Mad doctors, mad houses, and mad laws : in a series of three letters addressed to the editor of the "Scotsman."

Contributors

Mackintosh, Angus.
Harvey Cushing/John Hay Whitney Medical Library

Publication/Creation

Edinburgh : Published for the author, 1864.

Persistent URL

https://wellcomecollection.org/works/s7skp43z

License and attribution

Wellcome Collection
183 Euston Road
London NW1 2BE UK
T +44 (0)20 7611 8722
E library@wellcomecollection.org
https://wellcomecollection.org

MAD DOCTORS, MAD HOUSES,

AND

MAD LAWS:

IN A SERIES OF THREE LETTERS

ADDRESSED TO

THE EDITOR OF THE "SCOTSMAN."

BY

ANGUS MACKINTOSH
OF HOLME.

EDINBURGH:
PUBLISHED FOR THE AUTHOR.
SOLD BY ALL BOOKSELLERS.
1864.

MAD DOCTORS, MAD HOUSES,

AND

MAD LAWS:

IN A SERIES OF THREE LETTERS

ADDRESSED TO

THE EDITOR OF THE "SCOTSMAN."

BY

ANGUS MACKINTOSH

OF HOLME.

EDINBURGH:

PUBLISHED FOR THE AUTHOR.

SOLD BY ALL BOOKSELLERS.

1864.

EDINBURGH:
PRINTED BY BALLANTYNE AND COMPANY,
PAUL'S WORK.

MAD DOCTORS, MAD HOUSES, AND MAD LAWS.

THE following letters were addressed to the Editor of the *Scotsman*, in consequence of an article which appeared in that paper. That gentleman returned them with a note, from which an extract is subjoined :—"It is quite out of rule, and out of the question, to insert communications like those now returned. They contain a minute statement, necessarily *ex parte*, of a case which has already been stated to the public at enormous length, and would not only be tedious or uninteresting, but, much more, would necessitate me, in fairness, to insert replies from other parties concerned."

The writer is still desirous that the letters should appear before the public, and so has decided upon publishing them, without further preface, in their present shape.

WHITEHILL VILLA, *March* 9, 1864.

LETTER I.

To the Editor of the SCOTSMAN.

SIR,—I addressed you a few lines on the 17th February, which you were so good as to insert, and which were elicited by an article in your journal of the 16th. My object in that communication was simply to deprecate a hasty judgment in my case on the part of the public, as it is not concluded, and will soon again occupy the attention of the court. However, legal proceedings are proverbially slow in their progress; and directed to the subject as my mind has naturally been by my own case, and thus taking a warm interest in the whole question, at present exciting much public attention, of insanity and the legal duties and powers of medical men in connexion with it, while prosecuting my cause in the courts of law, much leisure time is left on my hands in which to consider, and form an opinion in the controversy. There have been, especially, several emanations from the press lately,—some having a direct reference to my own case, others touching on the subject generally, —which have led me to some reflections which I think worthy of being thrown into a connected shape. This I propose to do in the present letter. I shall then leave the communication in your hands, that you may deal with it according to the judgment you form of its merits and claims to public interest. The passages and articles I refer to are the following,—viz., two notices of my late action against the Saughtonhall doctors, in *Lloyd's Weekly London Newspaper* of the 14th and 21st February; articles in the *Daily Review* of 15th February; the *Scotsman* of 16th February; the *North Briton* of 17th February; the *Fife Herald* of 18th February; the *Caledonian Mercury* of 24th February; the resolutions of the Royal College of Surgeons, published in the *Scotsman* of the 22d February; an article in the *Scotsman* of the 27th February; and the report of the Royal Asylum at Morningside, contained in the *Scotsman* of 1st March.

The subjects comprehended in these articles I propose to notice under two heads,—1st, The remarks specially called forth by my own case; and, 2dly, Those on the subject of insanity generally, on the powers and duties of medical men, and the resolutions of the Royal College of Physicians.

There are two things which pervade all those articles in taking notice of my case, which I desire to allude to and set in a fairer light. First, the strong manner in which delay is made to tell against me; and, secondly, that the facts elicited in the evidence are generally most incorrectly stated.

And first as to the delay. If you will refer to the above-mentioned resolutions of the College of Physicians, you will find it stated in resolution 5, after quoting clauses as to the penalties in the Lunacy Act, 20 and 21 Vict. cap. 71, that "prosecutions for those offences would be undertaken by the public prosecutor, who may be supposed to act without prejudice in the matter." When I escaped from Saughtonhall in 1852, the above Act had not been passed; but under the Act then in force a penalty of £50 was exigible from the medical men for granting certificates without due inquiry and examination. After my escape, being, above all things, desirous that some proceedings should be taken to establish my sanity, and that I had been improperly confined, in the course of a day or two I did what I think would have naturally occurred to any non-legal man to do: I went to consult a law-agent as to instituting proceedings. Now, I do not here mean to maintain that a law-agent is compelled to institute proceedings for a client in a civil matter if he does not approve of such course being taken; but this I do say, that in our country, where salaried public prosecutors exist for the public protection, when a client makes a complaint to a licensed legal practitioner of a wrong he has sustained, punishable by a penalty which it falls within the duty of a public prosecutor to enforce, the agent is very grievously to blame if he does not put his client in the hands of the public prosecutor, that the grievance may be inquired into. In my case the grievance was my having been imprisoned and treated as insane; and from the very first I have maintained that the certificates upon which such detention followed were granted upon a glaringly deficient examination. If the blame I have above spoken of is, in the given circumstances, incurred by the law-agent, in my case it has been incurred not by one only, but more nearly by a score. In fact, from the first hour I felt myself a free man, after my escape from the madhouse, I have had, I may say, but one ruling idea in life—to clear myself from the imputation of madness. The agent upon whom I called, as stated above, a day or two after leaving the asylum, was Mr Thomas Henry Ferrier, W.S., here. He was about my own age; we had been most intimate in our school-days, and I expected of him not only that he would *procure for me*, (according

