is directed not to exceed it. "In other cases, the committee does what he thinks right with the money." He is not accountable to any one for the disposal of the money. The old rule was that he never did account. The Master in Lunacy has no control—"none whatever" —over the expenditure of the money by the committee of the person. If he does not do what is right, and it gets to the ears of the court (and can be proved, which would be only in a gross case), he may be overhauled, and another appointed. It is quite plain that, under this system, an unscrupulous but skilful committee could "make a livelihood."* His interest in the continued duress of a lunatic may be conceived. Then, his power of terrorising is quite startling, for he can order his patient, at any moment, into any asylum he pleases, without the preliminary necessity of obtaining a single medical certificate. This is his legal right, and a patient, made aware of it and desiring to enjoy an open-air life, would unquestionably take care not to thwart so potent a guardian. It seems a surprising excess of power to place in the hands of one whose self-interest lies in retarding the patient's cure. Not less remarkable are his privileges when he has placed the patient in that particular asylum which he chooses. Even should the patient be pronounced to have recovered, if there be no friend to act, the committee can detain this sane man in a madhouse by a policy of simple inaction.†

It is true, the patient has his legal remedy: he can forward a petition of *supersedeas* to the Court of Chancery, if he be aware of the right. This petition must, however, be presented in legal form, and has to be done through a solicitor. The matter could not well be accomplished, observed Dr. Bucknill, without the action either of the man who is recovered, or of his friends. This is an instructive illustration of the facility of the subsequent proceedings :—

> "1789. Chairman: But the man who is recovered can do it.—Yes, if he can get access to a solicitor."
>
> "1790. What you were asked just now was rather this: Whether the keeper of an asylum can, if he chooses, put obstacles in the way of a patient getting at a solicitor and going through those forms if his friends do not help him."
>
> "1791. That is the case?—Yes, certainly."
>
> "1792. You think that occurs?—I have known a man refused a solicitor, who had recovered."

I submit that a privilege of this kind, however rarely it be exercised, should never for one moment be vested in the hands of any person whose pecuniary or other interest lies in the detention of another fellow-being. The Bill of 1885, however, leaves the autocratic power undisturbed. It may be urged, on the other hand, that should the lunatic become violent he ought to be placed in an asylum. Granted. But let it be done under the certificate of an independent physician. If he began to show any such symptoms he should have been under medical treatment, and therefore there

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* 1867-8. † 1761.

should be no difficulty in obtaining such a certificate. This system can be applied in cases of urgency, as regards other lunatics, and its adoption in these cases will tend to insure proper medical care. Nor are such considerations rendered less weighty from the fact that the old principle of the law, laid down by Blackstone, and continued in Scotland and abroad, namely, that the next heir of the lunatic is never made committee of the person, "is quite abandoned now, it is never acted upon in England."*

IX. It appears from the evidence necessary that the powers of the Court of Chancery should be enlarged, so that it may extend a more prompt protection to the person and property of the lunatic at the beginning of the case. Master Barlow pointed out that, even after an inquisition had been pronounced, and he had been satisfied that it was unsafe for the patient to be at large, the court had not power to commit him to custody until some other proceedings had been carried out. Hence he considered that they should have power to appoint a committee of the person *ad interim*.† This would be practically renewed by sec. 9 of the Bill. The power of appointing a committee of the estate *ad interim* might also be advisable, and avert dilapidation and pillage. A solicitor testifies, as regards a case in which he was concerned, that if the property could have been taken care of earlier a large sum might have been saved.‡

X. Several instances have been cited in the first part of this paper in which gross illegalities have been committed, or abusive conduct pursued, in the case of alleged lunatics at the time of their capture and before their committal to an asylum. All this has been done, and may be done, with impunity, because the law offers no ready means of vindicating its authority. The persons against whom the outrages are perpetrated may be disabled, by mental disease or by poverty, from taking action, and thus the stipulations of the law may be derided. Thus, in the Marylebone case, a woman, who was not a pauper, was by strategem taken to a workhouse, and imprisoned there for a fortnight, the requirements of the statute being completely ignored. Mr. Harrison, again, was, it is admitted, re-captured by artifice or deceit, after the legal period for reclaiming the custody of his person had expired, and after proceedings taken before a magistrate with that object had failed. Baron Huddleston stated, in the case of Mr. Hillman, that somebody unknown, everyone repudiating it, sent three men, including a policeman and a blacksmith, to break open a house and take away the inmate. A carriage had been hired with two men by somebody unknown, and into this carriage he was put and borne off to an asylum, without order, inquiry, or examination—without the observance of any of the conditions of the statute. Lord Coleridge, in his place in Parliament, declared he had himself known a number of cases of persons "who had been sent to the lunatic asylum with such a disregard to the common forms even of decency" that the juries, in their indignation, were with difficulty prevented from

