

Report of the proceedings under a brieve of idiotry, Peter Duncan against David Yoolow, tried at Coupar-Angus, 28-30 Jan., 1837 : with an appendix of relative documents, and an introduction / by Ludovic Colquhoun.

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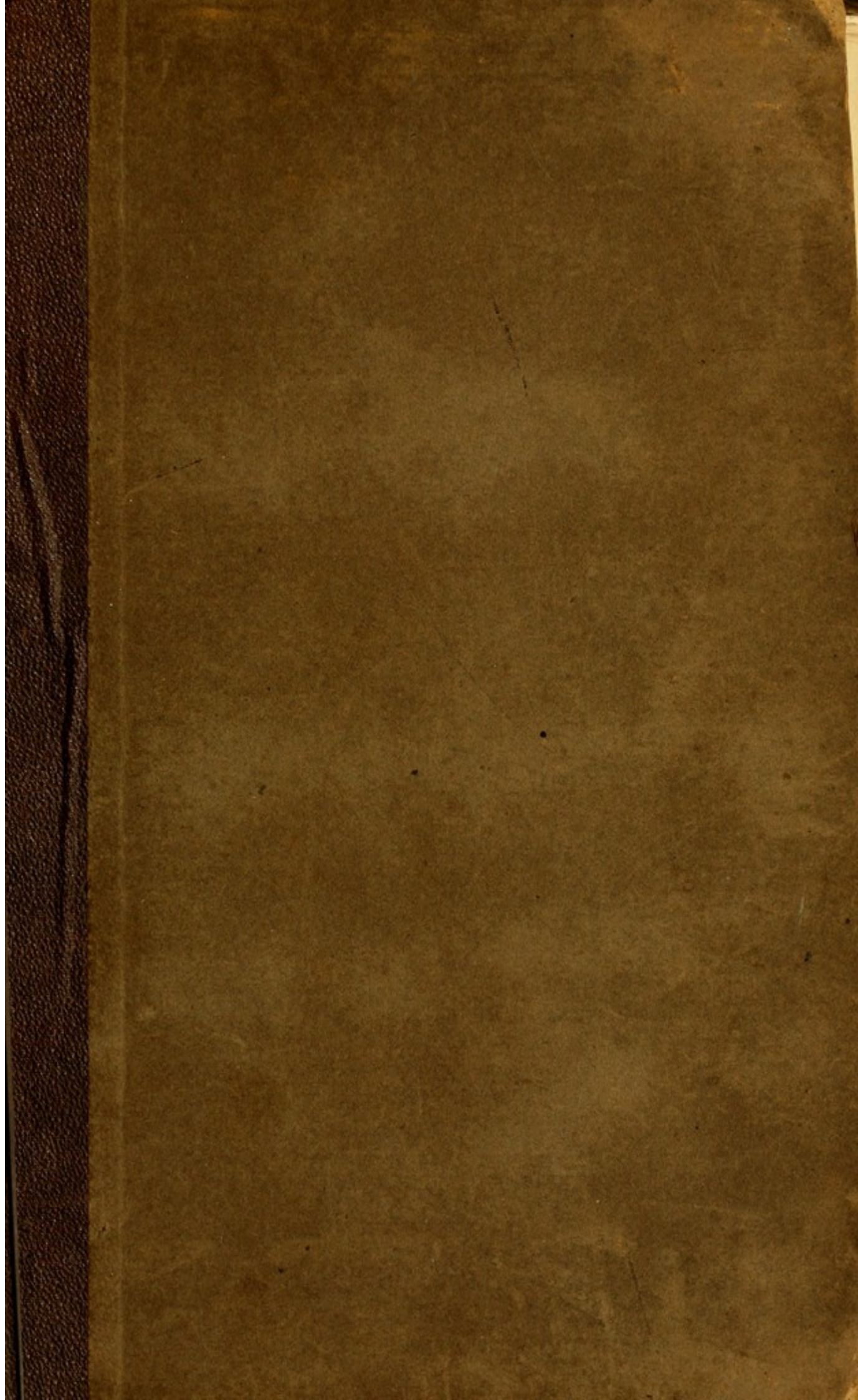
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Presented by
Dr. Chas. Miller.

Report of the Proceedings under a Bribe of Idiocy. Peter
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an appendix of relative documents and an introduction by Ludovic
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REPORT

OF THE

PROCEEDINGS UNDER A BRIEF OF IDIOTRY,

PETER DUNCAN

AGAINST

DAVID YOOLOW,

TRIED AT COUPAR-ANGUS, 26-30 JAN. 1837.

WITH

AN APPENDIX OF RELATIVE DOCUMENTS, AND
AN INTRODUCTION,

BY

LUDOVIC COLQUHOUN, Esq. ADVOCATE.

EDINBURGH :

THOMAS CLARK, LAW BOOKSELLER.

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INTRODUCTION.

IN this, and in every civilized country, from the enlightened ages of antiquity down to the present times, the law has justly regarded as entitled to its special protection all those, who, from not possessing a sufficient degree of understanding, are incapable of protecting themselves. It is too obvious to require observation, that the legislative rules, which are found adequate to ensure the peaceable enjoyment of their civil and social rights to those who have the average measure of intellectual capacity, must, in the case of persons wholly, or to any great extent, destitute of that capacity, afford very inadequate security. In equity to the latter, therefore, it is incumbent on the state to adopt such provisions as shall have the effect of placing them, so far as practicable, on a footing of equality with their more fortunate fellow-citizens. No act of the legislature, it is true, can confer reason on him to whom Providence has denied it, or restore reason to him whom Providence has seen fit to deprive of that blessing: the law cannot convert the idiot or the lunatic into a rational being, competent to take and maintain his place as an efficient member of society;—but, by appointing that to be done for him by others, which, were he endowed with reason, he could, and, it is to be presumed, would do for himself, the law can obviate much of the evil which, but for its beneficent interposition, would be the probable, nay inevitable result of his intellectual deficiency. To his person it can give that guardianship which his inability to protect himself renders necessary, and secure all those comforts to which his means may entitle him, and of which, in his unhappy condition, he can be supposed susceptible. His property it can preserve inviolate, not merely against force or

fraud, but against the operation of any circumstance by which it might be deteriorated, excepting those natural or accidental causes of depreciation, from the influence of which the property of no one is exempt. This—and it is much—the law can do; this the law ought to do:—and perhaps there is not a fairer criterion of the degree of civilization to which any state may have attained, than the spirit in which it recognises, and the fidelity with which it executes, so sacred a duty.

The advantages, however, which arise from a wise and faithful performance of this duty by the state, are not limited to those merely whose interests appear more immediately concerned in it. When the state, through the instrumentality of the law, takes upon itself the administration of the property of a person of unsound mind, it does so, in the first instance certainly, to preserve it for his own benefit during his life, or the continuance of his mental incapacity, but it has in view, besides, the reversionary interests of those who, by the rules or customs which govern succession among its subjects, would inherit that property on his decease. These rules the law suffers to be superseded by the expressed will of an individual, if he be truly capable of an act of sound volition; but the law does not confer this right of “discomposing, abrogating, and changing the natural and favourable order of legitimate succession,—thus substituting, as it were, a testator in the place of itself, and investing him with the character of a real legislature,—unless where a capacity exists proportionate to the importance of the ministry.”¹ This essential requisite is not possessed by the idiot or the lunatic. The same defect of capacity which calls upon the law to assume the management of his property during his life, renders him incapable of executing any deed to regulate its destination after his death. When he dies, therefore, the usual rules of succession have place, as in any ordinary case of intestacy; and the property which the law has preserved for his own benefit while he lived, is thus, also, preserved by it eventually for the benefit of his heirs.

Still, although the justice and expediency of this interposition on the part of the state, and the salutary results that flow from it, are unquestionable, it is equally evident that the state ought

¹ *Collinson, on the Law of Idiots, &c.* vol. I. p. 81.

never to exercise it, unless in circumstances which unequivocally indicate its necessity. That interposition which, in the case of an individual of unsound mind, is not less beneficial than necessary, would, in the case of an individual whose faculties are perfect, prove as injurious as it is uncalled for. The state, therefore, will refuse to interfere, unless it be demonstrable that *not* to interfere would be a dereliction of its duty; and that the seemingly harsh measure of taking from one of its subjects the control of his property, is, in reality, the greatest benefit it could bestow on him.

On the same principle, the extent of the protecting control imposed ought to be in proportion to the amount of protection required; lest, on the one hand, the remedy, from being less than the occasion demands, should fail to afford the requisite protection,—or, on the other, it should exceed the necessity, and degenerate into oppression. Mental disease is susceptible of an infinite variety of shades and degrees;—ascending from those lighter affections of which merely a certain imbecility or eccentricity is the characteristic, up to those in which unsoundness of intellect indisputably predominates over soundness;—and from these latter, again, rising to the melancholy instances in which the faintest glimmering of reason appears not, where nothing remains save the human form,—and that, too, if the expression may be used, often but a shell or a ruin,—by which the unfortunate being thus sunk beneath humanity is distinguishable from the inferior animals, happier than he in the possession of that instinct, which supplies them with “an intuitive sagacity, intelligence and wisdom, commensurate to their wants and destination.”¹ For affections so different in kind and in degree, it is plain that the law must provide very different remedies.

The principles, accordingly, upon which, in any case where legal protection is sought or seems to be required, it should be decided, whether and to what extent mental deficiency truly exists; and, assuming that it does exist, what measure of protection is the appropriate one,—have naturally formed the subject of much and anxious consideration in every enlightened state. The consequence has been the formation and adoption in all states of

¹ *Haslam*, on Sound Mind, p. 181.

such municipal regulations as each, in conformity with its general policy, might judge most suitable for determining the existence or non-existence of a claim to protection, and calculated at the same time to obviate any risk of that protection either proving inadequate, or running into abuse. These regulations, founded as they must every where be, on the same general principles, cannot fail to correspond every where in their general spirit; but in different states, each legislating for itself, and following the peculiar bent of its own genius, there will necessarily be important diversities in their application. It might be a pleasing, and not unprofitable task, to collate and compare the various regulations which have been adopted by different states,—to trace to their fundamental principles those of each particular state, and examine their fitness respectively to the end which they all have in view; but such an inquiry would be inconsistent at once with the object of these remarks, and the limits within which they must be confined, professing as they do merely to present a very brief sketch of the provisions relative to this subject, which have been adopted by the law of Scotland.

The leading provisions of the law of Scotland for affording relief to those who labour under mental disabilities, are based on a recognition of the obvious and important distinction which subsists between those instances where, from an absolute defect of capacity, the person as well as the property of the individual requires protection, and those instances where, from the deficiency being only partial, personal protection is not called for, and the application of a less stringent remedy will suffice to secure the property of the individual against the craft of others, or his own mischievous exercise of the ordinary powers of administration. This distinction has naturally suggested the division of such persons into two great classes.

The *first* of these classes, as described by our institutional writers, comprehends every one who is, in legal language, fatuous, and naturally an idiot;—or furious, mad, and a lunatic;—or whose external senses are so imperfectly organized as to render him totally incapable of the independent management of himself or his affairs.

The *second* class comprises those who, although not so devoid of reason as to be absolutely incapable of acting for themselves

in the minor affairs of life, are, nevertheless, from imbecility or weakness of judgment, considered by the law fit subjects for a limited degree of restraint, in matters of peculiar importance.

The form by which the law inquires whether an individual belongs to the former class, and ought, therefore, to be placed under the permanent and unlimited curatory which it holds applicable to the cases falling under that class, is Cognition and Inquest,—a process, the general nature of which shall be afterwards adverted to more at large. An interesting and instructive illustration of the mode in which such an inquiry is conducted in practice will be found in the Report to which these observations are introductory.

To meet those cases which fall under the latter class, a less solemn form of procedure, and a less universal control, are deemed sufficient by the law. The remedy, accordingly, which the law affords in such cases is that of Interdiction, which may be defined “a legal restraint laid upon those who, either through
“ their profuseness, or the extreme facility of their tempers, are
“ too easily induced to make hurtful conveyances, by which they
“ are disabled from signing any deed to their prejudice, without
“ the consent of curators, who are called Interdictors.”¹ This restraint is imposed in various ways. It may be imposed by the sentence of the Supreme Court, on an application by the heir or next of kin of the party for whose benefit it is sought, supported by such evidence as shall satisfy the Court that the remedy ought not to be withheld. Or it may proceed from the *nobile officium* of the Court themselves, when they perceive that a party to any suit before them is liable to imposition, from an extreme profuseness and facility of temper. It may even be self-imposed. Where a person is conscious that some restraint is necessary, yet is averse to the more public disclosure of his weakness which judicial interdiction implies, the law permits him to impose the fetters of interdiction on himself, which he accomplishes by executing a bond, obliging himself to do no deed which may affect his estate, without the consent of certain friends whom he selects

¹ *Ersk. Inst. B. I. T. 7, § 53.* The case for which this remedy is provided, as described in the modern Summons, is that of a person “lavish and prodigal, of weak and facile disposition, easily imposed upon, and liable to be concussed to do deeds to his lesion or prejudice.”

to be his Interdictors. Such a bond the law holds in all respects equivalent to a judicial sentence of interdiction, pronounced on cause shewn.¹ The effect of interdiction, in whatever way it may have been imposed, is, that when the interdiction shall have been published and registered according to certain prescribed forms, all deeds subsequently done by the party interdicted, without the consent of his interdictors, which affect his heritable estate, are open to reduction, and will be reduced, unless it shall appear that such deeds have truly been of an onerous and rational character, and that the granter has suffered no prejudice through them.

The Court of Session, too, has the power of appointing curators to take charge of the property of individuals, under peculiar circumstances involving incapacity, which will be hereafter noticed.