to the words of the original charter of the Court of Session procurators,) *for his wages*, but I looked for some friendship and sympathy. Instead of instituting proceedings for me, or handing me over, as he was bound to do, to tell my tale to the Procurator-Fiscal, he found some ridiculous excuse upon which to hang a disagreement, quitted and locked up his chambers in high dudgeon, and at his street door we walked away in different directions. Shortly afterwards, I consulted our family solicitor, Mr Mackay, on my arrival at Inverness, he being also Procurator-Fiscal for the county, and who must, therefore, have been well up in the duties of such functionaries. He would do nothing for me, and for that reason I left him and put my affairs into the hands of Mr Charles Stewart, solicitor in Inverness. Neither by him could I get any definite action taken. I may here state I was nothing of a lawyer myself; and my ideas at that time were influenced by my having met with a copy of "Erskine's Institutes" while in the asylum. I found that three years were allowed for prosecution under the statute for wrongous imprisonment. Having no copy of the statute, I naturally conceived that my own case fell under it; and as my health, both mental and bodily, had much suffered from the rigour of my confinement in the asylum—*for the iron had indeed entered into my soul*—I did not put myself about to urge on proceedings, as I really required rest and relaxation for a considerable period subsequent to my leaving Saughtonhall.

At the same time, when I again began to look into my affairs, I found them in a condition of great confusion, having been so left by my mother, my uncle, and the factor who had taken charge of them up to the period of my escape from the asylum. My mother had been appointed to administer my estate by the wisdom of the Senators of the College of Justice—the learned and illustrious thirteen "lords" of Session, who had become my guardians upon the death of my father intestate, when I was ten years of age. That administration had virtually not been put an end to up to the period of my escape from Saughtonhall in 1852; and, as I have said, when I then came to take up the thread of the management of my affairs, I found them in the greatest possible confusion; and in the autumn of 1853 I found it necessary, or, at all events, was over-advised, in order to their extrication, to execute a trust-deed in favour of Mr Dean of London. By this deed I reserved to myself a limited income, and assigned to my trustee the duty of prosecuting for me all actions necessary for the due conduct of my affairs. After he became trustee, what I continually most strongly

urged him to move in were proceedings as to my confinement in 1852. My supporting my personal expenses and further proceedings at law on the small income I had reserved to myself, was out of the question. Moreover, I had assigned to my trustee the right and duty of proceeding in my behalf. To move him to do so I found to be very up-hill work: possibly he had no great desire to bring the trust to a conclusion, as it provided for him an ample remuneration, and he might conceive that so long as I remained under a cloud I was less likely to terminate the trust. But, with whatever view, he was in no hurry to take action for me. After much delay, he consented that the opinion of Edinburgh counsel should be taken on the whole circumstances of the case. And for Mr Dean, I will say this, that, however shy he shewed in commencing an inquiry, once he had passed his word that an opinion of counsel should be taken, it was really his intention and desire that this should be done with the least delay possible; for he is a man of much activity of body and great energy of mind. However, in preparing the case and obtaining an opinion of counsel, a firm of Scottish agents in London—Messrs Connel and Hope—came to be employed, and under them a young man of the name of Monelaws, a W.S. here in Edinburgh—a poor fellow, who, I believe, has since come to a very unhappy end. Now, as a general rule, no one admires the adage *De mortuis nil nisi bonum* more than I do, although in the present case, so far as I deem it necessary, I consider myself justified in disregarding it.

Having previously, for some time, resided in London, I came down to Edinburgh in the beginning of the year 1855, (when Mr Monelaws was conducting it,) to urge the matter forward. I remained at that time about a month in Edinburgh; but finding my presence did no good, I returned to London. What I have now to state, I had from Mr Dean. Soon after my return to London he had a meeting with Mr Connel on some other of the trust affairs. Mr Connel was called out for a few minutes to see another gentleman, and Mr Dean saw in front of him a letter, headed "Holme Trust," evidently on our joint affairs from Mr Monelaws to Connel and Hope. He could not but see the contents of it; it was dated during my residence in Edinburgh, and to the effect that I was there urging forward the preparation of the case for counsel's opinion with great pertinacity, that he had done all he could to delay the matter, and keep the drag on, but he feared he could not do so much longer. I may mention that Mr Monelaws had been sought out by myself, and intrusted with the case at my own desire, on

the high recommendation of an old professional personal friend at Edinburgh. As to *the system* which permits an agent to take a man's money and act by him, as I have stated above, I think it needs no comment on my part.

