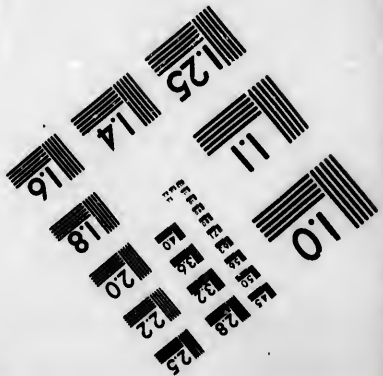
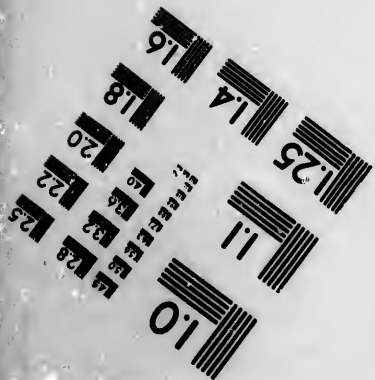
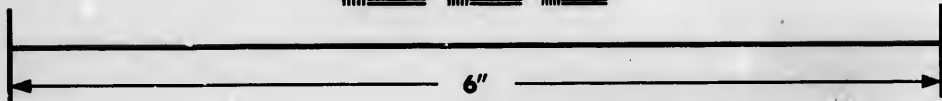
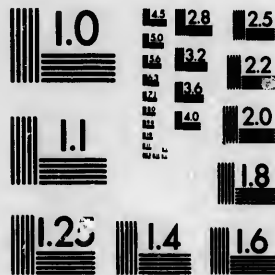


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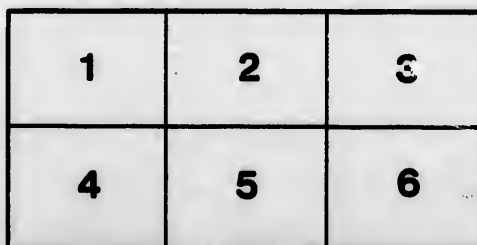
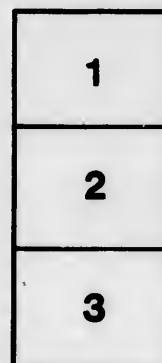
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SOME REMARKS

ON

THE MEDICAL JURISPRUDENCE OF INSANITY.

BY

HENRY HOWARD, M.D., M.R.C.S., ENG.