Besides these remedies, which have reference chiefly, though not exclusively, to the future protection of persons of deficient capacity, a retrospective remedy for any acts or deeds done by such persons to the injury of themselves or their heirs, is provided by the action of reduction on the ground of insanity,—or of idiocy,²—or of facility, fraud and lesion, as the case may be.³ This last remedy, indeed, seems to reach all those causes by which an individual may be injured from the weakness of his intellect, even where the defect is not so permanent or so constitutional as to render him a proper subject either for curatory or for interdiction.

While our law, therefore, has its remedial measures applicable

¹ However gently touched upon its inductive causes may be, the deed will nevertheless be effectual. Nay, a bond of interdiction has been sustained, which contained no recital whatever of the causes that led to it.—Feb. 13, 1789. *Braimer*. (Unreported.)

² See the following cases :—*Alexander v. Kinneir*, (where the action was brought by the party himself, who had recovered,) *Morr.* p. 6278 ; *Loch v. Dick*, *Ibid.* ; and *Christie v. Gib*, *Morr.* p. 6283, (in both of which cases the reduction was pursued by the party's heir.) Although, however, deeds executed by persons in these situations may be reduced, they cannot be found null by way of exception, but require a special declarator.—*Crawford*, *Morr.* 6275.

³ Where lesion in the deed, and facility in the granter, concur, the most slender circumstances of fraud or circumvention are sufficient to set the deed aside. *Ersk. Inst. B. IV. T. 1, § 27.*

to each particular variety of mental incapacity, still, however complete may be its recognition of the principle, that their exercise should always harmonize with and be strictly subordinated to the rules which justice and expediency approve, it is plain that the practical application of these remedies must in all cases be a matter of delicacy, and in some be attended with difficulties and responsibilities of no ordinary character. When the law ratifies by its sanction the act of an individual who places himself under interdiction, no restraint whatever is imposed on his person, and only that degree of restraint on his right of administering his affairs, which he himself is conscious will be salutary, and to which, therefore, he voluntarily submits himself. In cases of judicial interdiction, again, a restraint so limited in degree, and so beneficial in its nature,—imposed too, as it is, after due investigation, and at the request of those most interested in the individual interdicted, or by the Court itself, in circumstances which imperatively call for protection,—cannot in practice give rise to any difficulty of moment, or expose the lieges to any conceivable hazard of the remedy being perverted into a means of oppression. But in those cases, where the question is of that incapacity which the law holds to be total,—a question involving the dearest interests of the individual, and on the decision of which his civil existence itself depends,—the law, to obviate any ground even for the suspicion of error or injustice, has resolved, with equal equity and wisdom, that such a question shall be determined only by the most grave and deliberate procedure, and by a tribunal constituted in that form which is requisite in all those cases more immediately affecting the personal liberty of the subject. When such a defect of mind, therefore, is alleged to exist, as demands and would justify the appointment of a permanent curator, the exclusive form recognised by our law for investigating and determining a question of this magnitude is, as before observed, the process of Cognition and Inquest.

The various kinds of persons whom, and whom alone, the law considers proper subjects for cognition, have been already briefly alluded to; but, before proceeding to explain the nature of the procedure by which cognition is carried into effect, it seems desirable that they should be somewhat more fully described.

Those persons are held by the law to be in this situation who, either, *first*, from a total defect of judgment; or, *secondly*, from

a disordered brain; or, *thirdly*, from the wrong texture or disposition of the organs of sensation, are naturally and irremediably incapable of managing their affairs. “Of the *first* class are fatuous persons, called also idiots in our law, who are entirely deprived of the faculty of reason, and have an uniform stupidity and inattention in their manner, and childishness in their speech, which distinguishes them from other men; and this distemper of mind is commonly from the birth, and incurable.”¹ Although the term *idiot*, in its legal sense, seems more properly applicable to such persons only as have been without understanding from their nativity, and whom therefore the law presumes never likely to attain any, it includes also those who may have been at one time in possession of sound intellect, but who, through any cause, have been subsequently deprived of it, and are reduced to a state similar in its manifestations to that of congenital idiocy.

In the *second* class are ranked furious persons,—and they, strictly speaking, “cannot be said to be deprived of judgment, for they are frequently known to reason with acuteness: but an excess of spirits, and an overheated imagination, obstruct the application of their reason to the ordinary purposes of life; and their infirmity is generally brought on by sickness, dispointment, or other external accidents, and frequently interrupted by lucid intervals. Under these may be included madmen; though their madness should not discover itself by acts of fury, but by a certain *wildness* of behaviour flowing from a disturbed fancy.”² The term *lunatic* is, in our legal language, used with reference to those individuals, whose cases are characterized by the alternation of lucid intervals with ebullitions of frenzy.

To these two classes our law-writers add a *third*, which has reference to persons whose organs of sensation are defective or imperfect. But, at the present day, persons in this predicament are not considered proper subjects for cognition, unless where the defect or imperfection is, in character and degree, such as to be obviously incompatible with the possibility of capacity. In such a case, the individual is rightly judged by the law to be in no better condition than the connate idiot; for, as the senses are the only inlets of knowledge, if these indispensable inlets be obstructed

¹ *Ersk. Inst. B. 1, T. 7, § 48.*

² *Ibid.*

or closed, all ideas and associations belonging to them are of necessity totally excluded from the mind. In treating of the Brieve of Idiocy, Lord Stair lays it down, that the first head of this brieve,—which directs inquiry whether the person be “*incompos mentis*, fatuous, and a natural idiot, so that there is ground of “fear he may alienate his lands and goods,”—applies to the case not of idiots only, but of all who may be naturally incapable of managing their affairs, for example, persons deaf and dumb.¹ A person deaf and dumb from his birth is, no doubt, in presumption of law, in a state analogous to that of the idiot, but this presumption may be elided by proof that, notwithstanding his defective organization, he has the use of reason. At the time when Lord Stair wrote, this condition was believed to be irremediable, or remediable only in a degree which still left the individual without the possibility of his acquiring that information and knowledge which are indispensable to the right conduct of the business of life. This condition, however, and the means of alleviating it, have since been investigated with a zeal commensurate to the importance of the subject; and “the judicious and “humane means adopted in modern times for educating persons “born deaf and dumb, have been attended with eminent success; “—have furnished them with many means of profitable occupation, and endowed them with many of the privileges, and consequent responsibilities of moral and rational agents.”² It will not be attempted, therefore, at the present day, to impose a permanent curator on a person who should be destitute merely of the senses of speech and hearing, unless the existence of other circumstances, from which incapacity is inferible, should be established by satisfactory evidence. But if to the deprivation of these senses be added that of the sense of sight, it is evident that an individual thus imperfectly constituted must be incapable of receiving, through the medium of the senses which remain to him, however perfect, any impressions which can enable him to advance even a single step in the scale of intelligent being. Such a person, therefore, is properly placed by the law in the same class with the idiot,—his state declared by the same form of procedure,—and the restraint imposed upon him equally comprehensive.

¹ *Stair*, B. I. T. 6, § 25; and B. IV. T. 3, § 9.

² *Shelford*, on the Law of Lunatics, p. 4.

To persons in some one of the situations just described only, does our law give permanent curators; but in peculiar circumstances, as already observed, the Court of Session has conceived itself justified in granting to individuals the safeguard of a temporary curator; for example, to preserve the property of an idiot or a lunatic, until the party entitled to do so shall have obtained for him the proper remedy of cognition;—or in such other circumstances as indicate the necessity of legal protection.¹ Thus, on an application by the friends of a party alleged to be imbecile, that a curator should be given him, the Court has remitted to a Lord Ordinary to ascertain the state of the fact, and has granted or refused the desire of the application, according to the result of such investigation.² Several instances, too, have occurred of *curatores bonis* being appointed by the Court to parties who from age and infirmity were altogether incapable of managing their own affairs.³

In a late case, where the appointment of a curator by the Court was resisted in name of the party put under curatory, on the plea that he could not be deprived of his right to conduct his own affairs, unless cognosced by a jury, the Court remitted to the Sheriff to receive evidence as to his state, and being satisfied, on the Sheriff's report, and after a hearing in presence, that a curator was necessary, sustained the appointment.⁴

Such appointments, however, are merely of a temporary nature. The case last mentioned having been taken by appeal to the House of Lords, was remitted to the Court of Session for the opinion of the whole Judges, particularly as to the point whether the Court had power to proceed without a cognition. The majority of the Judges held, after the most anxious consideration, that the Court has power to appoint a curator, whose appointment, although in its own nature temporary, must continue, either till evidence of convalescence be adduced, or a tutor at law has been regularly served by cognition and inquest. The Court,

¹ Vide *Act of Sederunt*, February 13, 1730.

² *Ersk. Inst.* B. I. T. 7. Note to § 48, and relative Note by Mr. Ivory.

³ Cases of *Craw of Netherbyres*, 5 March 1777; *Jardine*, 14 Jan. 1784; *Watson*, 15 Feb. 1793; *Gordon*, Feb. 1805; *Capt. Swindle*, 6th, and *Black*, 7 March 1805. Several of these cases are unreported.

⁴ *Bryce v. Graham*, Sum. Sess. 1820.

therefore, refused to recall the nomination of the curator;¹ and their judgment, on appeal to the House of Lords, was affirmed.² From this decision, it appears, that while such appointments where necessary may and will be made, the Court both of Session and of the last resort have agreed that this exercise of jurisdiction shall be so guarded as to frustrate any attempt to obtain by a summary form, and on a comparatively superficial investigation, that permanent and universal control over an individual and his estate, which the law imposes only after it shall have been found, by the solemn and deliberate procedure of Cognition and Inquest, that the imposition of so serious a description of restraint is warranted.

Having thus given a concise, but it is trusted, sufficiently comprehensive sketch of those various states of mental derangement or deficiency, which are held to claim and justify legal interposition, and of the relative remedies afforded by the law, we shall now proceed to make a few observations on the nature and conditions of the most important of these remedies.

COGNITION proceeds on a Brieve, which is a writ issuing from the Chancery, addressed to the Sheriff or other Judge-ordinary of the territory within which the person who is alleged to be furious or fatuous resides.³ By this writ the Judge is directed to summon an inquest for inquiring, *first*, into the person's true state, and, if the inquest shall hold the existence of fatuity or

¹ *Bryce v. Graham*,—25 Jan, 1828, 6 *Shaw and Dunlop*, p. 425. The case was advised by their Lordships on long and able written pleadings for the parties. To the paper for the defender,—which is drawn by Mr. Solicitor-General Rutherford, and which discusses, in an elaborate and most luminous manner, the question whether the Court of Session can competently subject an individual to the fetters of permanent curatory, without cognition,—I have been greatly indebted in preparing this part of these observations.

² *Bryce v. Graham*—3 *Wilson and Shaw*, p. 323.

³ An exception to this rule may occasionally occur. Should it so happen that the service evidently ought not to be carried on before the judge-ordinary of the district,—*ex. gr.* where he is a near relation of the claimant or party, or himself the urger of the brieve,—the writ will be directed to, and the inquiry proceed before, the Sheriff of Edinburgh, to whom a commission is expedite in Chancery as Sheriff in that part thereby specially constituted. The form of procedure in such cases will be found in the first volume of the *System of Conveyancing* published by the Juridical Society, p. 433.

furiosity to be proved, the time when such fatuity or furiosity began;¹ and, *secondly*, who is the next male agnate of lawful age,² on whom the office of curatory may be conferred. Where the party is alleged to be fatuous, the writ which the Chancery issues is a Brieve of Idiocy; where he is alleged to be furious, a Brieve of Furiosity. There is no difference in point of style between these brieves, except in the clause expressing the different conditions of the persons whose state they are meant respectively to ascertain. In the brieve of Idiocy, the words are:—" *Si sit incompos mentis, fatuus, et naturaliter idiota, sic quod time-
tur de alienatione tam terrarum suarum, quam aliarum rerum mobilium et immobilium; et quamdiu sustinuit istam fatuitatem.*" In the brieve of Furiosity, the issue is—" *Si sit incompos mentis, prodigus et furiosus, viz. quod neque tempus neque modum impensarum habet, sed bona et possessiones dilacerandas et dissipandas profundit; et quamdiu sustinuit istam furiositatem.*" From the act of James III. alluded to below, it appears, that at that time and previously it was the practice to use only one brieve, which was applicable both to furiosity and idiocy. The essential difference between these states of mind, however, suggested the expediency of separate brieves, each applicable exclusively to the particular state which is supposed to be that of the party. And although the Court has held, that brieves of both kinds may be taken out against the same person at the same time,³ as indeed seems at one time to have been the practice,⁴ still,—unless in circumstances which render it a matter

¹ The branch of the inquiry having reference to the commencement of the disability was introduced by a statute of *James III.* (Parl. 9. c. 67. anno 1475,) in order that "all alienations made by the fool or furious person *after that time* may be retreated, as well as alienations made *after serving the Brieve.*"

² In the sense of the Roman law, *agnates* were persons related to each other through males only; but, in our law-language, all kinsmen by the father are agnates, though females should intervene. By *lawful age* is here understood the having attained twenty-five years complete.

³ Case of *Gartsherie*, Nov. 23, 1746. Reported by Lord *Monboddo*. *Vide Brown's Suppl.* vol. V. p. 745. In this case, while it was found, as stated in the text, that the two brieves might be taken out, the Court held that there must be a distinct claim and a distinct retour on each.

⁴ *Ersk. Inst.* B. I. T. 7. Last Note to § 60. *Vide* case of *Stark*, reported by Lord *Kilkerran*, No. 1. *voce* Idiocy.—*Dict.* p. 6291.

of doubt, whether the party sought to be cognosced should be proceeded against on the allegation that his state is that of furiosity, or is that of idiocy, and consequently, what brieve is the appropriate one,—the advantages which result from thus confining the inquiry to that state, which is believed and alleged to be the actual state of the party, are too obvious to admit of a probability that the simpler form of procedure by a single brieve corresponding to the case, will be frequently departed from in practice.