At last the memorial was got ready, and the opinion of two gentlemen, now considered luminaries of the bench—Mr John Inglis and Mr Robert Macfarlane—was obtained. In this opinion, again, no mention was made of the right to obtain an inquiry into the efficiency of the medical examination through the public prosecutor. The opinion was merely to the effect, that I had no case for an action against *any of the parties* connected with my confinement, as counsel were of opinion that I could not charge malice and want of probable cause, which they conceived it was necessary for me to do. That this opinion was not a correct one has been shewn by both the actions I have subsequently brought, as in neither was it held to be necessary that malice and want of probable cause should be put into the issue. However, the opinion was effectual in shelving my case for the time. Mr Dean refused to take further proceedings contrary to the advice of counsel, and as I was resolved that proceedings should be instituted, the only course open to me seemed to be to bring Mr Dean's trust to a termination, for, as I stated before, my carrying on an action on my own allowance was out of the question, and I found it absolutely impossible to raise funds without the concurrence of my trustee. This, however, to terminate the trust, I found not an easy matter; in fact, in order to do so I found I was reduced to two alternatives, either to sell my fee-simple property or to break the entail of Drummond. I endeavoured to put off a sale as long as I could, and therefore entered into treaty with the next heir for disentailing. This I found perfectly unavoidable in order to put me in funds to have my first action of damages brought to the stage at which it was ready for a jury. Through the instrumentality of Mr Somerville, I effected a loan with the North British Insurance Company, by means of which I brought Mr Dean's trust to a conclusion, and disentailed my estate, on paying, for their client, the next heir of entail, to Messrs Jolly, Strong, and Hendry, (who were also defending, for Mr Hugh Fraser, the action I had instituted against him, and who are now agents for the Mad Doctors,) the consideration of £14,000. To me, could I have thought of marriage, my entail had a pecuniary value from the settlements I would have been able to make under it on a wife and children; but with the brand of insanity unjustly imprinted on me, I felt I was in no condi-

tion to think of any such step, so the instruments of disentail were signed, the £14,000 paid, and I found myself in a position to proceed with my action. In giving a new disposition to a trustee for the security of the Insurance Company who had advanced me the money, I was obliged to give powers of sale of my estate; but my first action of damages was then pending; in two or three months I should have a verdict; I asked for £10,000 of damages, and I was very sanguine, if my case were properly conducted, that I should be successful; and even if I had got a verdict for considerably less than I asked for, I felt that my credit and my borrowing powers would be very different from what they then were. On this account I inserted a condition in my trust to Mr Wood for behoof of the North British Insurance Company, to the effect that no sales of my estate should be made within six months of my granting it, which left ample time for the verdict of the jury in my action being obtained. And if only common fairness and common sense had directed the procedure in my case of 1858 a verdict I should have obtained. I put it to any average man of the world whether, in a trial affecting him in so tender a point as his sanity or insanity, he would be satisfied if all the evidence were taken behind his back, if, over his neck, he was not allowed to appear in the witness-box to tell the jury his own story, and that they might judge of his mental capacity by their personal observation of him; and, in fine, if he should not be allowed, even when the judge had told the jury to consider it a strong point against this man, that he had given them no explanation of the evidence, if he should not be permitted even to enter his protest against the jury giving a verdict until either he had given his own explanations, or had informed the jury that it was entirely in his own despite that his evidence had been repelled. Yet this was the *equitable common-sense justice* meted out to me by the Right Hon. Duncan M'Neil, and my accomplished counsel, learned in the law, Mr Frederick Maitland; and it was my having lost this trial that, at my examination before the jury the other day, afforded Mr Solicitor-General Young, (who, of course, conceives himself superlatively entitled to be spoken of, as he did, to mark a contrast no doubt, and in irony of me, as) "the worthy citizen, the useful member of society,"—afforded him, I say, the opportunity of making what he seemed to think so great a hit when he drew from me the admission that I had lost it.

The loss of this first action, and the scant justice I had met with in the course of it, considerably stunned me, as would naturally be the case. My next step was to bring an action of declarator of

sanity against Drs Smith and Lowe, with the view of very probably following it up with an action of damages based on the declarator. I was for long undecided whether I should attempt an appeal to the House of Lords in the first action or not. To dissipate the brooding care which bore me down, I tried a winter in Leicestershire; and in what little indulgence in the joys of the chase I could allow myself, I found my health and spirits much renovated, and I proposed to remain in the same quarters for another year. I had been taking advice as to appealing my first action, but met with no encouragement to do so. In the spring of that year, the gentleman who occupied my residence of Ness-side, and of whose lease there were two years longer to run, wrote to me proposing, in place of remaining to the termination, to leave in the following autumn. Directly he made this proposal, I was seized with a fit of home-sickness, and jumped at it. I imagined that if I could be happy, and forget my wrongs anywhere, I should be so amidst my own woods and waters, under the roof-tree of my fathers. So, in the beginning of the winter following, I returned to take up my residence at Ness-side. On once finding myself there, however, that same brand of insanity, which, as I have said before, my confinement in Saughtonhall had impressed upon me, I felt more acutely than ever; and that it entirely intervened as a barrier between me and any schemes for activity and usefulness at home. And, in the beginning of 1862, I determined at all hazards to prosecute an appeal in my action against Hugh Fraser, and the doctors who had certified me insane. This occupied upwards of another year. It became apparent, however, that the gentlemen who had so cleverly lost the case for me had taken good care that no appealable grounds were left me under the statutes, which, in Jury causes in North Britain, are very strict. I lost the appeal nearly a year ago; and this is the explanation why my case against the mad doctors, Smith and Lowe, was delayed to be commenced till 1863. I judge it right thus to give a public explanation of the delay that has occurred in raising my action, because, during my examination in the witness-box the other day, though it extended to near on five hours, I could only very cursorily touch upon the subject. I hope that the facts I have stated have made it sufficiently clear that the delay which has taken place is attributable to a defective administration of the law, and not to any fault of mine; and that if I have suffered a wrong, this delay is to be regarded as a grievous aggravation of it, rather than as telling to the prejudice of my case.