*Government Medical Attendant, Lunatic Asylum, Longue Pointe.*

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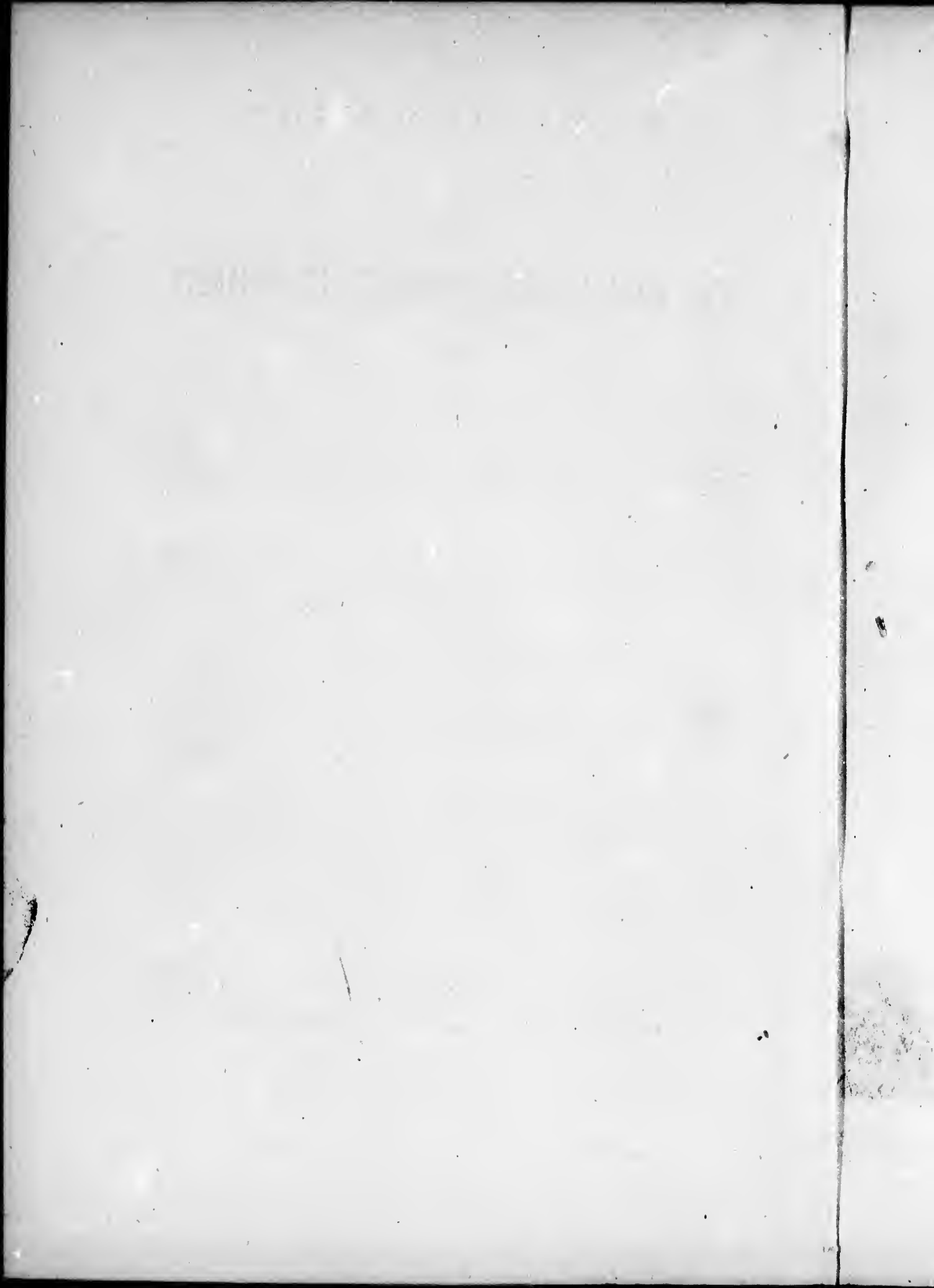
READ BEFORE THE MEDICO-CHIRURGICAL SOCIETY OF MONTREAL,  
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1877.



*From the Canada Medical and Surgical Journal, Nov. 1877.*

## SOME REMARKS

ON THE

### MEDICAL JURISPRUDENCE OF INSANITY.

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MR. PRESIDENT AND GENTLEMEN,—My object in bringing this subject before you this evening, is in the pleasurable anticipation that the question of insanity will receive consideration from Legislature at the next meeting of our Provincial Assembly, and that we may prompt such legislation to be from a medico-legal stand-point, and not from a legal stand-point only. And let us hope that whatever may be the results of the combined wisdom of those whose duty it is to undertake this important task, that we will have a law founded upon purely scientific grounds, having for its basis benevolence and justice, and for its object, the encouragement of all to try and attain to the highest position of civilization and Christian morality—to do to others as we would that others should do to us.

That we want a law there can be no possible doubt, now, more particularly, that there is such an increase of crime and insanity: when there is so much evil-doing that it would appear as if men could not do right: where some responsible murderers are, under a false plea, escaping the just consequences of their crime, and some irresponsible imbeciles and insane persons are, through ignorance, unjustly punished. You are, no doubt,