The brieve is issued by Chancery, generally on the application of the nearest agnate of the party.¹ If the agnate should decline to interfere, or where no agnate exists, it seems to be settled that the nearest relations on the mother's, as well as the father's side, may competently prosecute the brieve.² Where the relations refuse to act, or a party has none, it would appear that there is in our law no form by which he can be subjected to cognition. From an expression of Lord Eldon, in his speech on moving the judgment of the House of Peers in the case of *Bryce*, it would seem that he imagined the Court of Session might possess some power of originating such an inquiry, for his Lordship gives it as his opinion that the Court have an indubitable right to “appoint a person to take charge of an individual who “cannot take care of himself, *until they can have an opportunity of ascertaining by a Jury* what is his state, and whether “he ought to be permanently treated as in a state in which he “is not capable of managing his own affairs.”³ His Lordship also threw out a suggestion,—with reference to the case of a party having no relations, or whose relations should refuse to

¹ *Gartsherie* (referred to *supra*.) Here the nearest agnate was an infant under tutory; and a brieve having been purchased by one of the tutors, without the consent of the rest, it was found that the brieve might be pursued by the tutor.

² *Balfour*, anent *Curatouris*, Title *Brieves*, Ch. 68.—Case of *Macalister*, (in which the right of a sister to pursue a brieve was sustained.) *Vide* Note to the Report of *Bryce v. Graham*, 6 *Shaw*, p. 440.

³ *Bryce v. Graham*, 2 *Wilson and Shaw*, p. 481.—Often as I have referred to it, I cannot take leave of this case, without mentioning that a notice of it, containing some interesting details illustrative of the mental condition of Bryce, is given by Dr. Abercrombie, in his admirable “*Inquiries concerning the Intellectual Powers*.”—Sixth Edit. p. 374.

sue out a brieve,—that “it might be very well worthy of consideration whether the Lord Advocate of Scotland is not a party entitled to interpose in such cases.”¹ Both of these points were very carefully considered by the whole Court in the case of *Bryce*, on its return from the House of Lords. On the first point, the Judges concurred in holding that the Court of Session have no power either to compel the relations of an imbecile party to pursue a brieve, or, where there are no relations, to order, or in any way originate, such a process themselves. As to the second point, an equally unanimous opinion was expressed that the Lord Advocate has no title to interfere,—Lord Gillies referring to the case of “an individual of the greatest respectability and most distinguished talents,”—whose situation called for curatory,—“but who had no relations; when it became a very grave question, on which the most eminent lawyers were consulted, whether it was not the duty of the Lord Advocate to take the necessary measures for his protection; but this was not considered warrantable by law.”²

With reference to contingencies of this sort, therefore, the law of Scotland appears to be defective. An attempt seems to have been occasionally made to supply the defect, by the nomination of curators by the Sovereign through the Court of Exchequer, according to the practice in the case of tutors-dative to infants; for a few instances have occurred of curators being thus given to idiots and madmen, where the relations had not come forward. But “such gifts are truly a deviation from our law, since they pass without any inquiry into the state of the person to whom the curator is appointed; and they are admitted only from necessity.”³ Although cases of this description are fortunately so rare, that but little practical inconvenience can result from the absence of a definite legal provision to meet them, the bare possibility of their occurrence enforces the propriety of some specific remedy being provided, either by an extension of the powers of the Lord Advocate, or, should that be deemed inexpedient, by some other adequate measure in harmony with the general spirit of our institutions.

The person whose state is to be tried under the brieve must

¹ *Wilson and Shaw*, referred to *supra*.

² 6 *Shaw*, p. 436.

³ *Ersk. Inst. B. I. T. 7. § 51.*

be made a party to it,¹ because if he be truly of sound mind, he has good interest to oppose it, and instances have occurred of brieves having been advocated on the party's opposition.²

As already said, the brieve is addressed to the Judge-ordinary of the bounds within which the party resides, who is directed to call a Jury to inquire into and determine his state. The expediency of intrusting this duty to a jury taken from among the neighbours and equals of the person whose state is to be investigated, is evident. It will immediately be seen, that their own personal inspection and examination of the party forms a most material element in the proof by which the Jury are to be guided in coming to a verdict. Now, the physical condition of the party may (as in the present instance) happen to be such as to make his removal to the place where the Court is held a matter of danger; and in this situation, should the distance between the Court-room and the residence of the party be considerable, the necessity of transporting from the one place to the other the Judge, the jury, and those professionally connected with the cause, must occasion much loss of time, and lead to many inconveniences. But the circumstance by which the propriety of trying such cases in the county where the party has his domicile is mainly recommended, is, that here those considerations do not apply, or apply only in a very partial degree, which, as regards other civil causes to be decided by Jury, obviously render it in many instances desirable, and in some indispensable to the due administration of justice, that the Jury should, if possible, come to the inquiry without any previous knowledge either of the matter at issue, or of the parties between whose conflicting claims and interests it is their office to arbitrate. In a trial of this sort, the more that the Jury know of the party, and of the question,—the more intimately they are acquainted with the alleged lunatic or idiot, and the more frequent the opportunities they may have had of testing the state of his mind—the better are they qualified

¹ The brieve is proclaimed at the market-cross of the head borough of the jurisdiction within which the service is to be carried on, by the officer of the Judge before whom the service is to be expedited, under authority of a precept issued by the latter, which is also the officer's warrant for citing the party.

² *Ersk. Inst. B. I. T. 7. § 49.*

for a right fulfilment of their duty. Assuming it to be well founded, their verdict, whether affirmative or negative, cannot be other than beneficial to the defender. Should it happen, therefore, in consequence of the Jury being taken from among his neighbours, that some of the Jurymen should regard him even with a feeling of friendship, the probability of a conscientious verdict being returned is increased, precisely in proportion to the degree of friendship felt, and the consequent bias towards such a decision as will be most conducive to the party's interest. As the friends of an individual must, of all human beings, be the most prompt to acknowledge and to act on the undoubted truth, that it is not more certainly for his interest, if he be really of sound mind, that no restraint should be imposed on him, than it is for his interest, should his state be such as to require protection, that the fact should be declared, in order that he may receive that protection,—no prepossessions in his favour which the Jury may have acquired from acquaintance, or habits of intimacy with him, can in any way interfere with the impartial discharge of their duty which justice demands. And although, on the other hand, in consequence of similar intercourse, prejudices, or even enmity towards him, may have been generated in the minds of other Jurymen, it would be a libel on human nature to suppose that an individual could be found, who, merely to gratify such a feeling, and without the remotest benefit to himself, should be capable of inflicting on a fellow-creature the most grievous of wrongs, which he can accomplish only through his own perjury.

The first branch of the inquiry to which the Jury are to address themselves, is the present state of the party. This leads us to consider the nature of the evidence by which that state is to be ascertained.

It is a maxim of the law, founded on wise principles, and never lost sight of in practice, that, in all cases of disputed fact, the best evidence which exists and is attainable, relative to the matter at issue, must be submitted to the tribunal which has to decide upon it; and that an inferior species of evidence, if better might have been adduced, ought to be regarded with jealousy, and held entitled to little weight in influencing the decision. And not merely does the law insist on that evidence which is in its own nature the best, but it subjects all evidence to the operation

of such tests and checks as reason advises, and experience has shewn to be suitable, for proving and ensuring its title to trustworthiness. When persons, therefore, whom the law recognises as credible and competent witnesses, have sworn directly to a fact, the juryman is justified in believing that the fact truly is as they have attested it to be. Still his belief is merely an inference, founded on the general presumption in favour of human veracity, corroborated, in the particular instance, by the additional presumption arising from the circumstance, that the witness has come unscathed through the ordeal by which the law tries his pretensions to belief; and the degree of conviction thus produced in the juryman's mind, is necessarily somewhat short of that which he would feel, if the fact spoken to had fallen immediately under his own cognizance. However unexceptionable the witness may appear, it is still possible that the fact may not be as he has stated it. He may have asserted what he knew to be false; or he may have suppressed what he knew to be true; or, dismissing suppositions so unfavourable, he may have been mistaken, and thus, unconsciously and with the purest intentions, he may have stated as truth that which is wholly or partially untrue. But, not to dwell on so self-evident a proposition, as that the conviction resulting from the testimony of others must be less complete than that which results from the testimony of our own senses,—there is another circumstance which may and frequently does render it exceedingly difficult for a jury to derive from the former, that unqualified conviction, with reference to the true state of a fact, without which they cannot be justifiable in holding, and, by their verdict, declaring, that the true state of that fact has been established. It often happens that the evidence of witnesses is contradicted by that of other witnesses; and this, too, even where the fact spoken to is of such a kind, as would seem to exclude almost the possibility of a mistake on the part of the persons who speak to it.¹ Now, as the law of Scotland holds that the evi-

¹ The records of Courts, both criminal and civil, in all countries, abound with examples of such perplexing conflicts of evidence. I shall only instance one, the celebrated case of *Elizabeth Canning*, which occurred in 1775-6. An old gipsy, named Mary Squires, had been found guilty and sentenced to death, on a charge of having committed an assault and robbery on the person of Elizabeth Canning, at Enfield Wash, near London, and of having afterwards confined her in a hay-loft there,

dence of two unexceptionable witnesses is sufficient to establish the truth of any fact, however important, if two or more such witnesses swear positively to a particular fact, the jury must look upon that fact as proved. But, suppose that as many other witnesses, equally unexceptionable, swear as positively to the very reverse,—and that there are no extrinsic circumstances, from which the actual state of the matter may be inferred,—it follows, either that the Jury must decide between the conflicting sets of witnesses without a *ratio decidendi*,—which would be absurd,—or they must hold that the evidence of the one neutralizes that of the other, and can, therefore, come to no decision at all. It may be said, no doubt, that the case put is an extreme one, and that it can but rarely happen that the evidence should be thus nicely balanced, or the fact to which it refers so isolated as to be incapable of receiving from the evidence applicable to other facts, at least some reflected light, by which the Jury may be guided. But granting this, it is obvious that any conviction thus attained must always be short of complete; for as, in the case supposed, the testimony on each side, considered apart and in itself, amounts to what the law holds a sufficient proof, although circumstances may cause one of them, in the estimation of a Jury, to preponderate over the other, still that testimony to

for upwards of three weeks, on a miserable pittance of bread and water. Some contradictions, however, in the evidence of the girl, excited the suspicions of Sir Crisp Gascoyne, the then Lord Mayor of London; and through his influence a respite, and ultimately a free pardon, were obtained for Squires. Upon this Canning was arraigned at the bar of the Old Bailey, on a charge of perjury. At the trial, a number of witnesses swore, that they had seen and conversed with Squires at or in the immediate neighbourhood of Enfield Wash, at the time when the alleged robbery was said to have been committed; while a still greater number swore that, at that very time, she had been seen and conversed with by them, at a place distant from Enfield Wash upwards of 130 miles. The witnesses on both sides spoke positively, and were apparently free from any grounds of suspicion. The contradictory nature, therefore, of their testimony is striking, particularly when it is considered that Squires was in person deformed, and in point of countenance “presented an assemblage of features uncommon, and diabolically hideous,” constituting an *ensemble* so unique as to justify, in the opinion of every one present, her emphatic appeal to Canning herself, when first accused by her—“Do you say *I* robbed you?” she exclaimed—“look at me. You cannot mistake *me*. God Almighty never made *my* likeness!”—*State Trials*, Fol. Ed. Vol. X. p. 205.

which the superiority shall be ultimately assigned, must necessarily be received "with a diminution of assurance, in proportion to the force of its antagonist."¹

But, serious as are the obstacles to the expiscation of truth which originate in the frailty, and, occasionally, in the wickedness of men, these obstacles have as yet been regarded from a point of view which exhibits them only in their least formidable aspect. We have hitherto considered evidence, as it may relate to matters of fact, properly so called, which form the subject of mere perception. But, when the conclusion of a jury is to be deduced, not from the proof of some matter of fact, but from proof of the *opinion*, respecting some matter of fact, which a witness shall have arrived at by a process of reasoning, the task of the jury becomes greatly more difficult. For, although the contradiction which results from the opposition of witnesses speaking to matter of fact is a prolific source of doubt and perplexity, the opposition of witnesses speaking to matter of opinion gives rise to contradiction at least equally embarrassing, and unfortunately, even of still more frequent occurrence.² It would hardly be possible, —were it necessary,—within the limits of these remarks, to enumerate all the causes to which it is attributable that men are so often found to draw different, or even opposite conclusions from premises identically the same; but many of these causes are so obvious as to supersede the necessity even of the attempt. And that such contrariety should occur more frequently where evidence relates to matter of opinion than where it relates to matter of fact, ceases to be surprising, when we reflect, that, as the process of reasoning is infinitely more complex and fallible

¹ *Hume's Essays*, (Ed. 1778), vol. II. p. 121.

² That such is the fact, my legal brethren, from every day's experience, are but too well aware. The unprofessional reader, however, may be assured, that men are not found to differ in opinion more frequently, nor to cling, each to his own, more pertinaciously, in ordinary life, than witnesses are found to do in courts of justice; and he may form some notion of the contradiction thence arising by looking into the following, taken from a host of similar cases:—*Lowe v. Joliffe*, Sir William Blackstone's Reports, vol. I. p. 365. The case of *Davies*, (of which an article, attributed to Dr. Gooch, in the 84th number of the Quarterly Review, contains a masterly analysis); the case, *Mackenzie v. Roy*, 11th May 1830, Murray's Reports, vol. V.; and the case of *Yoolow*, now reported.

than that of observation, men are more likely to err, and consequently to differ, respecting the results of reasoning than respecting those of observation.