As I find that my remarks have run to such a length, I shall

stop here for the present, and resume my observations in a second letter.—I am, &c.

ANGUS MACKINTOSH.

LETTER II.

To the Editor of the SCOTSMAN.

SIR,—Resuming my subject at the point where I left off in my last letter, I now go on to the second point I wish to allude to in noticing the remarks in the articles referred to, more specially directed to my own case—viz., that the facts elicited in the evidence are jumbled up, and stated very incorrectly. And, by way of preface, I may very appropriately introduce the following lines from Old Smollett, himself a medical man: "Indeed, nothing more easily gains credit than an imputation of madness fixed upon any person whatsoever; for, when the suspicion of the world is roused, and its observation once set at work, the wisest, the coolest man upon earth will, by some particulars in his behaviour, convict himself of the charge; every singularity in his dress and manner (and such are observable in every person) that before passed unheeded, now rises up in judgment against him, with all the exaggeration of the observer's fancy; and the sagacious examiner perceives distraction in every glance of the eye, turn of the finger, and motion of the head; when he speaks, there is a strange peculiarity in his argument and expression; when he holds his tongue, his imagination teems with some extravagant reverie; his sobriety of demeanour is no other than a lucid interval, and his passion mere delirium." (See "Adventures of Peregrine Pickle," chap. 96.) I shall quote from the different articles the allusions to the evidence I refer to. In *Lloyd's London Newspaper* of 14th February, under the heading of "Curious Scotch Lunacy Case," it is stated, that I was taken to the Police-Office in Edinbro', because of my *violence* and *eccentricity;* that, coming to Edinbro' in pursuit of Miss Emma Wright, I behaved so peculiarly from drink and want of sleep, *or* from mental disease, that I was conveyed to the Police-Office, and to Saughtonhall. In the same paper of 21st February, with the title, "The *Extraordinary* Lunacy Case," it is stated, that I am in possession of estates yielding several thousands a-year, (which, however it may have been before two doctors *were fee'd* to

certify me insane, is, unfortunately, far from the case now, after twelve years of litigation.) It is said I escaped through the connivance of one of the keepers. That the previous circumstances of my history, and my conduct in the asylum, satisfied Drs Smith and Lowe that I was at the time insane. That in *my examination, I deponed* that I had, *for some years*, been leading a fast life, distressing to my mother and friends; that in April and May 1852 I became *very violent.* Then follows a certainly *highly-coloured* version of my evidence as to the Kensington Palace and Queen's drawing-room affairs. I applied for redress to the Lord Chamberlain, but in vain. (*This is not true.*) Then, that by the innkeeper of the "Golden Lion" at Stirling, I was believed to be insane; that I called *late at night* on Mr Fraser, and again at four in the morning; that at the Commercial Bank I got excited, and was handed over to the police. That at the Police-Office my conduct was so outrageous, that all the officers thought me insane. That at the asylum *it was proved* that my conduct was marked by *gross obscenity*, and extraordinary violence.

So far from the above being a correct account, it appears, from the evidence, that before I arrived at the Police-Office, I exhibited no violence whatever; and that even when there, there had been no violence on my part before I was rolled and pulled about on the floor, by about a dozen men, in searching, and depriving me of my purse, watch, and other valuables, when I naturally resisted the violence which was offered to me. That I escaped through the connivance of a keeper is not proved, and *is not the fact.*

That previous circumstances of my history and conduct *have been proved*, and that conduct of mine in the asylum *has been established* sufficient to satisfy Drs Smith and Lowe that I was, at the time, insane, I emphatically deny. And before such assertions can justly be made regarding me, the facts on which they are grounded must not only be asserted, but proved. All that I have quoted of my own evidence is an incorrect version of what I said. What is the value of the *opinion* of my sanity by the innkeeper of the "Golden Lion?" Then it cannot be shewn from the evidence that I called on Mr Fraser late at night, that at the bank I *got excited*, and was handed over to the police; that at the Police-Office there was anything outrageous or violent in my conduct before gross personal violence was offered to myself; and I do not think there is much in the police-officers' saying that they set down as insanity the excitement occasioned by a single-handed struggle with a dozen men, and kept up by my subsequent incarceration in

a police cell, without my being able to obtain the slightest satisfaction as to the reason of my being so treated. As to the tales of *obscenity* trumped up by the two mad doctors, and their satellite, Begbie, I think it is quite enough to point out, that the other three keepers do not mention one word as to obscenity, (and Begbie has remained in this neighbourhood since 1852, within reach of the doctors' influence;) and I feel satisfied that the scenes described will be regarded by all who will take the trouble to form an opinion on the subject simply as the fictions of men having to make up some defence for themselves in what was, almost, for them a life and death struggle, and will be appraised at their real value, as the cream of their experiences (so varied) of the hosts of miserable lunatics who have passed through their hands, flavoured with all the richness of their prurient imaginations.