aware that it has taken not only years but centuries to have anything approaching to a humane law in any part of Europe on this subject; and even yet the law of lunacy is far from what it should be. And all this through the absurd idea that a judge was the proper person to diagnose a case of insanity, and to declare what was and what was not insanity, who was and who was not morally and legally responsible for his acts. In fact, the old idea was that the lawyer of to-day, when he became a judge to-morrow, no matter through what influence he obtained his high position, from that moment, by something in virtue of his judgeship, was capable of defining the disease of insanity. This was just like the old exploded idea that a king, in virtue of his kingship, cured scrofula by the touch of his royal finger. Well, gentlemen, if these old ideas have gradually exploded, it is due to the gradual development of science and to the gradual discoveries of scientific men, which have culminated in the recognition of the great scientific truth that *body* and *mind* are one—that the mind is as much the product of the mental organization as bile is the product of the liver, and that mind diseased (insanity) is simply body diseased; and that mind deformed (imbecility and idiocy) is simply body deformed, and the very worst form of deformity that a human being could be born with.

I would not have you understand from my remarks, that these great truths, which I have just mentioned, have been, and are, accepted by all; far from it,—men of the highest intellect and of the highest standard of education, still hold to the old ideas, not from any objections that they have to receive scientific truths, but from a fear that having admitted something, they may possibly be lead into the error of admitting too much. These cautious men are to be respected, for they are, in a great degree, the checks to the wild theorists, who, through their pride of intellect are making shipwreck of established usages that have been the safeguards of society for thousands of years,—and it is those theorists that are bringing sound practical science into disrepute: the science that raises men to the highest moral



standard of civilization, if they have intellects to be raised to that standard.

It is very much to be regretted that when medical men have written upon the subject of the medical jurisprudence of insanity, they have too frequently considered it their duty to attack the judiciary in a very course manner, and on the other side the compliment has been returned with compound interest, when the subject has been written upon by lawyers.

No good could be expected to come from such a course of proceedings; it is simply discreditable to both. For my part I can see no reason for a quarrel between the two learned professions. The Judge and Lawyer must yield the point, for public opinion will force it, that it belongs as much to the medical man to diagnose insanity and imbecility, as it does to the judge to administer the law. And the medical man must learn that when called upon to give his evidence as to whether a man is, or is not, imbecile; to give that evidence calmly and dispassionately to the best of his knowledge, and having done that, to take no further interest in the case. What the consequences of the trial may be is no affair of his,—he has nothing to do with it; he has done his duty when he has given his evidence. It is simply disgraceful to see medical men in courts of law taking sides; if they are called upon by the crown, they think their duty is to have the accused condemned; if they are called upon by the defence, they consider it their duty to do all in their power to have the accused acquitted. This is all right for the lawyers, but it is not the duty of the medical man; and it is this that brings them so often under the reproof of the Court. Medical men do more than this:—very frequently, even after a verdict is given by the jury, and sentence given by the judge, they will write to the press and find fault with both one and the other, and try to bring discredit upon the jury and the judiciary. This ought not to be—the medical man is not the judge, he is the witness at the trial. Again medical men have brought discredit upon themselves and the profession generally, by the absurd statements they have made in Court, when called upon to give evidence in a case where the plea of insanity has

been set up. I have heard medical men display the greatest ignorance and speak the most absurd nonsense. I have heard two medical men, one after the other, describe, accurately, the illusions a man suffered under, and call them hallucinations; and I have heard a most learned and honourable judge accept the statement,—saying, “I understand you—yes, yes; the man evidently, as you say, suffers from hallucination,” when there was not one word of evidence that the man suffered from any such symptoms. Another great mistake of medical men is to believe that there is no trouble in diagnosing a case of insanity, and unfortunately it is the most ignorant men in our profession, who fancy they know everything, and who are always prepared to rush into Court and give their evidence. A thoroughly educated and intelligent medical man will accept such a position with great caution; he knows that no one man can know everything in our profession; he knows that no matter how well he may be posted in books, and how good his memory may be in retaining what he has read, that without experience, and a large share of it, he should not go into Court and give his opinion on the mental state of a man under trial for a capital offence. I know I am never called upon to examine a man, and to report upon and give evidence as to his mental state, that I don't feel the most fearful responsibility, least by any chance I should make a mistake. And if it were possible, I would often cheerfully avoid the responsibility; yet, I am happy to say, my testimony has never been refused by either side, whether for the Crown or for the defence. I will report to you three cases, as they were all different, and you will see from them how necessary it is that we should have a law, well-defined and specially suited to each individual case, where the plea of insanity is set up in the defence of a person accused of a crime.