Evidence of opinion, however, excepting in some peculiar cases, is very cautiously admitted by our law. It is, in general, but an inferior species of evidence;¹ and it is only in those cases where it not merely loses that character, but actually becomes more deserving of credit than any direct testimony, that it can ever be resorted to with advantage. In certain questions, for example, involving matter of scientific or professional knowledge, —the opinions of individuals conversant with the particular science or art, on points falling within the range of their peculiar study and practice, are a competent and most important species of evidence, being, in such cases, “in reality matters of fact, and “a material out of which the judgment of a jury is formed.”² The class of cases, however, where this description of evidence can be held thus paramount, is an extremely limited one; and in those other cases to which it is deemed applicable, the degree of weight to which it is entitled must vary with the nature of the case, and with the greater or less degree of suitableness of such evidence for its elucidation.

The practical inference deducible from these considerations is, that in every case of legal inquiry where it is material to obtain an accurate knowledge of some fact, no testimony or other species of proof ought to be admitted so as to supersede the better evidence of perception. Wherever the matter of inquiry falls under the direct evidence of sense, and can be exhibited to a jury without occasioning inconvenience to which the object is not commensurate, the just rules of our practice require its production. Thus, for example, in trying a charge of fire-raising, where the *species facti* alleged is, that the fire was applied to, and took effect on the door of a house, the door should be sub-

¹ “If the information of a witness is found to rest upon the evidence of his reasoning powers, it is inferior to that which is derived from his perceptions and memory; for, in so far as his conclusions are independent of the latter foundations, we can employ our own reason to judge of their truth, which to us affords a superior evidence.” *Glassford's Essay on the Principles of Evidence*, p. 45.

² *Ibid.* p. 354.

mitted to the inspection of the jury, that they may be enabled, by the evidence of their own senses, to decide whether combustion had actually taken place. Thus, likewise, when the matter to be determined is of such a nature as not to be cognizable by the mere evidence of perception, but must depend on conclusions to be reached by the exercise of the reasoning faculties, the law requires that the facts which constitute the premises to be reasoned from shall be laid before the jury.

Questions having reference to mental incapacity are clearly of this kind; and in trying these questions, therefore, the law holds it essential that the party whose state is to be investigated shall be exhibited to the jury, in order that the conclusion regarding his state to which they shall come may be founded on the basis of their own observation.

“ When one is to be cognosced fatuous or furious, his person
 “ ought regularly to be exhibited to the Inquest, that they may
 “ be the better able after conferring with him to form a judge-
 “ ment of his state from their own knowledge: and this holds
 “ more especially in the cases of fatuity and of a distempered
 “ brain, which are habitudes not quite so obvious to the senses
 “ as furiosity, and in some cases hardly to be discovered but by
 “ conference. *The verdict, therefore, of the inquest concerning*
 “ *the person's present condition, is grounded on the conviction*
 “ *arising in their breasts, from what themselves have seen.*”¹
 Such is the rule of our law, as laid down by Mr. Erskine, with regard to the evidence by which the jury are to be guided in questions of this description. The party is to be produced to them, and subjected to such an examination by themselves, the Judge, and those professionally engaged in the proceedings, as may be deemed proper and requisite for testing the soundness of his intellect, and his capability to manage his affairs. If the examination shall terminate in the jury being satisfied that the true state of the party at the time has been disclosed by it, the conviction thus produced forms of itself a sufficient ground for a corresponding verdict.

It is more than probable that our law did not originally contemplate, with respect to that branch of the inquiry which concerns

¹ *Ersk. Inst. B. I. T. 7, § 51.*

the present state of the party, any thing beyond this examination itself. Our institutional writers do not specify, or even allude to any auxiliary means of proof; and, indeed, in the general case, any other evidence would seem superfluous. For, when fifteen individuals, possessed of the qualifications which the law requires in those whom it intrusts with the power of determining questions the most momentous, shall, after seeing the party, and after that wary and searching examination into his state which their duty calls upon them to institute, be satisfied that they have ascertained its true nature, and consequently that the party is of sound, or of unsound mind,¹ as the case may be,—we may, as a general rule, safely assume that such is the fact. Holding their verdict to be conscientious, it is all but impossible that it can be other than just; for if it shall find *unsoundness*, the conviction in the breasts of the jury on which it is based, must have been the result of their own observation of circumstances so unequivocally indicative of that state, as to be exclusive of all rational doubt with regard to the fact: while, on the other hand, if it shall find *soundness*, although it is possible that the party may in reality be of unsound mind, while the Jury, from the latent nature of the affection, and the adroitness which the subject of such affections is sometimes found capable of employing to elude detection,² may have observed nothing which could excite even a suspicion of the lurking unsoundness,—still such instances are so rare, and the means of foiling any attempt at concealment of the infirmity generally so effectual, that the improbability of the fact being otherwise is sufficiently great to justify us in believing, that, in this case also, the verdict is consistent with the true state of the fact.

¹ The expression "*unsound mind*" is used throughout these observations to denote the state, whether it be idiocy or furiosity, of those whom the law considers liable to cognition.

² Two very remarkable instances of the subtlety and cunning of madmen, exerted for this purpose, are related and commented on by Lord (then Mr.) Erskine, in his celebrated speech in defence of James Hadfield. *Erskine's Speeches*, vol. V. pp. 19—22. A third, not less remarkable, is related by Dr. Haslam,—*Observations on Madness*, p. 53.—See also, for another instance of successful dissimulation, a case mentioned by Lord Eldon from the bench, as having occurred in his own practice at the bar,—*Vesey Jr.'s Reports*, Vol II. p. 11. *Ex parte Holyland*.

So fully, therefore, does our law recognize the importance of this mode of proof, and so absolutely does it regard it as *inter essentialia* of the proceedings, that if, in any case where it is practicable to produce the party to the jury, this shall not be done, or, supposing the party to be produced, the jury shall neglect to avail themselves of the opportunity of examining him, little or no faith can be placed in the stability of a verdict of cognition founded on any other evidence.¹ And rightly: for, this examination of the party being, as it undeniably is, the best, and, in the judgment of the law, a sufficient means of ascertaining the fact, should the jury not have enjoyed the benefit of the light it affords, their verdict will necessarily be founded only on a secondary species of evidence, which, as already shewn, is entitled to little weight, when a superior means of proof could have been resorted to. Accordingly, in an action brought to reduce a verdict of cognition, on the ground that the party had not been examined by the jury or in their hearing, although he was present during the whole proceedings, and consequently might, and ought to have been examined, the Court reduced the verdict.²

But while, from its intrinsic superiority as a means of proof, our law will neither suffer the examination of the party, where practicable, to be dispensed with, nor admit that its absence can be fully compensated, there is another circumstance connected with it of perhaps almost equal importance. If the party shall not be produced, that fact of itself throws an air of suspicion over the whole proceeding. For, if the claimant truly believes that there are just grounds for prosecuting the brieve, he must be sensible that it is not less his interest, than the law tells him it is his duty, to bring forward that evidence which must afford the best and clearest proof of the truth of his allegation that the party is of unsound mind. Should he, therefore, withhold this evidence, the inference is irresistible, that he has with-

¹ *Stevenson v. M'Farlane*, 20 Nov. 1801.

² *Dewar*, 25 Feb. 1809, *Fac. Coll.* See also the foot-note relative to this case, on page 201 of Mr. Ivory's Edition of *Erskine's Institute*. Although, as Mr. I. very correctly observes, the Court proceeded on a compound view, embracing this and also some other circumstances founded on, a single glance at the report of the case in the Faculty Collection will shew that the omission of the jury to examine the party formed substantially the ground of decision.

held it from a consciousness that its production would be perilous, possibly fatal to his case. It would seem, then, to be extremely doubtful whether at the present day a verdict, cognoscing as of unsound mind a party who might have, but has not, been produced for examination, would be returned by a jury, or if returned, could be held good in law; while, to overturn a similar verdict, where the party had been produced to the jury, and his capacity carefully tested in their presence, would appear to be next to an impossibility.

These doctrines were well illustrated in a comparatively recent case of reduction, in which it was attempted, without producing the party to the Jury at the trial, to set aside a verdict of cognition pronounced by a jury who had seen and examined him. *John Newlands* had been found, on the 11th of April 1823, by the verdict of a Jury on a Brieve of Idiocy, to be then of unsound mind, and incapable of administering his affairs, and to have been in that state from December 1820. A reduction of this service, and of the Letters of Curatory following on it, was subsequently brought by certain parties against Newlands and his curator, on the allegation, that, at the date of cognition, and during the two years immediately preceding, Newlands had been truly of sound mind; and that the service had been obtained "by collusive devices, in consequence of his true state having been concealed from, misrepresented, and unknown to the inquest by whom he was cognosced." The case was tried at Glasgow in September 1825, on issues to the following effect:—(1.) Whether on the 11 of April 1823, and from the month of December 1820 down to that date, John Newlands was of sound mind, and capable of administering his affairs.¹ And (2.) Whether John Newlands did fraudulently, or by producing false evidence, prevail upon and induce the Jury to return the verdict of cognition. A great mass of evidence was led on both sides, but Newlands *was not produced to the Jury*. This circumstance was strongly com-

¹ It will be remarked, that, Newlands having been cognosced as of unsound mind, the question for the Jury to decide under the reduction necessarily was, whether he was of *sound* mind; while, as every one is presumed to be of sound mind until the contrary be proved, the inquiry under a Brieve must be, whether the party is of *unsound* mind. The *onus probandi*, in both cases, rests with the pursuer; but the point which he has to establish in the one case is diametrically opposite to that which he has to establish in the other.

mented on in his charge by Lord Gillies, the presiding Judge, who held that it was *incumbent on the pursuers* to have exhibited him to the Jury; and who also dwelt particularly on the considerations suggested by the fact, that the Jury then sitting, who *had not* seen or examined Newlands, were thus called upon to set aside the verdict of a Jury who *had* seen and examined him. His Lordship did not think that the defenders, in support of the verdict, were called upon to exhibit Newlands to the Jury, or that their case was exposed to any fair observation on account of that not being done by them; and, holding that the examination of Newlands by the former Jury, which was necessary to enable and entitle them to cognosce, might of itself have been conclusive, and might have been the sole and a sufficient ground for their verdict, he did not see how the Jury in the reduction could be entitled or reasonably asked to set aside the verdict of cognition, when the pursuers had not put Newlands, who was said to feign idiocy or imbecility, to the test of an examination by the Jury in the reduction. The Jury found for the defenders on both issues.¹

It has been already observed, that, while it is next to impossible that a verdict of *unsoundness*, founded on due examination of the party, can be erroneous in point of fact, and that such a verdict, consequently, may be held almost proof against any attempt to overturn it, a verdict of *soundness* does not stand in precisely the same situation. When a Jury find unsoundness, they do so because they have observed circumstances indicative of that state, and incompatible with soundness. When they find soundness, again, they do so, partly because the circumstances which they observed were consistent with that state, but principally because they have not observed any circumstances indicative of unsoundness. In both cases, the verdict is in accordance with the evidence; but, in the former, being founded on circumstances indicative of unsoundness actually observed by the Jury, while in the latter, it is founded partly, it is true, on their actual

¹ *Newlands*, Sept. 1825.—For a reference to this case, (which is unreported,)—for the means of access to the papers connected with it,—and for the substance, as given in the text, of Lord Gillies' observations to the Jury on the point under consideration, I am indebted to the kindness of the DEAN of FACULTY, who was the leading counsel for the defenders.

observation of circumstances inconsistent with unsoundness, but chiefly on the fact, that they have not observed any circumstances from which the presence of unsoundness is to be inferred,—the verdict in the one case is based on evidence of a less conclusive nature than it is in the other case. Actual soundness cannot co-exist with actual unsoundness; and if the presence of unsoundness be proved, it is impossible that the party can truly be of sound intellect. But actual unsoundness may co-exist with *apparent* soundness; that is to say, unsoundness may actually be present where soundness, and nothing but soundness, appears, and therefore it is quite possible that a party, who shall have exhibited nothing contradictory of soundness, may truly be of unsound mind. An individual may be produced to a Jury,—he may exhibit none of those peculiarities or incongruities in dress, manner, or aspect, which are almost universally found to accompany unsoundness of intellect,—he may be subjected to the most rigorous examination,—he may return the most rational answers to every question put to him;—in short, he may so appear, and so conduct himself, that the jury can come to no other conclusion than that he is a man not merely of sound, but even of vigorous intellect, while, after all, his mind is in reality unsound. A *monomaniac*, for example, whose mind is unsound only upon one subject, may thus elude detection. Unless the particular subject be touched upon, his insanity will not appear; for on all other points he is, or may be, perfectly sane.¹ He may be compared to a musical instrument, the chords of which, with the exception of one, are all strictly in tune, and on which the most skilful artist may perform any piece of music which does not involve the use of that chord, without discovering, or even suspecting, that the instrument is imperfect. But strike the chord,

¹ The propriety of legal interference,—so far at least as implies the imposition of restraint in its higher degrees,—in many cases of this description, where the affection is bounded in extent, and its character is not such as to render the patient palpably dangerous to himself or to others, either as regards person or property, is a question of much interest, but one which would require greater space for its discussion than my limits permit. I may mention, however, that it is very fully considered by Dr. Conolly, in the Tenth Chapter of his able and eloquent “*Inquiry concerning the Indications of Insanity*.”

—or allude to the subject,—and the defect of the instrument or the intellect at once becomes apparent. Cases of *monomania* are not rare; but rarely indeed can concealment of the infirmity be successfully attempted. It is only in such a case, however, and on the supposition that proof can be brought that the Jury have thus been induced to return a verdict, which, although in conformity with the evidence, is not in conformity with the fact, that the reduction of a verdict of soundness, pronounced after due examination of the party, can rationally be anticipated.