* 10849. Mr. Wilde, Registrar in Lunacy. † 10982. ‡ 4979.

giving verdicts, which would have been wrong, against those who set the law in motion. And Mr. Perceval, secretary to the commissioners, gave evidence (Weldon *v.* Semple, 1884) that if an order has been placed in the hands of an asylum keeper he need not register it nor notify the commissioners until the patient is lodged in the asylum. Until then the commissioners cannot interfere. A person might even be captured and kept in duress by his captors for some days before being placed in the asylum, and the commissioners would have no information.

Now, I submit that similar scandals might readily, and should effectively, be prevented from occurring by the simple method of extending the jurisdiction and information of the Commissioners to the date of the order, and by making any offence against the requirements of the statute punishable by fine or imprisonment from that period. The Commissioners should have a power of prosecuting for this antecedent period, similar to what they possess in cases of infringement of the rules after reception of the patient.

XI. With the safeguards provided in the Bill, and the amendments here suggested, the evils attaching or imputed to the existence of licensed houses, or private asylums kept for profit, would be annulled. It would require, however, that a system of extern local medical visitors, paid by the State, should be made a reality; these, visiting more frequently than it is possible for the central officers to do, would become intimately acquainted with the idiosyncracies of the inmates under control, and would be thus able to note whether they are advancing to recovery or not. As an illustration of what may be done, the example of what has been ordered in France deserves to be quoted; hence I extract the following passage from a work on mental diseases by the eminent Paris psychologist, Dr. Ball:—

> "The patient is placed in a *maison de santé*. Notice of his admission is given, within four-and-twenty hours, to the administrative authority by the director of the establishment. Three days after, he receives the visit of a medical inspector. Fifteen days after, the physician of the institution sends his report on the case to the authorities. The state of the lunatic is noted every month on an observation-register, and countersigned by the mayor. If the patient make any complaint, the Procurator of the Republic pays a visit to interrogate him. Finally, any friend may intervene juridically. Such are the precautions taken on admission. To obtain his discharge, a declaration from the physician in attendance is required, stating that the patient is in a condition to leave the asylum. If he has recovered, he has an absolute right to be discharged without any delay; on the other hand, if the physician considered it premature and dangerous to discharge him, he must refer the matter to the Prefect, who gives judgment."*

The abolition of privileges which may be abused, and which by some unscrupulous, but exceptional persons, have been abused, conjoined with a system of extern visitation, ought to be welcomed by none more gladly than by the intelligent proprietors of private asylums; for by these means public confidence would be secured without peril of it being at any time shaken by the scandal arising

**Leçons sur les Maladies Mentales*, p. 856. Paris: Asselin.

from the misconduct of some unworthy keeper. One such scandal is the generating cause of an atmosphere of suspicion, continually maintained by a knowledge of the laxity of the law permitting abuses. This atmosphere would, under a better system, be swept away, and all the peculiar advantages fully developed which are claimed for such institutions—as privacy, personal attention, individual comforts, and continuous care. The existence of the better class of private asylums would, in fact, be beneficial in maintaining a healthy emulation, demonstrated by a rivalry in the number of recoveries recorded between such establishments and public asylums with paying departments. The Lord Chancellor, in introducing his Bill, did indeed give expression to a hope that—

> "The system of public asylums would gradually become, in a natural way, a substitute for licensed houses,"

which the justices are enabled to buy out. But the result must depend largely on the intelligence and action of the owners of these institutions themselves. The advantages of public asylums, in eliminating all question of pecuniary interest, is, of course, obvious; but that, under a reformed system, may be practically eliminated as regards private houses also. The disadvantages of public asylums are that they are necessarily large, and containing a great number of inmates, not so much space can be given to each, nor so much individualised attention. Accustomed to deal with a poorer class of patients, attendants are sometimes rude and rough, in spite of all supervision. The Spanish system of having several grades of paying patients might be adopted in these institutions, and the plan of having a visiting committee of ladies, which is reported to work extremely well in Spain, might be adopted with advantage.