Next for the *Daily Review;* no portions of the evidence, I think, are quoted in this article; but, to speak very mildly, exceedingly strong language is used in alluding to the writer's notions of the facts disclosed at the trial; which, if any *real facts* were to be actually *found proved* against me to justify, I should feel very much concerned indeed. This writer speaks of my asserting the soundness of my intellect at the expense of *impugning my conscience ! !* of my protesting against my conduct being attributed to anything but *moral obliquity.* Then he speaks of my bringing the extraordinary action against the doctors of Saughtonhall, for the purpose of vindicating myself from the aspersion of having been out of my mind for a few weeks twelve years ago. He says, the conduct with which I am charged was attributable (*as I allege !*) not to any misfortune which would make me an object of pity, but to *outrageous misconduct.* He says my plea was a mad-looking one. He even wishes me so well as to congratulate me on losing my case, and so far regaining my character. He looks at the prosecution as extravagant, both economically and otherwise. Then my "*outrageous* conduct and *strange immoralities* may have really been the natural outcome of *innate pravity.*" I "unquestionably presented such symptoms as were mistaken by almost every one for madness, and which most people would take for the symptoms of madness still." "Nothing," continues the *Review,* "would be more difficult to believe than that a man of gentle upbringing, with the ineradicable instinct, we might almost say passion, for physical purity peculiar to an *English* gentleman," (for my case, the wider epithet, *British,* is necessary,) "*could have acted as we heard described at the trial,* excepting *through loss of reason.*"

If the alternative had been between my being held responsible for some black and horrid crime, for murder, for robbery, or forgery, or gross commercial fraud, or the like, or such crime being accounted for on the ground of insanity, such choice flowers of rhetoric from the vocabulary of vituperation as I have culled above would be very applicable; but when the extent of moral obliquity which can be charged against me amounts to an excessive indulgence in stimulants for a few months, at the age of twenty-five, on breaking free from the trammels of a set of Puritanical relations, under whose influence my spirit had been cowed, and my affairs mismanaged up to this comparatively advanced period of life; and to an attachment, infatuated if you will, to a girl, who, whether or not worthy, was at least well calculated to inspire such a feeling in an ardent temperament, such as, without doubt, mine was; when this is really all that can be said *to be proved* against me, I think it will at once be allowed that all this strong declamation is entirely out of place.

As to the beastly and disgusting fables invented by the doctors, I have already spoken. I can safely say, and those who have known me best for all my lifetime will bear me out in the assertion, that to no gentleman of Britain who has ever breathed do I yield in the refined sensitiveness of the instinct, if it may be so termed, for physical purity which has always characterised me.

Next there is your own article of the 16th February. The remarks just concluded do also apply to your strictures on my conduct, though in a milder degree. Where you speak of "any young man who takes to dissipation of all kinds, squanders his means, leads an *utterly vicious and abandoned life*, and goes about drunk and uproarious, disgracing himself and his family," without doubt I am designated. Then you say, "Even supposing that Mr Mackintosh was not insane when under the care of Drs Smith and Lowe, his conduct fully justified them in so considering him, and it must be admitted that if, after his escape, he had continued to conduct himself as he did before he was confined, no one would have doubted that he had been all along insane. As it has turned out, he has, from the time of his escape, now eleven years ago, conducted himself in a way that has at all events not again called for confinement in an asylum. Looking backwards, by the aid of this light, it is seen that probably a month of imprisonment anywhere else would have had an equally salutary effect."

Now, first, upon this last remark, I shall only ask, if I was not insane, was I lawfully confined in a madhouse? and if I was not

lawfully confined in a madhouse, was there anything in my conduct to have justified and rendered lawful my confinement anywhere else?

You, or any one, may hold the opinion that a term of imprisonment might be the most salutary treatment in the world for me, "or any other man," (a bigoted Romanist would no doubt prescribe seclusion in some monastery, amidst a *holy brotherhood*,) but has any one the right to inflict this except in so far as the law allows it? And, then, as to your remarks generally, I can only say that your commenting on the evidence, as you have done, only much strengthens my argument, to be presently stated, for an investigation in which the facts proved may be authoritatively declared.

The *Fife Herald* says that I clambered along the side of the train while it was in motion. This can be found nowhere in the evidence.

In the *Mercury* of 24th February, the following appears :—"The Saughtonhall case is itself an evidence that as the law stands a medical man may be subjected to serious inconvenience and expense for having signed, in however good faith and sincerity, a certificate of lunacy. The College of Physicians do not refer to a merely fanciful and possible grievance, when they say in their reported resolutions that 'the peculiarity of the position of medical men in signing such certificates is, that they are thereby brought into contact with persons who are not in the full possession of their senses, and who, even after being discharged from an asylum, frequently retain a prejudicial or revengeful feeling against those by whom they have been placed under restraint.' The case referred to shews that a man under such feelings may, years after his liberation, bring an action against the medical men under whose certificate he was confined." The *Mercury* thus publicly connects my case with the resolutions of the College of Physicians, and I assert with confidence my right to have the facts upon which such an assertion may be made definitely established before the College of Physicians, ere any man or body of men are entitled to set me down as a person not in full possession of my reason.

Here end my quotations.

That garbled reports of facts should get about, however, was inevitable, from the mode in which my action against Drs Smith and Lowe was dealt with by the Court, and my principal object in appealing against the procedure at the late trial is, that the evidence on the question of my state of mind may be more authoritatively

pronounced upon; and in asserting my right to this after the remarks which follow have been considered, I hope I shall carry the voice of the public with me. In proceeding against the doctors of Saughtonhall, I commenced, as I formerly mentioned, by raising an action of declarator, concluding to have it found and declared that I was sane in June and July 1852 when they confined me. I proceeded in this form, holding that I had a right—1st, to have it established what *matters of fact* are proved against me; and, 2d, to have the law applied by the Court, whether the facts established do or do not, in law, constitute insanity? I brought the declarator before Lord Kinloch: he allowed me a proof, which was led and reported, and thereafter he pronounced a decree of sanity, the defenders not appearing.