If a verdict finding soundness be returned by a Jury, where the pursuer of the brieve might have, but has not given them an opportunity of seeing and examining the individual, although such a verdict, having been pronounced in the absence of that essential element of proof, is clearly open to reduction at the instance of any party who can qualify an interest, it is equally clear that any proceeding with this view, at the instance of the pursuer of the brieve himself, should, and in all probability would, be repelled as incompetent. The verdict of the Jury must be supposed to have been based on the evidence, such as it was, which was submitted to them; and, as that verdict has declared soundness to be the state of the party, such it must be held truly to be. But the probability that the verdict is well founded, is supported, moreover, by the presumption in favour of soundness, unless the contrary be shewn; and by the further presumption, so unfavourable to the pursuer's case, which arises from the fact, that, although he had it in his power to produce the party, he has not thought proper to do so. Now, as of all conceivable or competent grounds on which an action for setting aside a verdict on a Brieve can be laid, the most important unquestionably is that the Jury have not seen the party, and that their verdict, consequently, has proceeded only on a secondary species of evidence, the pursuer of a Brieve, who should afterwards seek to impugn a verdict, returned under such circumstances, is barred, *personali exceptione*, from availing himself of this leading ground of reduction. And it is difficult, if not impossible, to figure any other ground of reduction, which should explain and justify the absence of this, and, at the same time, adequately supply its place.

It cannot have escaped the notice of the reader, that, in the course of the preceding observations on the nature and effect of

this paramount species of evidence, allusion has repeatedly been made to other kinds of evidence, to which, in questions respecting capacity, more or less weight is in practice conceded. Superior, when compared with every other means of ascertaining the present state of a party, as the examination by the Jury undoubtedly is, and sufficient for the purpose as it is, even singly, in the view of the law, a very erroneous estimate of its importance as an element of proof would probably be formed by any one, whose conclusions should be drawn merely from his observation of the mode in which an inquiry of this kind is usually conducted in practice. He sees the party, it is true, brought into Court, and subjected to examination. But what does he see next? Not that the Jury, satisfied with this examination, come to a decision, and announce their verdict;—not even that they retire, to deliberate upon the verdict which they should return;—but he sees a witness introduced—and witness after witness—while the Jury sit quietly in their box, hour after hour, possibly day after day, listening to the depositions of these witnesses, and the speeches of counsel learned in the law, all about the sanity of the very party whom they themselves have so recently seen and examined. We need not be much surprized, then, should we find the uninitiated spectator of such proceedings somewhat underrate the importance of the one species of evidence, and overrate that of the other; and still less need we wonder, if, when he is told that the law holds the examination of the party to be not merely an indispensable part of the proof, but in itself sufficient proof, he should think it necessary to ask, why, since the party *has* been examined, all this cumbrous and superfluous machinery should have been set in motion, and should require some explanation of a proceeding apparently so anomalous.

It must be conceded that the anomaly does exist; and further, that it is not susceptible of an explanation which shall be altogether and universally satisfactory. But the procedure which gives rise to the anomaly admits of defence, and, to a certain extent at least, is justified by resulting advantages, which counterbalance the irregularity of introducing into our practice, in inquiries of this kind, a species of evidence not originally pointed out by the law as necessary, or even as expedient.

Although the distinction between soundness of mind, and un-

soundness of mind, in our *legal* sense of these terms at least, is sufficiently broad,¹ and although the characteristic features of these respective states are, in the general case, so strongly defined, and so well developed, as to render it no very difficult matter for a Jury, after suitable examination of the individual, to decide whether his mind belongs to the class of the sound, or to that of the unsound,—it is undeniable that cases may occur where the most thorough examination of the party shall furnish no evidence sufficient to satisfy the Jury, that they have ascertained his true mental state. The occurrence of such cases, no doubt, suggested the expediency of endeavouring to supply, from some other source, such further information with regard to the state of the party, as should seem calculated, when the balance hangs in equipoise, and “doubt hovers on the beam,” to render the evidence in the one or the other of the scales the weightier, and enable the Jury to decide whether the proof of soundness or unsoundness preponderates. Now, the only source from which that information, which their own observation had failed to afford, could be looked for, would manifestly be the observation of others; and, consequently, recourse would be had to the testimony of such individuals as should be supposed capable of affording that information. A means of proof, therefore, which the law had not originally contemplated as requisite for any case, was thus, from a sort of necessity, at first received in some cases, and in the course of time, has been extended to all; whether profitably or wisely, a brief consideration of the nature of this kind of

¹ Dr. *Mason Good*, in the fourth volume of his *Study of Medicine*, referring to the *medical* definitions of unsoundness of mind, complains that some of them are “so narrow as to set at liberty half the patients in Bethlem or the Bicêtre, and others so loose and capacious as to give a “strait-waistcoat to half the world.” These objections do not appear to apply to the definition of *insanity* proposed by Dr. Conolly, who asks, whether we can better define this state, than by saying that “it is the “impairment of any one or more of the faculties of the mind, accompanied with, or inducing a defect in the comparing faculty.” Those who may wish to pursue the subject further, and to make themselves acquainted with the grounds on which Dr. C. adopts this definition, will find them stated at length in the ninth chapter of that gentleman’s “*Inquiries*,” before referred to. With regard to *idiocy*, again, the medical definitions of that state correspond, generally speaking, with that received in our law, and are not less precise and intelligible.

evidence, and of the weight to which it seems entitled, will better enable us to determine.

The evidence thus introduced is derived from the testimony, *first*, of medical men, particularly of those practitioners who have made mental disease their special object of study; and, *secondly*, from the testimony of individuals who have had opportunities of seeing and observing the party, and who therefore may be supposed able to speak to facts which shall elucidate his state.

It is not intended here to discuss the *quæstio vexata*, whether the evidence of medical men should not be considered inferior to that of other individuals who may have had frequent opportunities of observing the party, where the same opportunities have not been enjoyed by the practitioner. It must be admitted that the "patient inquiry, daily communication with deranged persons, "and attentive observation of their habits,"¹ which the exercise of their professional duties implies, must render men thus practically conversant with the affections which are held to constitute unsoundness of mind, more competent observers, in the general case, than mere unprofessional persons; and that, in a certain class of cases, even with more limited opportunities of observing, their observations must be more to the point, and their testimony, consequently, more important, than that of unprofessional individuals whose opportunities may have been infinitely greater.

Without entering into particulars, we may observe, that the cases in which a resort to medical evidence seems proper and likely to be beneficial, are those chiefly where the question to be decided is of *insanity*, (contradistinguished as well from idiocy as from soundness of mind,) or when it refers to the state of a party alleged to be *non compos* from imperfect construction of the organs of sensation. But where the question is of *idiocy*, although it is possible to conceive a case which might receive some illustration from medical evidence, still, when we look to the nature of that state, as described both by our institutional writers, and the most eminent medical authorities, it is difficult to imagine why an intelligent Jury should not, from their own examination of the party, be as competent, in the general case, to determine whether the party is, or is not in that state, as they

¹ Haslam's *Med. Jurisprudence*, p. 5.

could possibly be after hearing the testimony of all the practitioners in the empire.

By our more modern practice, however, medical evidence is invariably resorted to, whatever the nature of the case may be ; and the consequences may easily be divined. In many cases its operation is most salutary ; in some, although productive of loss of time, and probably of patience, it is harmless ; while, in others, its effect is positively mischievous, and, instead of throwing light on the point to be ascertained, it envelops a clear case in doubt, and plunges a doubtful one into still deeper obscurity. But, notwithstanding the inconveniences, and even worse than inconveniences, that sometimes result from the indiscriminate application of medical evidence to the investigation of such cases, the advantages which are often to be derived from the testimony of learned and enlightened members of the medical profession are so obvious,¹ and the satisfaction which it must frequently afford

¹ A recent writer of some note on Medical Jurisprudence states it to be "proverbial, that the most eminent members of the faculty" (of medicine) "are among the worst witnesses in our Courts of Justice." How far his professional brethren may relish this *dictum*, or whether they are disposed to admit its truth, I know not ; but I can inform Dr. Ryan, that, among lawyers at least, it is always presumed that the *more* eminent a physician, the *better* witness he will be found to make. The writer then proceeds to account for this phenomenon, on the theory that it is occasioned (1) "by the *novelty* of their situation." Now, when we consider the vast variety of cases to which medical testimony is applicable, and in which it is uniformly resorted to, we should imagine that by the time a medical gentleman shall have taken his place among the "most eminent members of the faculty," such a situation must be any thing but a "novelty" to him. Be this as it may, however, why must "the most eminent members of the faculty," when they find themselves for the first time in a witness-box, necessarily be more sensitive than the least eminent members of the faculty, on whom, it would appear, according to the hypothesis of this writer, the "novelty of the situation" does not produce any effect ?—But the phenomenon, we are told, is occasioned, (2) "by the brow-beating and bullying behaviour of rude lawyers, which, one would think, is caused by a desire to impede, and not to promote the ends of justice—the elicitation of truth."—"Medical men,"—the writer goes on to say,— "are not thus to be insulted by the pettifogging scurrility of their rivals, who are often their inferiors in talent ;" and he considerably reminds them, that "*they* are not lawyers,—that *they* are never employed to convert truth into falsehood, to make black white,—and thereby to gain a reputation." On the taste, temper, and knowledge of the subject, displayed in these remarks, any comment is unnecessary.

to a jury to find their own inferences corroborated by those of individuals generally so competent both to observe and to infer correctly, is so desirable, that these considerations should incline us, on the whole, more towards the admission, than the exclusion of medical evidence, and should induce us rather to acknowledge with gratitude its frequent advantages, than to carp and cavil at its occasional defects.

The evidence of the medical witness relates partly to matter of fact, and partly to matter of opinion. He states to the jury such facts, relevant to the question at issue, as have fallen under his notice, or been elicited by the tests to which he has subjected the party. He states, also, the opinion which he deduces from these facts, and the reasons of that opinion. From what has been said in the preceding pages on the subject of evidence, it is obvious that the essential point for the consideration of the jury is, not the opinion which the witness shall have formed, but the facts on which he has formed it. But, although the verdict of the jury must ultimately be founded on their own inference from the facts proved in the case, the opinion of an intelligent and experienced medical witness is unquestionably well worthy their serious attention, as an aid to the formation of that inference; and therefore, in considering the facts which he attests, the jury ought to consider, too, the conclusion which he draws from these facts, and the reasons he assigns for having come to that conclusion. Should these reasons appear not to warrant his conclusion, while the jury reject the conclusion, they still have the facts, from which a more legitimate inference may be deduced by themselves. It is almost unnecessary to remark, that, however eminent in his profession the witness may be, the jury should in no case adopt his conclusion, unless the grounds of it are completely satisfactory to their own minds. Where this is not the case, or where medical witnesses come to different conclusions on facts essentially the same, the jury must throw aside the opinions which they deem inconclusive, and form their own on the facts which shall have been established in evidence, with such assistance as they may receive from those opinions, should there be any such, which they consider well founded.

The effect to be given to the evidence of individuals not belonging to the medical profession, must be with reference exclu-

sively to matters of fact ; and, even under this limitation, such evidence seems entitled generally to but little weight. For so seldom it is that unprofessional persons are even tolerably familiar with the genuine *indiciæ* of unsoundness of mind, and so loose and inaccurate are the notions commonly entertained on the subject, that we cannot rationally expect to find in non-medical witnesses either very competent observers, or very distinct reporters. What they have seen, they have in all probability seen accidentally, and investigated superficially ; and, in the general case, even under the most favourable circumstances, the facts to which they can speak must, as tests of capacity, be beyond all comparison inferior in point of weight and relevancy to those elicited by the well-directed examination of the party by the jury themselves. Where the jury, therefore, have an opportunity of examining the party, the testimony of ordinary individuals, although occasionally not without its use, may in most cases be looked upon as unimportant ; and the jury, in founding any conclusion on such evidence, must proceed with that circumspection which the questionable and slippery character of the premises demands.

The rapid survey we have thus taken of the different kinds of evidence, which, although not pointed out by our law, are now fairly adopted into our practice,—and which, although in truth auxiliary merely to the evidence derived from the examination of the party, assume in appearance a predominance over that essential means of proof to which they have no legitimate right,—has, it is trusted, sufficiently demonstrated the vital importance of the one, and, unless in its unavoidable absence, or in some very peculiar case, the comparative insignificance of the others. However decided, therefore, may be the testimony of ordinary witnesses,—however positive and unanimous the opinions of medical men,—if the jury, from their own inspection and examination of the party, should come to an opposite conclusion with respect to his state, their verdict would nevertheless be based on evidence which the law holds to be at once sufficient of itself, and superior to every other.

The first branch, then, of the inquiry, has for its object the determination of the present state of the party ; and this, as has been shewn, is in practice endeavoured to be accomplished by the

examination of the party, and by the testimony of medical and other witnesses. The next point to be inquired into by the jury is, how long the party, if of unsound mind, has been in that state.

“That part of the verdict,” says Mr. Erskine, “which looks backward to the past state of the party, must of necessity rest solely on the testimony of witnesses.”¹ The past state of the party may be an important element in determining his present condition as to soundness or unsoundness; but it is, of course, only where the jury shall be satisfied that the party is at the time of unsound mind, that it becomes necessary for them to take into consideration the point as to how long he has been in that state. After what has been said on the subject of evidence, the description of testimony to be adduced for this purpose, and the rules by which the effect that should be given to it is governed, must be sufficiently obvious. Although proof which shall satisfy the jury as to the time when the unsoundness truly commenced must undoubtedly be laid before them, still the evidence, which has established the presence of unsoundness, must in most cases have incidentally thrown considerable light on this point also; while, the actual existence of unsoundness being once established, the direct evidence necessary to fix the date of its commencement may be of a character somewhat less weighty than is requisite for establishing the actual existence of unsoundness.