If a lunatic die, notice of his death must be sent to the authorities and others, and the coroner may proceed to hold an inquest. In consequence of a death having occurred in an asylum, in reference to which a charge was made against the medical officer, Lord Spencer, whilst Lord Lieutenant of Ireland, issued a circular to the lunatic asylums, directing that when an inquest was to be held the *post mortem* examination should be made by an independent medical authority, not connected with the institution. This excellent principle was subsequently extended to deaths in prison. In England it is the practice for the Home Secretary to give similar instructions as regards inquests on prisoners. It is highly desirable that the principle in question should be embodied in the statute law.

XII. Notwithstanding that the Select Committee recommended that—

> "Every person discharged from confinement in a lunatic asylum should, with the consent of the commissioners, have access to all documents connected with his detention therein,"

it was complained, in the recent case of Mrs. Weldon, that access was not given her. The Committee also reported that—

> "The system of unlocked doors, the liberty of walking alone in, and in many cases outside the grounds, and the almost uncontrolled admission of visitors, have the best effect."

That there should be power reserved to forbid visits, when they might injure a patient's chance of recovery, or when the visitor wishes to take advantage for a selfish purpose of his mental weakness, is unquestionable. But this power should be altogether placed in the hands of disinterested persons.

XIII. The Bill deals with the question of lunatic paupers, allowing a constable, relieving officer, or overseer, to place a destitute lunatic in a workhouse for forty-eight hours, in case of urgency. A justice may so place a pauper resident or wandering lunatic, for seven days, having taken information on oath. There must be proper accommodation. None shall be otherwise detained, as a lunatic, unless the medical officer certifies—(*a*) that he is a lunatic, (*b*) that he is a proper person to be detained, and (*c*) that "the accommodation in the workhouse is sufficient for his proper care and treatment." The detention may be continued for no longer than fourteen days, without an order from a justice. The English and Scotch workhouses, it should be remarked, have special arrangements for such cases, including padded rooms, isolated wards, and paid attendants. Yet Lord Shaftesbury and other witnesses considered that such patients were often injured by being detained in workhouses instead of being sent to asylums. Dr. Nugent, Inspector and Commissioner of Control of Lunatic Asylums, whilst testifying, with the weight of his great experience, to the generally satisfactory condition of the Irish system—which had in many respects advanced beyond the English—was obliged to take exception to some things. In workhouses, he remarked, "there are no proper facilities for treatment of early cases or curable cases," whereas in an asylum there is "every facility for good treatment, air, exercise, occupation, large grounds, and due classification, which you have not in poorhouses." He stated that they were maintained at the expense of £12 a year, in workhouses, whilst it required more in asylums. Then comes the following evidence :—

> "2912 (*Sir Trevor Lawrence*)—Do you think it possible that a lunatic can be properly maintained and looked after at an expense of £12 a year? I do not. They are the lowest idiotic paupers that are found in poorhouses—that you find lying in corners, utterly demented. Their animal existence is maintained, but nothing more."
>
> "2913. You are altogether opposed to such wards? I am. I think the insane should be properly treated."

Dr. Nugent's words present a vivid picture of a condition of things, which cannot well be realized by those who have not seen it. There is nothing to be abated from what he describes; but there is something to be added. The lunatic ward of an Irish workhouse, without one padded cell, or the possibility of isolating a case, may include idiots, lunatics, and epileptics. Who are their attendants? Paupers only—men who may have been in the lowest rank of unskilled labour, without training, discipline, hope, or reward. They have to deal with mentally affected paupers—irregular, irresponsible, disorderly, and often unclean in their habits—whilst from time to time they must watch over a patient struggling in the terrible convulsions of epilepsy. It would be difficult, in all pro-

bability it would be impossible, to parallel such a condition of things elsewhere. It would not be tolerated in a prison for lunatic felons and murderers: but the Commissioners in Lunacy, who inspect the arrangements, have no control in the workhouses, though they may visit them. It would, certainly, be desirable that some proper understanding should be come to as regards this subject. It might possibly be found feasible to gather the insane paupers into provincial poorhouses, and place them under the control of the Commissioners. When separated from the rest of the paupers there could be no discontent arising on account of a different treatment—that treatment being such as is absolutely required for the humane treatment of persons mentally affected. At the very least, the power of certifying the fitness of the workhouse accommodation for lunatics should be reserved to the Commissioners in Lunacy.*

On the other hand, a number of selected cases might be boarded out, under the supervision of the workhouse or dispensary officers. Mr. Gibson, now Lord Ashbourne, recently Lord Chancellor, enunciated, in fact, this principle, when, speaking in Parliament, in 1881, he pointed out that—

> "The Irish poor-law might with justice be made more liberal so far as the granting of relief to persons temporarily disabled from working for a living."†

Another point justly complained of by Dr. Nugent was the manner in which a poor person of weak mind may for any trifling offence or irregularity be brought before the magistrates, as insane and violent, by his relatives who wish to get rid of him. The order, signed by two magistrates, sends him into an asylum as a "criminal lunatic." The result, Dr. Nugent observes, is very unsatisfactory.