Having thereafter brought my action of damages, I proposed to narrate my decree of sanity as a preamble to the issue, always, however, being anxious to sist proceedings if the defenders would fight me in the action of declarator. The First Division would not allow my preamble, and fixed for us the issue under which we went to trial the other week. At the trial the first evidence tendered by my counsel was the decree of declarator of sanity, which was rejected as evidence by Lord Kinloch, the judge who himself had pronounced the decree. Against this ruling I have appealed.

I think that when two doctors, (they took much pains to adduce testimony to the fact that they are medical men of high standing and renown,) keep an hospital or asylum for the insane, (and altogether of the higher, *i.e.*, *best paying* classes,) entirely as a private speculation, for profit, and as their means of livelihood, under a statutory licence, as its proprietor does a public hotel; and when these two doctors confine a man in their asylum as a madman for some weeks, after which he makes his escape, when that man thereafter, knowing that he was sane during his confinement, desires to establish that fact in the face of the world, (for certainly unless he does so, he will ever after be held to have been actually insane during the period of his detention in the madhouse,) and for this purpose brings an action to have it *found and declared that he was sane*—in such a case I think it would be very hard if there were no means by which he might compel these doctors to contest this action with him. It was, above all, with this end in view that my actions of declarator and damages were brought, and I hope that I shall make it plain that my appeal is well-founded to this extent, that the First Division of the Court in settling the issues, and more especially Lord Kinloch at the trial,

did me injustice in not ruling that the defenders must either contest the action of declarator with me, or the decree must be admitted as conclusive that I was sane. This course would have involved no hardship to the defenders, for even if, after a contested action, the Court found that I was sane, they might, if they thought proper, have qualified their judgment to the effect that the defenders need not necessarily have been aware of this, and therefore were not to blame in detaining me, and they might have found me liable to pay the whole costs of the action; so that, whilst this would effectually have cleared me from an injurious imputation, the defenders would have lost nothing by it, and I could hardly have succeeded in an action of damages based on such a judgment as this. This is what I myself consider the most important ground on which I appeal against the late trial—that the defenders were not entitled to adduce any evidence in reference to my mental condition unless they opened up and contested the action of declarator.

Jury trial by our law is set apart for a certain number of specified actions by statute; but beyond these the Court has power to order an issue to be sent to a jury only when *there is matter of fact to be determined;* that is, *for determining matter of fact.* My being aware of this was a principal reason for bringing my action of declarator of sanity separately from the action of damages for my detention. I have already explained many reasons I had for finding fault with the proceedings in my first action, that against Hugh Fraser and others; but, beyond those I have noticed, on thinking over the matter, it seemed to me that the issue adjusted in that case was very defective. No doubt the issue was framed by my own counsel. I saw it, and assented to it; and I feel certain, that if I had been present when that issue was being tried, I would either have insisted on the whole facts of the case being fairly brought out and pronounced upon, or, on such exceptions being taken as would have insured their being so brought out in the long run. The issue, however, though being certainly *my* issue in so far as I had assented to it, could not be treated at the trial according to my views of it, in so far as I was excluded from court during the whole period of the examination of the witnesses. In setting to work a second time, my object was to propose a less confused form of issue; therefore I kept the declarator of sanity separate from the action for damages.

After I had raised my action of declarator, I hold that the only form of issue which the Court had the power to grant, in any

degree embracing the question of my sanity, was one to the following effect, viz.—"The pursuer having been confined by the defenders as insane, at their asylum of Saughtonhall, from the day of June until the day of July 1852, the jury are required, after they have heard the whole evidence which shall be laid before them, to state what facts adduced by the defenders in justification of such confinement of the pursuer as insane, they shall find proved and established."

Most certain it is that the functions of juries, in civil causes, by our law go no further than to inquire into and determine *matters of fact;* and in no case, most assuredly, more than in one of alleged insanity, is it equitable and necessary that the *facts* which *are proved,* and on which a man is, so to speak, *convicted* of being insane, should be set forth *as proved* in full detail.

In the action of declarator which I had instituted, I had, as stated, been allowed a proof. A commissioner had been appointed, and a proof had been led. I think, in such a question, the facts deponed to in evidence might be as satisfactorily elicited in this manner as through the intervention of a jury; and that it might be as safely left to the Court as to a jury to say what facts they found proved or not. If, however, an issue to go to a jury were insisted on, I maintain that only such a form of issue could legally be allowed as one to the effect I have stated above.

I repeat, that nothing more shews the necessity, in a case like mine, of the facts found proved in the evidence led being authoritatively declared, than the accounts and notices of my trial which have found their way into the public prints, as I have above quoted them.

I shall reserve my remarks on the subject of insanity generally for a third letter.—I am, &c.

ANGUS MACKINTOSH.

LETTER III.

To the Editor of the SCOTSMAN.

SIR,—In my former letters I have disposed of the two separate heads into which I divided the first branch of my subject, or the remarks in the different articles upon my own case.

But there are still a few expressions in one or two of the papers

(much too flattering, I fear, to be near the truth) on which I shall say a few words before going on to the general subject of insanity.

Lloyd's London Newspaper of 14th February speaks of me as follows: (I can form no guess who the writer is, but he seems to be of this city, and to have been present at the trial.) Mr Mackintosh "was one of the most amusing and clever witnesses I ever saw under examination, giving his evidence in a frank, nonchalant, gentlemanly way, expressing himself elegantly, and dexterously avoiding awkward admissions. . . . . He is a very clever man, an excellent classical scholar and mathematician, and a gentleman in manner and style of speech. He was left an ample fortune; and was one of the most promising and accomplished of Highland lairds, better worth sending to Parliament than most of them, and certain to give information and amusement, should he ever arrive at that distinction."