The third, and, in practice, the last point which the brieve directs to be investigated by the jury, has no relation to the state of the party. Under the branch of the inquiry now to be considered, they are called upon to ascertain who is his nearest male agnate of lawful age, with a view to the appointment, if necessary, of this individual as his curator.²

A distinction was anciently made by our law between fatuous and furious persons; the curatory of the former being committed to the agnate, while that of the latter was held to belong more

¹ *Ersk. Inst. B. I. T. 7. § 51.*

² It may be noticed, that the guardians appointed to persons of unsound mind are, by our law-writers, called sometimes *Tutors*, and sometimes *Curators*—the terms being employed by them without distinction. As such guardians are charged with the care both of the person and the property, either term seems equally applicable, and, in these observations, they are used indifferently.

properly to the Crown, because the Sovereign alone had the power of coercing with fetters,¹ the use of which might sometimes be required in the case of furiosity. This distinction was abolished by the statute 1585, c. 18, which declares that “the next agnate shall be preferred to the curatory, both of fatuous and furious persons, according to the common law.”² The next agnate, then, of lawful age,—by which, as before stated, is understood the age of twenty-five years complete,—is entitled to the office of curator, in all cases where he shall choose to claim it. There are only two expressly recognized exceptions to this rule. In the case of a married woman cognosced as unsound, her husband will be preferred to the agnate;³ and a father has a right, founded in nature itself, to the curatory of his fatuous or furious son. Mr. Erskine alludes to a third case, which, in his opinion, ought also to form an exception to the rule, viz. where a curator has been appointed to an idiot by the testament of his father;—“for surely,” he maintains, “the father is as justly entitled to name a curator to manage for his son, while he continues under that disability, as he is to appoint one for protecting him against the follies of youth. But,”—he very properly adds—“before the testamentary curator can enter upon the exercise of his office, the son ought to be declared or cognosced an idiot.”⁴ Nor does there seem any reason why a son, properly qualified, should not be preferred to the agnate as curator of his insane father or mother.

It may happen, however, that there is no agnate; and it has been contended that, in such a case,—the object of the brieve being to ascertain the state of the party, *with a view to his being placed under the curatory of his next agnate*, if necessary,—as no agnate exists, the brieve, so far as it relates to the next agnate, must remain unanswered; and that a return, which shall thus be silent with regard to so essential a point of inquiry, can be of no efficacy. But the object of the inquiry would seem to be sufficiently attained,

¹ *Craig*, De Feudis, Lib. 2. D. 20. § 9.

² *Ersk. Inst. B. I. T. 7. § 50.*

³ *Haliburton v. Maxwell*, Dict. 16,379. Here the husband's right was sustained, although a voluntary separation had taken place between him and his wife, prior to the commencement of her mental incapacity.

⁴ *Ersk. Inst. B. I. T. 7. § 49.*

if the jury should return a verdict finding that *there was no agnate*; for, in such a situation, there would plainly be room for a gift of curatory from the Crown. It has been already observed, that gifts of curatory have occasionally been conferred in cases of necessity, where the relations of the party had not chosen to come forward;¹ and although such gifts are certainly a deviation from our law, their irregularity consists only in the circumstance that they pass without any previous inquiry into the state of the person to whom the curator is appointed. But, in the case supposed, this objection has no place; for here the state of the party has been investigated and ascertained by the most solemn form of procedure known to the law. When, therefore, a party shall have been cognosced as unsound, and the jury at the same time find that there is no agnate, the Crown is clearly entitled,—nay, bound,—to nominate a suitable curator. And this exercise of the power which belongs to the Sovereign, as *parens patriæ*, seems not less competent or obligatory, in the case of a party cognosced as unsound, whose next agnate shall decline to accept of the office; but if the agnate should at any after period agree to act, the curatory thus given will fall, and the agnate supersede the curator-dative.²

But, assuming the party not to be without male relations by the father's side, no evidence is required beyond that of two unexceptionable witnesses, to authorize the jury to decide who is the nearest agnate, and whether he is of lawful age.

When the jury have examined the party,—have heard the testimony of the various witnesses,—and been addressed by the counsel on both sides, the evidence is summed up by the presiding Judge, who gives them the necessary directions in point of law. Should their minds be then made up, they return an immediate verdict;³ or, should they wish further time for deliberation, they may retire for that purpose. The issue which they have to try, it will be recollected, is, under a brieve of idiocy,

¹ *Ante*, p. xviii.

² Case of *Wardrop, Morr.* p. 6276. The same rule applies, *à fortiori*, to the case of a factor *loco tutoris*, or *curator bonis*, appointed by the Court, without cognition, to a person fatuous or furious.—*Bell v. Henderson*, 10th March 1784, *Fac. Coll.*

³ The verdict of the jury,—which consists of fifteen,—does not require unanimity, but may be determined by a simple majority.

whether the party is “*incompos mentis, fatuus, et naturaliter idiota* ;”—under a brieve of furiosity, whether he is “*incompos mentis, prodigus, et furiosus*.” The issue must be considered and answered by them *in terminis* ; and therefore, unless the jury are satisfied that the evidence amounts to proof of actual *idiocy* or *furiosity*, they are not entitled to cognosce.

If the verdict which they ultimately return shall find that the party is of unsound mind,—that he has been in that state for a certain time back,—and that the claimant, or, as it may happen, some other relation, is his nearest agnate of lawful age, that individual proceeds to grant a bond of caution, finding security for his intromissions with the estate of the party. The clerk of Court gives out an extract of the service, which, with the verdict, attested by the Judge and Chancellor of the Jury, is returned, or, as it is technically termed, *retoured* to Chancery ; and an extract of the retour, properly authenticated, being obtained from the Chancery-office, Letters of Curatory in favour of the agnate are expedite under the Quarter Seal, and form his title to act. Where, again, the verdict finds that the party is *not* of unsound mind, a corresponding retour is made, with similar formalities so far as applicable.

The effect of cognition is that the party cognosced ceases to have any person in law. He is held to have been incapable of acting, or of consenting to any act, since the time at which his mental infirmity is declared to have commenced ; and any act or deed which he may have done subsequently to that time and before cognition,¹ or which he may do after cognition, is *ipso jure* null, and may be found so by way of exception, without the necessity of an action of reduction.

The powers of curators to persons of unsound mind, and the obligations which their offices bring them under, are precisely the same as those of tutors to infants or pupils. To describe them at any length would be foreign to the object of these observations, and to describe them adequately would require an extent

¹ The statute 1475, c. 66, already referred to, declares all deeds of alienation granted in these circumstances to be null ; but as this act speaks only of deeds of *alienation*, it is doubtful whether the retrospective rule applies to all other transactions. Any deed, however, of whatever kind, may be reduced, by bringing sufficient proof of the granter's incapacity at the time of its execution.

of space which could not be afforded. With reference to this subject, therefore, it must suffice to say, that while, on the one hand, the powers of the curator extend to every proper and necessary act, relative to the care and control of the person of the party, and to the administration of his estate both heritable and moveable, the curator is bound, on the other, to exercise these powers with the most strict and conscientious regard to the interests of the party; nor, in the event of the party's death, or of his regaining the use of his faculties, will the curator be discharged from responsibility until he shall have fully accounted for his actings.¹

The office expires, either by the death of the party under curatory, or by his return to a sound state of mind. A curator, however, cannot resign his office on the occurrence merely of one of those lucid intervals commonly attending that kind of insanity which is termed *lunacy*;² for before he can competently do so in this, or in any other case where recovery is alleged, "the distemper must be radically cured, and that ought regularly to be declared by the sentence of a Judge."³ The form by which the curatory is brought to a termination, in the event of the party recovering his reason, is by *Declarator of Reconvalence*—a description of action to which the Supreme Court alone is competent. In this action, on satisfactory proof of convalescence, the Court will pronounce a judgment declaring the curatory expired, void, and null, and the party *sui juris* in time coming. But, should a relapse occur, the curatory cannot be revived, and the curator, should he desire to re-assume the office, can only do so after a new cognition by brieve and inquest.⁴

We have now reviewed—it must be admitted in a very cursory manner—the various states of mental disability for which remedies are deemed necessary and proper by the law of Scotland,—

¹ *Miller*, 15th May, 1810, *Fac. Coll.*

² As the law presumes the state of a man's mind to continue unchanged until the contrary be made manifest, where the validity of a deed executed by a *lunatic* after cognition shall be maintained, on the plea that it was executed during a lucid interval, the burthen of proof showing sanity is of course thrown upon the party who seeks to establish the validity of the deed.

³ *Ersk. Inst. B. I. T. 7. § 52.*

⁴ Case of *Elderline*, 27th Feb. 1740.—Reported by Lord *Elchies*.

the nature of the evidence by which the existence of these several states is ascertained,—and the different measures which have been devised for affording that relief which is considered suitable to each particular state. And, without claiming for our own system a pre-eminence over the systems of other countries equally advanced in civilization, or affecting to assert that it is altogether free from imperfection, we cannot but allow that it appears well calculated, on the whole, to afford the *maximum* of relief which can be given by the state, consistently with the *minimum* risk of infringement either on the rights and interests of individuals, or on those of the community at large.

It was originally intended that these observations should close with an analytical examination of the evidence in the case of DAVID YOOLOW, a Report of which is now presented to the profession and the public. But that evidence will be found so thoroughly sifted and minutely commented on, and the principles by which its application ought to be regulated so well explained, in the speeches of the leading counsel and the charge of the Sheriff, that even the unprofessional reader, keeping in view the general doctrines of the law with relation to this description of case, can have little difficulty in forming for himself an estimate of its true bearing and effect ; and, on that evidence, it is thought, he can have hardly more difficulty in coming to the conclusion that Mr. Yoolow was not a fit subject for cognition.

To the legal profession this Report cannot fail to be of much practical value. Several important points of form will be found to have been discussed at the trial, and the relative decisions may hereafter be quoted as precedents. And, as it is understood that no report has hitherto been published which embraces the whole proceedings, from first to last, in a case of the kind, the present one will form a useful manual for future practice in similar cases.

In conclusion, I ought to state, that to the exceeding kindness of my friends, Mr. SHERIFF L'AMY, the Judge who tried the case,—and Messrs. ROBERTSON, M'NEILL, NEAVES, and A. M'NEILL, the Counsel who conducted the proceedings,—I am indebted, almost entirely, for the materials of the ample and, as I believe, very accurate Report which follows. On the same

score, and for access to the documents printed in the Appendix, my acknowledgments are due to Mr. C. KERR, the agent of Mr. Yoolow. I have been favoured, also, by Mr. GIBB, the Session-clerk and Schoolmaster of the parish of Kettins, with a drawing of an ancient tombstone of the Yoolow family,—(who appear to have resided at Mill of Peattie, in that parish, for upwards of three hundred years,) and with authenticated Excerpts from the parochial records relative to the family, which contain, besides, much interesting information regarding the state of manners and church-discipline in that part of the country, during the seventeenth and eighteenth centuries. But, as these excerpts,—which, I should mention, derive additional value from Mr. Gibb's explanatory annotations,—have no immediate connection with the object of this publication, it has been judged advisable rather to print them (accompanied by a lithograph of the tombstone) in a separate form, for the benefit of the curious in such matters.

EDINBURGH, 12th *May*, 1837.

REPORT, &c.

COUPAR-ANGUS.

SATURDAY, 28th January 1837.

The SHERIFF took his seat at eleven o'clock.

Counsel for the Pursuer.

PATRICK ROBERTSON and ALEX. M'NEILL, Esqs. Advocates.
ANDERSON and FLEMING, Writers, Coupar-Angus, and
J. BRODIE, Solicitor, Edinburgh—*Agents*.

Counsel for the Defender.

DUNCAN M'NEILL and CHARLES NEAVES, Esqs. Advocates.
CHRISTOPHER and JOHN KERR, Writers, Dundee, and
JOHN CHRISTIE, Solicitor, Edinburgh—*Agents*.

The Trial took place, by appointment of the Sheriff, at Coupar-Angus, as being near the residence of David Yoolow, whose state of health made it doubtful whether he could be removed to a distance. There is no regular Court-room at Coupar-Angus, and the Court on this occasion was held in the Parochial School-house, as being the most commodious place. The room was crowded at an early hour.

Mr. ROBERTSON, for the pursuer, moved that the brieve and claim be remitted to the knowledge of an inquest.

The following Jurymen were then chosen by ballot,* from among the "honourable persons and faithful men" lawfully summoned to pass upon the inquest,—viz.

1. John Boath, jun. manufacturer, Forfar.
George Ballingall, farmer, Cookston.
John Cairncross, accountant, Dundee.
Peter Samson, farmer, Kinalty.

* The Sheriff appointed the Jury to be chosen by *ballot*, as relieving himself from the responsibility of making a selection.

5. John Steele, merchant, Forfar.
 John Sanderson, merchant,^e Dundee.
 W. D. Proctor, Esq. Glamis.
 J. H. Anderson, corn-merchant, Dundee.
 Andrew Moncur, Magdalene Yard, do.

11. William Wilkie, farmer, Balbridie.
 David Halkett, farmer, Dunkenny.
 Thomas Adamson, ship-builder, Dundee.
 John Colville, farmer, Carlingwell.
 John Taylor, residing Half-penny-burn.

15. William Halley, merchant, Dundee,—

Who were all solemnly and lawfully sworn to pass upon said inquest, and who thereupon unanimously made choice of the said W. D. Proctor to be their chancellor.

Mr. ROBERTSON moved the Sheriff now to receive evidence of the lawful execution of the brieve, which the Sheriff allowed, —whereupon John Stewart, Sheriff-officer, was sworn, and deponed that he executed the brieve in terms of the execution thereon, in presence of the witnesses therein mentioned; and the witnesses, James Stewart and Alexander Peacock, being severally sworn, deponed that they were present at the execution of the brieve, in terms of the execution thereon, and subscribed the same.

At the request of the counsel for the pursuer, the brieve and claim were read to the Jury.*

Proclamation was then made to all persons having, or pretending to have interest, to compear and object,—whereupon compeared the counsel and agents above named, for David Yoolow.

Mr. A. M'NEILL rose to open the case for the claimant; upon which it was suggested by Mr. D. M'NEILL, that, before going further, the course of procedure to be followed ought to be settled.

Mr. ROBERTSON and Mr. A. M'NEILL contended, on the part of the pursuer, that the same course should be followed as

* The proceedings preliminary, as well as the brieve, claim, and other documents, are printed in the Appendix.

is in use in civil trials by Jury in the Court of Session,—namely, that the counsel for the pursuer should open the case, and lead the evidence for the pursuer—that the counsel for the defender should then address the Jury, and lead the evidence for the defender—and that the counsel for the pursuer should reply.