If my memory serves me right, I believe it is this very month three years ago that I was called upon, by the then Minister of Justice, now the Honorable Sir Aime Dorion, Chief Justice, to go and see and examine a man in prison in Upper Canada under sentence of death, and make report to him. That Dr. Dickson, of Kingston, would meet me there and for us to

examine the man severally and collectively. The cause of thus being called in was that very strong petitions had been sent to the government, stating that the man was really mad. I remember well how terribly I felt the responsibility. I spent nearly two whole days with that man, and reported that he was not mad, but playing the madman; which he continued to play till the rope was actually round his neck, when he threw off the disguise. I believe if he had not done so, one-half the people of that town, if they could have caught Dr. Dickson and me, would have tarred and feathered us.

The second case was on the 4th of October, 1876. I was instructed by the Hon. Attorney General of the Province of Quebec to see William Murphy, who was confined in the jail of St. Johns, awaiting trial for some capital offence. This man had been brought up for trial in October, 1876, and was found to be insane; he was sent to the asylum at Longue Pointe. When admitted, I found him labouring under acute mania. I sent him back to prison in the month of May, 1877, recovered of his attack. When I visited him in October, 1876, in company with Dr. Howard, of St. Johns, I found no symptoms of insanity in the man, and reported him fit for trial, stating in my report that I did not believe the man ever had possessed a very strong intellect. This man was brought up for trial on the 11th of said month, one week after I had seen him, and found guilty of the crime of which he was accused and sentenced to five years in the Penitentiary—no doubt a very just sentence, and no doubt both jury and judge were satisfied that when he committed the crime he was *sane*, and therefore responsible for his act.

The third case I would draw your attention to, was a young man in the jail of Sherbrooke, awaiting trial for having shot and killed his brother; he was to be tried on Monday, 8th of October 1877. On Saturday, the 6th, I received a telegram from the Advocate for the defence, who wanted to establish that the man was insane. On examination I found that, properly-speaking, he was not insane, but that he was an imbecile, who never had any intelligence to loose, and consequently could not be held

responsible for the killing of his brother ; nevertheless (as I stated) a very dangerous man to society, being a homicidal "imbecile" that did not know the value of life. I told the Crown prosecutor what my evidence would be before the jury, and he, like a sensible and intelligent man that he is, at once abandoned the case, till he could report to the Attorney-General. Had he been a thick-headed, obstinate man, he would have gone on with the case ; and should the jury have accepted of my testimony, the man would have been acquitted, and a homicidal imbecile set loose upon society to commit another murder, but as it is there will be no trouble in having the fratricide locked up for life.

You see the difference, gentlemen, in these three cases : the first was a veritable criminal, for he had been tried and found guilty of murder—in fact of the murder of three—but was supposed by kind-hearted people, to have become mad while awaiting the carrying out of his sentence.

The second case was that of a man not a criminal, but accused, who spent six months in a Lunatic Asylum, and then six months in prison without trial, becoming insane after having committed the crime, and recovering.

The third was an untried imbecile, who it was certain had shot and killed his brother, yet under existing laws could not be tried for his act.

Now, in these three cases, any mistake on the part of either Lawyers or Doctors would have terminated with either injustice to the accused or to society : so that it was necessary that the whole proceedings should be conducted by all engaged without any prejudice, and simply with the intention of arriving at the truth, without at all considering consequences.