The North Briton of 17th February states, that at the late trial I made "an excellent appearance."

Then the *Fife Herald* says,—"We believe that at the time when Angus Mackintosh was consigned to Saughtonhall, he was not mad at all. . . . . No one can suppose for an instant that he has been insane during the last twelve years: no one imagines he was insane the other day, when, for hours together, he stood a most searching cross-examination at the hands of one of the ablest counsel at the bar; and at length left the witness-box, having baffled his opponent, and wavered not one tittle from the plain, blunt, unvarnished tale which had originally been elicited from him by the Lord Advocate. His conduct that day shews that so far from being insane, he is a man possessed of powers of intellect far above the average."

And yet *Lloyd's Paper*, in the very same article I have quoted, speaking of me, says,—"He has shewn no signs of insanity since 1852, unless persisting in these actions of damages be a sign of insanity." And the *Fife Herald* would by no means have it supposed they think the verdict arrived at by the jury to have been an incorrect one. Now, can any of these journals really believe,—if I deserve even a fractional part of these "good words" they have bestowed upon me,—that, having been treated in 1852, and from that time till now, under our legal system, as I have described in the two preceding letters, I am not justified—nay, so long as any sense of self-respect remains to me, compelled—to move heaven and earth, to the extent of my ability, to have my remaining career here, and my memory hereafter, cleared of a foul, a false, and

damning imputation? I am sure the man who spoke of my persistence as a sign of insanity will regret the words he has written.

Now for a few remarks, which will not take me long, under my second head, on the subject of insanity generally, the powers and duties of medical men, and the resolutions of the Royal College of Physicians.

In your article of 27th February, I think that a single question which you ask is a sufficient answer to the medical men, when they attempt to establish the existence of such a condition as what they term moral insanity. After quoting a description of this condition, you ask, "If this be moral insanity, what, then, is moral depravity?" I can conceive of no insanity existing in a criminal which should be sufficient for shielding him from the penalties of the law, short of such a state of imbecility or idiotcy as would prevent his being conscious that any given criminal act would subject him to its legal penalty. There is one thing, as to the case of Townley, which should go far to open the eyes of the public and put them on their guard; and the Lord Advocate well alluded to it in his speech on my behalf. It is the excessive facility with which medical certificates of insanity could be obtained in a case in which, almost within the lapse of a few days thereafter, the whole world was unmistakably satisfied that no insanity existed. If the same certificates had been granted to consign a sane man, not a criminal, to an asylum under our present *silent system* of procedure, they would in all likelihood have kept him there for life.

There is a remark in the report of Dr Skae, published in your paper of 1st March, which speaks of a trait in his system of managing the asylum at Morningside, which only needs to be mentioned to be approved of, and which, in the management of the doctors at Saughtonhall, according to the evidence elicited from themselves and their subordinates at my trial, was only conspicuous from its absence. Here is Dr Skae's remark—"When a patient's letters are inspected, they are made aware of the fact by being told that they must be left open—*perfect frankness and truthfulness being found to be essential to any cordial relations between the officers of the asylum and those under their charge, and the basis of all good that can be derived from the moral treatment of the insane.*" Compare this remark with the evidence elicited as to the fraudulent pretences under which I was inveigled out to Saughtonhall. Since my late jury trial I have seen a communication to a friend from a Mr Newcombe, an English clergyman,

who was *detained* for a considerable time at Saughtonhall some two or three years ago, and who has much testimony to give as to the fraudulent and mendacious manner in which he was dealt with there.

In the resolutions of the College of Physicians, resolution 4th says that "the peculiarity of the position of medical men in signing certificates, is that they are thereby brought in contact with persons who are not in full possession of their senses," and so forth. Though the law makes medical certificates necessary before a man can be committed to an asylum, or, in the words of the College, "placed under treatment," it nowhere makes it compulsory on a medical man to grant such certificate; and if the conduct of a doctor in placing a man under treatment begets in that man a prejudicial or a revengeful feeling towards him, (the doctor who has so placed him,) this can only be because the doctor's conduct and its consequences have been such as to excite such feelings in the breast of the other, be he sane or insane; and a doctor must be very much safer in having excited feelings of prejudice and revenge in the breast of a man "not in full possession of his senses," rather than of one in whom all the powers of mind and body exist and are at work in a state of high health and perfection. So that if a doctor, by performing an act which is essentially voluntary on his part, excites such feelings as are mentioned above, and if the class he is brought in contact with in performing such act is always that mentioned in the resolution, all that can be said is, they are the safest class which could have such feelings excited in them.

In your article in the *Scotsman* of the 16th February, and in the *Caledonian Mercury* of the 24th of same month, two separate views are presented of the duties and responsibilities of the medical profession in granting certificates in lunacy. The resolutions of the College of Physicians also take notice of the same subject. In your own article you say,—"The persons concerned in placing and retaining a patient in an asylum are—first, the patient's relatives; second, the certifying medical men; thirdly, the sheriff; and lastly, the asylum superintendent. . . . Whether the medical certificates afford sufficient proof of insanity, the law submits to the decision of the sheriff, who, if satisfied, grants his order or warrant for the admission of the patient." You also remark that "a great proportion of insane patients [or I have no doubt your meaning is, of those for whose confinement the sheriff is asked to grant warrants] are paupers. . . . Hence in great measure arises a confident and reckless procedure which leads to the disregard of those

checks which the law has established against improper confinement."