> "Very often the magistrates do not exercise proper discretion, and they send in patients that they ought not. They may be insane, but they fix them in the asylum as dangerous lunatics, when *bona fide* they are not dangerous lunatics, but simply mentally affected."

Consequent on this, as the law of settlement does not exist in Ireland, a lunatic from any part of the country may be thus kept chargeable to the city of Dublin for the remainder of his life. Mr. Litton, who made an effort to remedy this, by his Assimilation Bill in 1881, pointed out a remarkable contrast between England and Ireland in this matter:—

> "There was a wide difference between the number of lunatics in the asylums of England and Ireland who were classed as criminal lunatics. In one year *three* only were so classed in England and Wales, whereas no fewer than 1,204 cases came under that head the same year in Ireland. The reason was that, owing to the system of admission prevailing in Ireland, the vast majority of persons suffering from mental disease were necessarily handed over to the police or brought before the magistrate, and were at once branded as criminal lunatics, and that from no fault of their own."‡

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* It would seem desirable that the title and powers of the English, Scotch, and Irish Boards of Lunacy control should be harmonized.

† *Times*, 7th April, 1881, Speech on the Lunacy Assimilation Bill.

‡ *Times*, 7th April, 1881.

The board of governors of an asylum may, at their meeting, admit a patient on a medical certificate; the resident physician may also admit, subject to the sanction of the next board; but these modes are not so facile as the other. Dr. Nugent found that in one year only 197 were admitted "in the legitimate way," 798 were admitted by the resident physician, and 1,239 were sent in by magistrates.

It is to be remarked that the law in Ireland, as amended by the Act of 1867 (30 and 31 Vict. c. 118, s. 10) does not require that any offence shall have been committed in order that a person shall be branded and confined as a dangerous lunatic. It is laid down that whenever "any person," not a pauper merely, is brought before two magistrates, and it is proved to their satisfaction that he was "apprehended under circumstances denoting a derangement of mind, and a purpose of committing some crime, for which, if committed, he would be liable to be indicted," the justices, on one medical certificate, may commit him as a dangerous lunatic or dangerous idiot to an asylum. It is made easy in Ireland to enter a lunatic as dangerous, and difficult to enter him as harmless, and the consequence necessarily should be what the *Irish Medical Press* declares it is, namely—

> "The process of certifying a lunatic who is harmless is so complicated and dilatory that in very many instances Irish lunatics are, by a stretch of imagination, supposed to be dangerous, and are certified under the foregoing law. There does not exist in Irish law any provision for the certifying of harmless lunatics."*

This is a serious stain, involving as it does the imposition of a life-long stigma on innocent men. It needs erasure. By adopting sections 4 and 5 of the Bill of 1885, relating to urgency orders and lunatics at large without due control, the remedy is supplied. It may be added that the presence of a comparatively large number of lunatics under detention, often for a considerable period, came before the Royal Commission on Prisons, of which Sir Richard Cross, the late Home Secretary, was chairman. That Commission, of which I had the honour to form part, took notice of this, and, judging ordinary prisons to be unsuitable for such inmates, reported in these terms:—

> "Special care requires to be given to any lunatics who may be confined on remand or for trial. We observe from the annual returns that the number of lunatic prisoners in Irish prisons is considerable; we recommend that every possible means should be taken to reduce the term during which they remain in prison to a minimum."

XIV. There is a class of cases, which may be termed doubtful, for which it is desirable that some special provision should be made. Mr. Harrison, for example, whilst only escaping re-capture as a lunatic by flight and concealment, had four certificates of his sanity given by medical men. In the Minutes of Evidence given before the Select Committee there is a large body of testimony to the fact that many patients are a source of great anxiety, owing to differences of opinion as to their more or less perfect recovery. Patients have

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* *Irish Medical Press*, 26th August, 1885.