Mr. D. M'NEILL and Mr. NEAVES contended, on the part of the defender, that the course of proceeding alluded to was of recent introduction into Scotland, and extended only to one Court, in which it was established by special enactment and regulation, as applicable to certain causes only: That the universal form of procedure in Scotland in the Criminal Courts, supreme and inferior, and in all other Courts, was, that the counsel for the pursuer might shortly open the case—that the counsel for the defender might also state shortly the nature of the defence—that the evidence for both parties should be led, beginning with that of the pursuer—that after the whole evidence on both sides was concluded, the counsel for the pursuer should address the Jury on the whole case, and then the counsel for the defender should also address the Jury on the whole case.

The SHERIFF intimated his opinion, that the course contended for by the counsel for the defender was the proper course in a trial of this kind; and stated that the same course had been followed in a recent trial before him, relative to compensation under a rail-road act.

The counsel for the pursuer then stated that they did not mean to press the point: Whereupon

Mr. ALEXANDER M'NEILL opened the case for the claimant, as follows:—

Gentlemen of the Jury,—The object of this inquiry is to ascertain the state of David Yoolow's mind. By the brieve which has been read, you are called on to say whether he is, and how long he has been, of unsound mind. The brieve is urged by the nearest agnate; but that person does not seek to be served to the office of tutory. It is not necessary that he should be served. He has no personal interest in the matter; and if you should find that David Yoolow is, as I allege, a person of unsound mind, it will be for the Court of Session, or other competent authority, to nominate a guardian to his person and estate. You will, therefore, not be called on to return any answer to that head of

the brieve which directs inquiry as to who is the nearest agnate.

You will have an opportunity of seeing this person, and forming your own estimate of his capacity. He will either be produced to you, or you must visit him at his residence. My statement is, that he is a complete imbecile—not absolutely bereft of reason—but totally unable to manage his own affairs. He is now fifty-two years of age, and has all his life been treated as a child. In early youth he met with an accident, which brought on paralysis and fever—the effect of which on his constitution, bodily and mental, was to arrest all advancement; and he has remained in a state which cannot strictly be called second childhood, as he has never been enabled to emerge from first childhood. He has been constantly attended as a child. He was reduced to a state of great deformity by the malady in his youth. What the exact nature of that malady was I am not able to state, nor is it of much consequence now; but you will find that its effect on the mind and body was such as I have described. From infancy he had been a person of very feeble, if not the feeblest intellect; but he was able to go to school, and he learned to read. This was the utmost amount of his attainments. He was never taught to write, and he does not seem to have been taught arithmetic. His parents were early told that his mind was not susceptible of improvement, and that expense bestowed on education would be idly incurred. They therefore made no attempt to give him farther instruction. His reading has since been confined entirely to the Bible. He has a remarkable memory, and in particular exhibits a distinct recollection of the contents of the sacred volume. But such memory is by no means unusual in persons of imbecile mind. Instances are familiar to us all, of persons in a state of undoubted and hopeless idiocy exhibiting most retentive memory; and it most frequently happens that the Scriptures form the subject to which the memory is applied. Medical men will tell you that a faculty of this nature is even symptomatic of weak and disordered minds. At this very time there are individuals confined in an asylum not far off, who exhibit the same knowledge of the Scriptures which you will find that David Yoolow possesses. They have a faculty of citing them at times with propriety, but not in such a manner as to indicate the existence of that reasoning power which all must have to be able to conduct the ordinary affairs

of life. It is very much to the credit of the people of this country, that these imbeciles have any attention which they are capable of bestowing, directed to sacred things. They have souls to be saved; and it is most fitting that the consolations of religion should, as far as possible, be placed within their reach. It does not require any grasp of mind to take in some of the most important truths, and on these the minds of the most imbecile may repose with comfort and satisfaction. It has even been remarked that, on religious topics, persons of weak mind have often shewn what might be termed acuteness. The medical books give many proofs to this effect; and I believe the medical gentlemen will tell you that what I now state is not unusual. It is related of a celebrated French divine,* that he once offered to give an apple to an idiot, if he would tell him where God was. The answer of the idiot was, "I will give you two, if you will tell me where he is not."

I have read somewhere, that the following beautiful lines are ascribed to an idiot :—

" Could we with ink the ocean fill,—
 Were the whole earth of parchment made,—
 Were every single stick a quill,
 And every man a scribe by trade,—
 To write the love of God above,
 Would drain the ocean dry,
 Nor could the scroll contain the whole,
 Though stretched from sky to sky."

But it is not by the recollection of sacred subjects that the mind is to be tested. Greater power may be possessed, and the individual may yet be hopelessly helpless, as to all management of the most ordinary concerns of life. This I assert to be the case of David Yoolow. He has never been engaged in a single business transaction: He has no capacity for business of any kind. To the world he is a complete recluse. He rarely leaves his room,—he requires the assistance of a servant in every act of his life. Without such assistance he can do, and attempts to do nothing. His only occupation is constantly, for so many as five or six hours a day, poring over the Scriptures. But of what is going on in the world around him, he is altogether ignorant. He reads no other book, and has neither taste, relish,

* Bossuet.

nor inclination for any thing else. In his father's settlement he is described as a person weak in mind and body. The expressions used are not very strong ; but they plainly indicate the sense of the father that he was incapable of taking care of himself. Though the only son, he is left nothing. The care of his person is left to his sister : and a small sum is provided, under her superintendence, to be appropriated to his maintenance. In like manner, he is left nothing under his sister's settlement. A sum is provided for his behoof, but not under his management or charge. He has important rights in connection with that settlement, which must be the subject of investigation elsewhere ; but of them I say nothing in this place. They form no part of our inquiry, although making it very important for that imbecile that this inquiry should take place. I will not trouble you with legal authorities on the nature of this investigation. My proposition to you is, that David Yoolow is a man of unsound mind, incapable of managing his own affairs. I do not say that he has no ray of reason, but I say that he cannot protect himself in regard to the affairs of this world ; and I say that this incapacity is the consequence of his faculties having been impaired, or never having been matured. It is not necessary that it should appear that he is bereft of all judgment—that he should not know the difference betwixt right and wrong. The law would leave many a one altogether unprotected, if it were necessary to establish such deprivation of the faculties, before it would sanction the appointment of a tutor. Such deprivation as exists in this case is sufficient to meet the exigency of this brieve ; and upon the evidence to be adduced, I doubt not but you will so find.

Mr. ROBERTSON then moved that the defender, David Yoolow, be produced to the inquest,—whereupon

It was averred by Mr. D. M'NEILL, on the part of David Yoolow, that to remove him at present from his house to the place where the Court was sitting, would, in his state and condition, be attended with very serious hazard to his health, and even danger to his life ; and as means were provided for enabling the inquest to see him at his house, he moved that the Jury should visit him there, instead of his being removed hither, and that the visit should take place at such time as might be arranged.

Mr. ROBERTSON, for the claimant, averred, and offered to prove, that David Yoolow was in such a state of health as to admit of his being removed from Mill of Peattie to Coupar-Angus ; and produced a certificate to that effect under the hands of four medical gentlemen, which would be verified, if required, —which certificate was marked by the clerk.

The SHERIFF allowed to both parties a proof of their averments.

PATRICK NIMMO, Physician in Dundee, *sworn*.

Examined by Mr. D. M'NEILL :—I am physician to the Lunatic Asylum, Dundee. I visited David Yoolow on Tuesday night. I think that to remove him from Mill of Peattie to the Court-room here, would be attended with great risk of an apoplectic attack, especially as it is understood that when he was eight years of age, he suffered from an apoplectic attack, followed by paralysis. I think that in the present state of the weather, and considering his habits of confinement, it would be dangerous to remove him.

Cross-examined by Mr. ROBERTSON :—I have only seen Yoolow once,—viz. on Tuesday last, four days ago ; and I have no personal knowledge of the attacks which it is said he suffered when he was eight years of age. I have understood that he had a second attack twenty months after the first. I have understood that he goes occasionally to the garden and door, but that otherwise he is confined to the house. I ground my opinion of the possibility of another attack upon his present nervous and excitable state. I do not altogether allude to the mere journey from Mill of Peattie to the Court-room, but also to his coming suddenly into Court after his long seclusion. If the Jury were to go to Mill of Peattie to visit him, it might not produce the same effect, or at any rate, would in a less degree. Dr. Bell, of Dundee, accompanied me when I visited Yoolow ; and, I think, we were about an hour and a half in the room with him. I think it would perhaps be equally dangerous that the Jury should see him at the inn, as the journey, which is equally great, might affect him, though upon that last point I cannot speak decisively.

Re-examined by Mr. D. M'NEILL :—He is in a weak state of body, and cannot walk easily ; and his appearance seems to indicate the attacks of paralysis, which I understood he had. His bodily health seems pretty good.

ALEXANDER BELL, Surgeon in Dundee, *sworn*.

Examined by Mr. D. M'NEILL :—I visited David Yoolow on Tuesday and also this morning, and, under all circumstances, I think it would be

dangerous, and very improper, to bring him here. I think there would be a risk to his health, and possibly to his life.

Mr. ROBERTSON then stated, that after the evidence which had been adduced, he did not think it would be proper to press for the removal of Yoolow; and that, although prepared to adduce contrary evidence, he would not avail himself of it, but would consent that Yoolow should be visited at his own house. A minute to this effect was entered upon the record, whereupon

The SHERIFF ordained the Jury, with the counsel on each side, to proceed, with himself, to Mill of Peattie, for the purpose of visiting Yoolow.

The SHERIFF now observed, that if the defender's counsel intended to make any opening statement on his behalf, the proper time for doing so was at this stage of the proceedings.

Mr. NEAVES, accordingly, opened the case for the defender:

Gentlemen of the Jury:—I had not expected to address you at this time, or indeed at all in this cause. But a deviation from the usual procedure on the other side, renders it necessary that some observations should be made now on behalf of my client. It would be unjust that you should proceed to so important and critical a step as the personal examination of the defender, after having heard the strong statements and able views of the opening counsel, without also hearing some explanation of the nature of the case, as it is to be maintained on this side of the bar.

It is my duty to warn you, that in now seeing and conversing with David Yoolow, it will be necessary for you to summon up all that conscientious caution and impartiality, which your oaths have bound you to observe in a question so seriously affecting the interests of a fellow-being. Yoolow must be presented to you under great and singular disadvantages; and allowances of no ordinary kind must be made, before a true estimate of his condition can be formed. You will be struck on beholding him with defects and peculiarities, which it is impossible for any one to contemplate without uneasiness and pain. A cripple and a paralytic from his boyhood, you will find his limbs decrepit and deformed, his arms and hands misshapen and contorted so as to be useless for the needful purposes of life, and his eyes, countenance, and whole frame agitated by fearful and convulsive motions, that

seem incompatible with regular volition or intelligence. His articulation, also, has been much affected by his disease, and adds another difficulty to the task which you have to perform—another obstacle to your arriving at the truth. I do not fear that such men as you, bent simply on discharging your duty, will allow any fastidious feelings to operate with you; but I do fear, that you may be led to associate and confound together, things that are essentially different—bodily infirmity and mental incapacity. It is not the external husk that you are to regard. It is the mind within that you are to search for, and measure if you can reach it. And I have no hesitation in telling you, that within that unpromising and forbidding frame of body, there does reside a mind and soul possessed of all the faculties and powers which belong to a rational, an intellectual, and a moral creature. You must remember also this man's history. His bodily helplessness cut short his education, and has made him for more than forty years a recluse, scarcely moving from his own door, and unable to look on the wide face of nature or of human society. Think what a deduction such a disadvantage must make from any man's attainments and experience. But the attainments may be wanting, while the powers remain. This unfortunate man has not allowed himself to sink into a state of mere vegetation and utter inertness. His faculties have not been idle. Excluded from active pursuits or worldly cares, he has betaken himself to the best resource for one in his condition—the study of the Scriptures; and these he has mastered, not by rote, but in their true meaning and spirit. He knows, not merely the words of his Bible, but the whole connected system of Christianity. Neither is he ignorant or slow of perception as to the general relations of human life. He understands the basis on which these rest. He has a lively sense of the obligations of conscience, and both morally and religiously recognises the accountability of man here and hereafter for all his actions. If I have described him rightly, it is plain that you can never in this case return a verdict affirming the brieve. You have now heard the explanations we have to give on this side of the bar. You will make those allowances which common sense and justice require;—overlooking the external disadvantages which you have to meet with, you will endeavour earnestly to come in contact with the understanding of this poor man, and form an opinion of its powers. If you do so, I have no fear of the result.

The Sheriff, with the clerk, the Jury, and the leading counsel on each side, then proceeded to the residence of David Yoolow, at Mill of Peattie, which is about three miles distant from Coupar-Angus.

On their arrival there, the Sheriff and counsel went into the apartment where David Yoolow was. The Sheriff stated to Yoolow, that he (Mr. L'Amy) was the Sheriff of the county; that one of the gentlemen with him, whom he pointed out, was Mr. Duncan M'Neill, who was his, Yoolow's, counsel; and that the other was Mr. Patrick Robertson, who was the counsel for Peter Duncan.

The Sheriff then asked David Yoolow various questions suggested by himself and the counsel; after which the Jurors were introduced, and in their presence the Sheriff repeated some of the questions he had already put, and also put others. Questions were likewise put by the counsel, and by some of the Jurors. The interview lasted about an hour.

Yoolow was asked if he was aware that there was a proceeding going on at Coupar-Angus for the purpose of trying his case? He answered, "Yes—and I hope you will soon bring it to an end." He was asked, if he knew that the object of the trial was to ascertain the state of his mind? He answered, "My mind is strong enough, though my body and bones are weak."