In the *Mercury* of 24th February, on the other hand, it is stated that "the law considers the medical men the *best judges* of insanity;" that "the law imposes on the medical men the invidious task of examining the patient, and coming to a decision as to his sanity or insanity." Further on, "Many reasons could be offered why medical men should be recognised as *legitimate judges* in cases of insanity."

Now, sir, these two quotations present very opposite views of our lunacy law; and I think there can be no doubt that the view which you take is the right one. There can be no question the law, as you say, submits *to the decision, not* of the *medical men, but of the sheriff*, the question, whether or not there exists that kind of insanity which renders a man a proper person to be placed in an asylum; that the law makes *the sheriff*, not the medical men, *the judge* in the matter. The certificates are to be regarded, as you well say, as evidence for the sheriff to consider—the medical men are only skilled witnesses.

Without doubt what your article states as to confident and reckless proceedings is said advisedly, and you account for it from a great proportion of insane patients being paupers. Certainly, there is the greatest possible difference between the responsibility incurred in signing a warrant for confining, as a lunatic, a pauper who must be supported at the public charges, whether in the poorhouse or the asylum, and for confining a man of ample fortune, in whose case, (not to speak of any possible views as to his means, by which petitioning relatives might be actuated,) his mere board will be an object to the keepers of the asylum where he may be placed, to the extent of some three hundred guineas a year, or upwards.

And do not the words of the statute, if properly construed, provide for the sheriff's dealing with cases differently, according to the value of the interests at stake, when it is enacted "that the sheriff shall satisfy himself of the propriety of granting warrant, by the certificate of medical persons, *and otherwise, as the circumstances of the case may seem to require?*"

And if a sheriff deals with a case of the latter description I have mentioned, in the "confident and reckless" manner which might be almost excusable in one of the first description, does not the sheriff break the law, and is he not responsible for a breach of the law, as any private man would be? That in signing the warrant

for my confinement the sheriff acted over-confidently and recklessly, in the circumstances of my own case, has always been my opinion. Had not my own wish been over-ruled by my professional advisers, the sheriff would have been included in the actions I have raised from the very first. I have before stated, that, in the opinion of Messrs John Inglis and Robert Macfarlane, they advised that I should have to libel malice and want of probable cause in proceeding against *any* of the parties concerned in my confinement, and this I have found was unsound advice. And many a fight I have had, as to this matter of the sheriff, with my professional friends. We have heard before now of "divinity hedging round a *king*," but I have never heard before of divinity hedging round the stipendiary sheriff-substitute of a Scotch county. And yet there seems to be some such notion of divine right with respect to these functionaries, when a man, who has been imprisoned for six weeks, cannot raise a whisper as to impugning the legality of their procedure in granting warrant against him, without his being hushed, and his mouth shut up, with the cry of "Privilege! privilege! privilege!" I have judged it proper to make the above public statement, that it may not be cast up to me at any time hereafter that I have never impugned the propriety of the sheriff's granting warrant for my confinement.

And now I shall only remark further, that if the law is (as I assume it to be) as you lay down, if the sheriff be the judge, and the medical men but skilled witnesses, and if the sheriff gives only as much care to examining and sifting the evidence on which he is to grant warrant for consigning a man to a madhouse, as he would do before committing a man to prison, say for a week or a fortnight, to await his trial, on a charge of picking pockets, or the like, in this case there would be little fear of any infringement of the liberty of the subject, on the one hand, or of any risk being incurred either by sheriff or medical men, on the other, to give them further protection from which legislation is necessary. The writer in the *Daily Review* says, with a good deal of truth, that insanity is erected, owing to the legal consequences attached to it, into the semblance of a crime, of which the accused has to establish his innocence. Why, then, in this case only, should the accused be convicted on the evidence of witnesses *who are paid to testify against him*, and without its being thought necessary in any way to sift the evidence, or his being given any opportunity to answer for himself, or plead his own cause before the judge? I maintain, sir, that if our present law were carried out in the equitable and common-

sense spirit which regulates all other investigations, it would be all but impossible that injustice could be done. If the accused were confronted with the doctors who are to be the witnesses against him, either together or singly, before the sheriff who is to act as judge; if the sheriff were to satisfy himself of the state of mind of the accused, from an examination made in his presence, and a full record of this examination were preserved; were the sheriff then, if satisfied, to grant his warrant, at the same time informing the accused that he did so, but that the accused, if dissatisfied, had an appeal to those higher authorities to whom the sheriff is subordinate; if the law were thus acted on, there would be little fear of wrong. For there is no doubt that by our law, here in North Britain, be a man twenty times committed by a sheriff's warrant to an asylum, he does not lose his right of immediately raising an action of declarator of sanity, which at once removes the case from the jurisdiction of the sheriff; in the first place, to that of the Supreme Court here, and, in the last resort, to that of the House of Peers.

With thus carrying out the law, only are *perfect frankness and truth ulness* consistent, which, according to Dr Skae, have been found the basis of all good that can be derived from the moral treatment of the insane.

I do hope, that if there is to, as need there is there should be, legislation before long on this subject, it will not give further powers and protection to the doctors, but will rather render compulsory a more free, fair, and straightforward manner of carrying out the law; will make it obligatory that all the procedure be carried through openly, in the broad light of day; so that under the cloak of our mad laws alone a back door shall not remain for perpetuating such injustice, as even the most tyrannical inquisitors of the dark ages might blush to be charged with.

If no other effect than this should be achieved by the public notice which my case has attracted, I shall feel that I have not suffered altogether in vain,—I am, &c.,

ANGUS MACKINTOSH.

BALLANTYNE AND COMPANY, PRINTERS, EDINBURGH.