But these cases show also that it is necessary to have a law by which all accused of crime should be tried at the first opportunity for their crime, quite independent of their mental state. They also show that the duty of the judge, jury, and lawyers is one thing, and the duty of the medical man is another, all having separate duties to perform, but uniting for

one great object: to arrive, if possible, at truth. I say if possible, because no matter what caution is taken, no matter what their united wisdom may be, cases can arise where it is impossible to speak with certainty. For example, an epileptic maniac, who had shown no signs of mania say for five or ten years, holds conversation to-day, for a couple of hours, with a particular friend; in one hour after the conversation he kills a man in some lonesome place, and is found and made prisoner for the murder while the blood of his victim is still warm on his hands; and, when made prisoner, shows no sign whatever of insanity, denies the killing, and can show no reason whatever for the act—or says he can show no reason—nor any reason for the blood stains upon him. Now, who on earth can say, positively, that this man was insane when he committed this crime? No man in the world could say so positively; yet he may have been insane, he may have committed the crime under an insane impulse, and laboured at the time under the delusion that the man was going to kill him. It would be strong circumstantial evidence in favor of his being insane, if his victim had been to him a perfect stranger, that he had never even seen before, but, on the other hand, if his victim had been one with whom he had been well acquainted, and with whom, it had been well known, he had lived at enmity for years, then there would be strong circumstantial evidence against his having committed the deed in a fit of insanity. Still he might have been insane. What would be the duty of a medical man in such a case? Simply state the facts to the judge and jury, and the judge and jury would have quite enough to do. Afterwards, of course, in such a doubtful case, the accused would have the benefit of the doubt, yet this man *might* have been perfectly sane when he committed the crime, and might possibly have been a wilful murderer. I have at present an Epileptic in the Asylum subject to attacks of recurrent mania, G. J., aged 22, admitted for the second time April, 1877. Had no maniacal attacks since the January previous. One day in June in making my ordinary visit at 2 o'clock, he was well and cheerful, at 6 he made a sudden rush

through the ward screeching, don't let him kill him! and before he could be stopped, pushed his two hands out through the panes of glass, cutting them dreadfully, his cry all the time was "Don't let him kill him! will none of you save him?" When I returned in the morning, I went at once to see the poor lad; he had just awoke out of a quiet, refreshing sleep. I said "What happened you George my boy?" His reply was "Nothing sir, I was dreaming I saw Kennedy (a lunatic in the ward with him), shooting you in the yard; he had the pistol to your forehead." Now, there is no doubt, but had the poor boy met with Kennedy at the moment of his insane impulse, he would most likely have strangled him, and afterwards when spoken to about the matter, of course, deny it, and tell of his dream. You see how similar this actual case is to the imaginary case I have just supposed for you. I could give you other similar cases to the one I have just given, but this is sufficient.

You now see, gentlemen, the great responsibility that rests upon judge, jury, lawyers and doctors, when the plea of insanity is set up for the defence of one accused of murder or of any other capital offence. I could tell you of how, in my own day, in the very town I lived, in Ireland, nearly forty years ago, a poor, miserable imbecile was tried, found guilty and hanged for the crime of raping a married women. The man had no friends, no one to defend him, and had no idea, in the world, of what the whole proceedings meant—even up to his being hanged; the creature had not half the intelligence of a very stupid dog. And it is not so very many years ago since there was a man hanged in Montreal for killing an infant, of whom he was the father and his daughter the mother. Why, he and his whole family were a family of imbeciles, living together like a lot of the lower brutes! What things these two creatures were to hang, as a warning to evil-doers! Hanging two dogs would have produced as great a moral good to society. On the other hand, gentlemen, though I would not if I could, nor could not if I would, give you actual cases of vile murderers that escaped the punishment due to their crime on the plea of insanity, yet there is not the slightest doubt of that fact,

