

"The language of the judges in the House of Lords has no doubt been repeated as of general application, but erroneously. Their answers had reference to the specific questions put them by the House."

And immediately after, he goes on to say :

"The point has not come under judicial decision in a case which really raised the question."

This was said in 1879. The answers given by two learned Judges of the Exchequer Court in England, before the Capital Punishment Commission, in 1864, shows that really the lawyers and doctors are not so very far apart on this question of insanity. Lord Cranworth, a long time Baron of the Exchequer Court, answered :

"Is there not a variation between the medical opinions and the legal definitions upon the subject? I am not able to answer that question; very likely it is so."

Take the opinion of Baron Bramwell, another Baron of the Exchequer Court, on the same question, which is to be found on pages 23 and 24 of the report of that commission :

"Mr Neate.—I observe that in your last letter to the commissioners, as the result of your experience, you use these words: 'Six prisoners in six cases were acquitted on the ground of insanity, and rightly. I do not mean that the prisoners were insane as the law requires.' I observe that you say that they were rightly acquitted, although they hardly came within the limits of legal insanity. Have you alterations to suggest in the legal definition of insanity?—A. No; I think that the legal definition is perfectly right.

"Q. But you say that they were rightly acquitted, although their insanity was not to the extent which the law requires?—A. I will explain that observation, which is, no doubt, an apparent contradiction. What I mean is, that according to the practice of juries, which has met with the sanction of judges, or which has been without any reprobation from the judges, and which is in accordance with public feeling, these prisoners were rightly acquitted."

So much for the doctrine of insanity, and I believe that the law upon that point was rightly laid down by Lord Erskine as early as the trial of James Hadfield for firing at George the Third. He said :

"To deliver a lunatic from responsibility to criminal justice, the relation between the disease and the act should be apparent. When the connection is doubtful, the judgment should certainly be most indulgent, from the great difficulty of diving into the secret sources of a disordered mind."

This is what the Government should have done, and what they have not done, for there is a doubt, and there is more than a doubt—there is, in my mind, ample proof—that this man was insane; but if some hon. members are not willing to go that far, I claim there is more than a legitimate doubt in their minds that the man was insane, and the proposition of Lord Erskine, as to the difficulty of diving into the secret sources of a disordered mind, should be acted upon. I will not trouble the House with citing more authorities.

An hon. MEMBER. Hear, hear.