been shifted about from one private asylum to another, because it was supposed that the keeper and his subordinates were bearing witness against him, wittingly or unwittingly, which the facts did not justify. Committees of the person have likewise contested the liberation of their wards. Now in all such cases those who object are able to urge the weighty argument that, being constantly with the patients, they have means of judging which it is impossible for the Visitors or Commissioners to possess. The patient may reason fairly and seem sane during the visits, but may be heard at other times, at night in his cell, for instance, muttering homicidal or suicidal threats. There is no means of testing such evidence, nor of making sure that harmless eccentricities are not magnified, or natural impatience or anger misinterpreted. Then again, under the system, persons may be brought before the magistrates, justices, or county court judges, concerning whom there will be great difficulty of forming a judgment. The Bill enables the presiding authority to sign or dismiss an order of detention, and nothing could be better, if it were possible, always to ascertain whether an individual is sane or not sane at a given time. But it is quite possible, and not at all improbable, that this may occur :—The petitioner for an order comes before the tribunal with the certificates of two medical men, that Mr. A. is of unsound mind; but the judge or justice, being in doubt, proceeds to take evidence, with the result of evoking equivalent testimony contradicting this opinion. Such cases have not been unknown in our superior courts, and must exist so long as men are required or are willing to give an immediate opinion, on what is often a dark and difficult problem, for the solution of which no sufficient data exist. In such a case, what is a judge or justice to do, who of himself may never have seen a case of insanity, and who would certainly be incompetent to decide where medical skill is baffled? If the individual in question be sent into an asylum, a grievous injustice may be done to a sane though eccentric man. On the other hand, if he be set free, he may commit an act of violence on himself or on others.

Now, if this man were a criminal in an English prison there would be no difficulty whatever. Supposing that he showed himself eccentric, the presumption would be not that he was mad, as it so often is in the case of a free man, but that he was simulating insanity. In order to test the question, he would be removed to a special cell or ward for the purpose of observation, and then his conduct would be watched at times, and in a manner, unknown to him. From acts noticed when off his guard it could be clearly determined, soon or late, that he was a malingerer or a lunatic.

Now my suggestion is that this principle should be made operative, and the benefit of it secured for free men also, as regards whose alleged lunacy there is conflicting evidence or reasonable doubt. This could be done by the establishment in the vicinity of London, Edinburgh, and Dublin of OBSERVATION HOSPITALS, under the immediate control of the Commissioners in Lunacy. Persons whom the Visitors or Commissioners desire to remove from remote asylums or from single custody might be placed here under con-

tinued close observation, and a satisfactory decision arrived at. This course also could be followed with respect to the more important cases coming before the local tribunals or superior courts, as regards which conflict of evidence may make continued examination by skilled and impartial men alike desirable and necessary.

Not the least advantage of such institutions would be that they would encourage the early treatment of mental diseases, hitherto too frequently retarded, inasmuch as the patients who pass through an Observation Hospital would not have the adhering stigma of residence in a lunatic asylum. It may be added that, in localities where the number of doubtful cases would not be sufficient to justify the establishment of a separate OBSERVATION HOSPITAL, the desired object might be accomplished by instituting a detached OBSERVATION WARD in connection with a general hospital.

III.—*Amalgamation: being some Considerations on Proposed Changes in the Relations of the Legal Professions in Ireland.* By T. S. Frank Battersby, B.A., Barrister-at-law.

[Read Friday, 5th February, 1886.]

NOT seldom are complaints made of the unwillingness of a legislature to enact reforms until compelled to do so by agitation. In some cases this procrastination has its advantages. Instances indeed are not unknown in which resistance to popular clamour became the duty and the reason of a government. In such cases it behoves the thoughtful few to examine the pretensions and restrain the violence of the hasty and self-interested many. To-night, however, I propose to draw your attention to an agitation for reform which is being carried on, not by unlearned and heedless men, but by members of an ancient and honorable profession, whose claims to our respect are all-powerful, and to whose proposals careful consideration must be given, whether we may agree with or differ from the conclusions at which they have arrived. I refer to the question of amalgamation of the solicitors' profession, and that of the bar, and to other kindred topics which have recently occupied the attention of the Incorporated Law Society in this country, and have resulted in an elaborate report upon which their final decision is to be given in a few days. That report was drawn up and approved of with but three dissentients, by a large and representative committee, after giving a full and anxious consideration to the question of amalgamation, and after a very complete examination of the constitution of the legal profession in foreign countries, and in the colonies—their labours extending over a period of eighteen months.

It may be remarked in passing, that the committee before commencing their enquiry, invited the co-operation of the law societies of Belfast and Cork, but these bodies were "unable to concur" with their Dublin brethren as to the necessity for such an investigation. The conclusions arrived at are therefore those alone of the metro-