Gentlemen, if I have taken up your time with all these cases, real and supposed, it is to impress you with the fearful responsibility the judge, the jury, and the medical witnesses have, where, in a trial for murder, the plea of insanity has been set up for the defence. What law, then, do we want that will, as far as it is possible, secure equal justice to all—justice tempered with mercy? We want a law by which every man shall be, at the earliest possible opportunity, tried for his supposed offence, quite independent of his mental state, whether it be sound or unsound. Let the man be tried, at all events. If the plea of insanity be set up, let the widest possible latitude be allowed to the defending advocate. But let the Crown take the greatest possible caution that nothing in the case shall go wrong; therefore, let the Government have sworn medical experts, men of experience, and let these experts be present at the trial, and hear all the evidence for and against the accused,—and having examined him, let them give their testimony before the judge and jury, not with any desire to either convict or acquit the accused, but simply that the jury may have all the information possible upon which to find their verdict, and the judge all the information possible upon which to pass a just sentence. If the judge and jury are satisfied that the accused was sane when on his trial, but was insane when he committed the crime of which he is accused, why of course he must be acquitted and set free. If they are satisfied he not only was insane when he committed the crime, but insane at the time of trial, he must either be sent to a lunatic asylum, or be discharged when cured; or his friends must give security for his safe-keeping. He must in all respects be treated as an innocent man suffering from a terrible disease. If the judge and jury are satisfied that the accused was *sane* when he committed the crime, and became insane while awaiting trial, like case No. 2, let him be found guilty, and sentenced as if he were sane at the time of trial, but let him be sent first to a Lunatic asylum to be, if possible, cured of his disease. If the accused should be found subject to homicidal fits of insanity, for the sake of society let

his sentence be to be imprisoned for life, in either an asylum or penitentiary. If judge and jury should be satisfied that the accused was a dangerous homicidal Imbecile, like case No. 3, that I read for you, why, of course, sentence him to life-long imprisonment in the Penitentiary; such a creature should never be at large, once found to have homicidal tendencies, or tendencies worse than homicidal. As you already know, my theory is that all these criminal imbeciles should be locked up for life, but I would have it done according to law.—But none hanged.

A few remarks, gentlemen, with regard to criminal Lunatics, in a Lunatic Asylum, and I am done. For example, I am obliged to consider every insane person who comes from prison to be a criminal lunatic, whether they have been tried or not: it is no business of mine. My duty is when I consider them fit to be discharged, to send a certificate signed by another medical man and myself to the Honourable Provincial Secretary stating that fact, and His Excellency the Lieutenant-Governor issues an order either to discharge the person or send them back to prison.

Now this places me, or any man that would or may occupy a similar place, in a very false position. These creatures, before they enter, and after they enter the asylum, are told that their discharge depends altogether upon me, and every day there is the everlasting cry, "Doctor, I am well; give me my discharge." This cry comes in every shape and form, and when they get weary in asking for it they come to hate me, and look upon me as an enemy, which is by no means safe or pleasant to me; indeed, I have been more than once struck and had my life endangered. But it is also injurious to the insane person himself, and often retards his recovery. The insane person should know from the beginning that I had no power to grant his discharge—and I should have no power—my simple duty should be to treat them for their disease to the best of my capacity. How, then, you will say, should they be discharged, if the medical attendant should not discharge them? I have spoken of government medical experts; well, a part of the duty of these experts should be to hold, with the medical



attendant, a board at different periods of the year, say every three months, at the lunatic asylums, for the purpose of examining into the mental state of the patients, discharging those whom they found fit to be discharged, and returning to prison those that should be returned for trial. And I hope, for the sake of medical attendants, of proprietors of asylums, who are exposed to unjust criticisms though they were very saints—and above all, for the sake of the insane themselves—that whatever legislation may take place on the subject I have treated of, that these particulars will not be lost sight of; and that the law may accurately define the exact duties of judges, juries, lawyers and medical experts, in all cases where the plea of insanity is set up for the accused; and that it will also accurately define the duties of experts, medical attendants, and proprietors of asylums, as to their several duties—particularly as to who shall be discharged and retained in asylums—and as to when Boards shall be held.

If, Mr. President and gentlemen, I have detained you long, you will make all allowance when you consider the great importance of the subject, and when you remember that, as men of science, we are bound to do all in our power to have humane and equitable laws, and to use every effort to raise the standard of morality and civilization—the grand standard that all should be taught to aim at, “to do to others as we would that others should do unto us.”