In answer to other questions put to him, he stated that he had been at school at Kettins, till he was about nine years of age, and that he had learned to read, but had not been taught arithmetic. He mentioned the name of the schoolmaster of the parish, and also that of the present minister, Mr. Symmers. He stated the dates, and the length of time since the death of his father and sister respectively. He said that his sister, Miss Yoolow, had been kind to him. He stated that his father had left him £600, which was in the bank; that he formerly got £20 of interest, but last year only £12. The Sheriff having remarked that this was two per cent. interest, he said it was. The Sheriff then put down seven shillings successively, which Yoolow reckoned up; whereupon a half-crown and a sixpence were put down, and he readily added to the seven shillings the half-crown and the sixpence, and said that the whole was ten shillings. Being shewn a guinea note of the National Bank, he said that it was a guinea note, and that the value of it was a pound and a shilling. At first sight, he

said it was a note of the Commercial Bank, but almost immediately corrected himself, and said it was of the National Bank. He was asked as to the extent of his farms, which he stated correctly, and said that one of them was held from Mr. Murray, and another from "the Laird of Pitcur." He stated the amount of rent payable to each landlord, and that part was payable in money and part in grain, and specified the quantities of grain. Being asked what would happen if he did not pay the laird (landlord) the rent of the farm? He answered, that he would be turned out. Being asked, if he were the landlord, what would he do with the farm? He answered, "I would let it, I suppose." Being asked whether he read the newspapers, he answered that he did—the Weekly Journal. He was asked what it was that he read in the newspaper? He answered that it was the price of grain. Being asked, what is the price of wheat? He answered, thirty-eight shillings a quarter. Being asked how much is in a quarter of wheat? He answered, eight bushels. To the question whether he read his Bible? he replied, that he did. Being asked if he understood what he read? He answered, "I think I do." He was asked, whether the soul perished with the body? He answered that it did not. Being asked what became of it? He answered, "If you are good, it goes into happiness; if not, into misery." He was asked how many ploughs he had labouring, and how many horses? which he answered correctly. Being asked who were his sister's trustees? he named them all. Being asked what he would do with his money at his death? he answered, "I cannot take it with me." He was asked, if he were dying, would he not think it right to leave some part of his money to his relations? he answered, "part of it." He was asked, if a deed were offered him to sign, giving away his property, would he sign it? He said, "I should like to know what was in it." Being asked how his money is applied? he answered, "In providing raiment to me, and the like." He was asked the distance from Mill of Peattie to Coupar-Angus, which he answered correctly. He was asked the distance to Dundee, and answered that he did not know. He was asked if there was any town further off than Dundee? He answered, "Yes, Edinburgh, but I never was there; and Glasgow, and Greenock, and Paisley."

The interview then terminated; and the Jury, along with the

Sheriff, and clerk, and counsel for the parties, left Mill of Peattie,* and returned into Court, after an absence of between two and three hours,—whereupon the pursuer's counsel called the following witnesses:—

DR. ROBERT CHRISTISON, Professor of Materia Medica in the University of Edinburgh, *sworn*.

Examined by Mr. ROBERTSON:—I was formerly Professor of Medical Jurisprudence in the University of Edinburgh; and during the eleven years I held that situation, my mind was necessarily turned to the subject of mental incapacity of individuals. I was lately called on to visit David Yoolow, and visited him yesterday. I was with him first for about ten minutes; and, after an interval of about fifteen minutes, I was with him again for about half an hour. He is labouring under bodily defects. He is subject to irregular muscular actions, apparently arising from a want of power to direct the muscles to the object he seemed to have in view. There has been partial paralysis of the fingers and arms, but I did not examine particularly the extent of this. There was a convulsive motion of the features, and a rolling of the eyes, especially when excited. I more particularly directed my attention to the state of his mind. I had such a detail and length of conversation with him, as to satisfy myself in regard to the state of his mind. I am of opinion that he labours under a great degree of imbecility, and is unable to manage his affairs. My opinion is grounded on various circumstances:—First, His replies to certain ordinary and simple questions, on points that ought to be within his comprehension. On the second interview, I asked him if he took any interest in farming matters. He said, Yes; but he could not go out. I said, “You are told what is going on.” He answered, “Whiles,” (sometimes.) Then I asked him how many lambs he sold last season, to which he said, “he did not know;” but I thought that was a matter he ought to have known, being a farmer. I asked him, “Suppose you got twenty shillings for each of your lambs, how much would that be a score?” He turned to a female servant, without whose presence we were informed by Charles Scott, that he could not stand any examination, and said to her, “Would that be twenty pund?” (pounds.) The servant said, “You should not ask me.” He then turned to me and said, “Would not that be twenty pund?” On every occasion when he seemed to be in the least at a loss for an answer, he turned to this female servant, and applied to

* When the party were leaving the room, Yoolow called back Mr. McNeill, and said to him, “You are my counsel, and I hope you will do what you can for me,—I hope I'll not be plagued with these people coming back again.”

her for an answer. She always replied, "You should not ask me, master, but answer yourself." When he did answer readily, it was in the shape of a question to me, and immediately afterwards he turned round to the servant. I asked him, "Suppose your shepherd should take a score of sheep to the market and sell four, how many should he bring back?" He answered, "Would not that be sixteen?" I said, "Being a farmer, you can tell me how many bolls of wheat would afford a good return per acre?" He said, "No: for we had very little white crop last season." I asked him, "How much wheat should be used per acre in sowing?" To which he answered, "A boll." Then I asked him, "What would be a good return?" He answered, "Twa (two) bolls;" and this he repeated, on being asked the question again, and said, "It would be a very good return." He was then asked, "How many horses were on the farms?" To which he answered, "Four on the one, and five on the other," which I understood to be correct. He was then asked, "How many acres the farms consisted of?" To which he answered, "230 acres." He was then asked, "How many yoke of horses would be required to work the farms?" He could not tell. I asked him, "How many pounds a hundred guineas made?" He then turned to the servant, and said he "could not tell;" but immediately he said, with seeming pleasure, "I can tell you how much a guinea is—a pound and a shilling." I then repeated, "How many pounds more than a hundred is a hundred guineas?" He said, "I cannot tell you how many more or less." I asked him then what interest he got for his money in the bank? He answered, "Twenty pounds." I then asked him, "Whether that was for the year or half-year?" and he answered, "Oh! for the year." "And what money have you in the bank?" He answered, "£1200." Then Mr. Symmons asked, "How much that was the hundred?" He said he could not tell; and added, that he was "no good hand at arithmetic." I asked if he ever read the newspapers? He answered, with seeming pleasure, "Oh, yes." I asked, "Are you a great politician?" He answered, "I never meddle with politics." I asked him if he "knew who was prime minister just now?" He thought a little, and then answered, "No: but I can tell you fine who is King—it's King William;" and this was said with seeming pleasure, which appeared childish. I said, "Although you do not meddle with politics, there are some branches of them which, as a farmer, you should know about; for instance, what is your opinion of the Corn Bill?" He answered, "I ken naething about that." I asked, "What is it intended for?" He answered, "To sell the corn, I fancy." He was asked regarding the price of wheat, and he could not tell. Who sold his corn and cattle for him? He answered, "Charles Scott." "When Charles Scott comes from selling your corn and cattle at the market,

“ does he tell you what they are sold for ?” He hesitated for a considerable time, and then said, “ Whiles,” (sometimes.) “ Do you ever take notice of the price, or find fault ?” He at first hesitated, and then said, “ No ;” and afterwards added, “ I am aye content when Charles Scott kens.” A long time was spent in putting these questions in a simple manner and repeating them, so that he might understand them. Another question was asked him, “ What do you feed the sheep upon when snow is on the ground, as at present ?” To which he answered, “ Neeps (turnips), I’m thinking.”—From the tenor of this conversation, Do you think Yoolow is capable of buying and selling, or entering into any ordinary transaction ? Certainly not. I asked if he gave any direction about the farm ? He answered, “ No.”—What are the other circumstances on which your opinion of his incapacity rests, besides the above ? His expression of countenance, which was such as I never saw in any man who was not considerably imbecile ; and also, the irregular movements of his arms, and limbs, and face, which though by themselves of less importance, yet, when taken along with the other circumstances, indicate the state of mind I have described ; also, his apparent dependence on others for keeping him in an even train ; and lastly, and chiefly, his easy excitability, and the apparent complete overwhelming of what mind he has when in that state. What was the cause of his excitement when you first went to call for him ? It was either our arrival, or the conduct of Charles Scott, or both. Charles Scott’s conduct was in resisting my entry into the house, though I told him who I was, and that I had a note from Mr. Kerr, Yoolow’s agent, which I exhibited. The note is in these terms, “ Charles Scott will be so good as give Dr. Christison free access to David Yoolow. ‘ (Signed) CHRIS. KERR.” Scott said I could not be admitted, as Yoolow was then at his reading, and could not be disturbed then. Dr. Anderson was present and said, he would speak to Yoolow and get me admitted, and afterwards returned and said we would be admitted. We then went into Yoolow’s room, followed by Scott, who, in a loud voice said, “ You cannot disturb him at his reading, and you cannot at present ask him any questions.” Yoolow had at this time a book before him, and turned round obviously alarmed at our presence. He ceased his reading. I put questions to him softly in order to compose him, but Scott instantly interposed, and said, “ He cannot answer you questions while he is at his reading.” Yoolow did not check Charles Scott, but when he went out, Yoolow called for him. From this I infer, Scott had a control over him. I then told Scott he had interfered too much, and it was not for his interest to do so. He then ceased for a time to interfere. I then asked Yoolow (who had the book still in his hand) to read a little, with the view of composing him. He read aloud for a little. I

did not understand what he was saying, but on looking over the book I was satisfied he was reading tolerably correctly. The book was a Catechism—I asked to see it, and he did not answer me. I tried to take it out of his hands, but he resisted very violently. His resistance was like a child refusing to part with a play-thing, but he shewed no bad humour. Scott then interfered again, saying “you must not interrupt him while reading, he cannot answer any questions till he has done reading, and then he’ll answer questions.” After another altercation between us, Yoolow said to the female servant, “Take them out.” The servant said, “they will go if you order them.” Yoolow then said, “then I order them.” In consequence of what Scott had said, that Yoolow would not answer till his reading was over, we left the room. I attached no importance to what Yoolow said, as the order he gave was put into his mouth by the female servant, for he had not previously expressed any disapprobation of our presence, or any wish that I should leave the room. Nothing at this interview occurred, calculated to excite a man of sound mind. Yoolow suggested no subject of conversation, except, that upon the second interview he asked me to draw near the fire; and upon our going away, and my shaking him by the hand, and wishing him good night, he said “I hope, gentlemen, you will take no offence, and that this will not injure me.” I did not explain to him the reason which led me to visit him, or that there was any trial depending, and I do not know whether he understood it or not. An uncommon degree of memory sometimes accompanies persons of unsound mind, particularly memory of the contents of the Scriptures, which I was informed Mr. Yoolow possessed. It was partly on that account, and partly because I was otherwise satisfied he was of unsound mind, that I refrained from asking him any questions upon the subject of the Scriptures. From all I saw and heard, I have no hesitation in giving it as my unqualified opinion, that he is of unsound mind, and from that cause incapable of managing his affairs.

Interrogated by a Juryman:—Yoolow understood the questions I put to him. In general I had not much difficulty in making him understand the questions, as they were generally repeated twice.

Interrogated by the Chancellor of the Jury:—He was asked how many *yoke* of horses would be required to work the farm? At first he was asked how many *team*? and one of the gentlemen present having remarked that *team* was not a common expression in that part of the country, he was asked how many *yoke*? The Chancellor of the Jury then observed, that *yoke* was not a phrase used by the people in that part of the country.

Examined by Mr. ROBERTSON ;—I am physician to the Lunatic Asylum in Perth. I was called on the 3d of November last to visit David Yoolow. There were present with me, on that occasion, Drs. George and James Andersons. I had such an interview with him, as enabled me to judge of the state of his mind. I found him a very weak-minded man. This opinion I ground partly on his answers to the questions that I put to him, of which I took notes at the time. I asked him some questions in common addition, such as how many 48 and 52 make? On which he turned round to Charles Scott, who asked him what fifty and fifty made? and he could not tell. I then asked him what the price of meal was, as he was both a miller and a farmer? He turned round to Charles Scott, and muttered, what I supposed to be a question put by him to Charles Scott; and then said, "I don't know." I then asked him as to the state of the corn and potato crops? On which he again turned round to Charles Scott, and asked him, but I got no answer. I then got him on the subject of the Bible; and, at my desire, he read part of it, and seemed to know the meaning of what he read. But this did not shake my opinion as to his being a man of unsound mind, as it is not uncommon for lunatics, and other persons of unsound mind, to be acquainted with the Bible. There are several persons of this description in a state of hopeless *insanity*, and insane upon every point but the Bible; but I hold an *idiot* to be a person who is totally void of understanding. I asked him if he had heard of the Reform Bill, and that farmers of his extent of land were entitled to a vote? But this seemed to be all a blank to him. Yoolow's appearance, also, is very much that of an imbecile person. I understood that when Yoolow was about eight or nine years of age he had a fever, which ended in decrepitude and paralysis, which weakened his mind. He appeared very much excited when I saw him. There was a profuse perspiration on his forehead, and his hands and feet were constantly moving about; and I was afraid of his falling from his chair. There was no cause at all for this excitement. At this interview I was perfectly satisfied that Yoolow was a man of unsound mind. I again saw him on the 9th of November. He expressed no surprise at my visit, but he was very much excited, and I thought it strange that he was not surprised at my second visit. I did not tell him the object of my visit, but somebody mentioned that I was Dr. Malcolm. Yoolow said to Charles Scott, "Will he hurt's?" (hurt me,) but I spoke kindly to him, and he seemed satisfied. I asked him how much money he had; he said, "I got money,"—"I got money," and looked at Charles Scott, apparently to assist him with the answer. Dr. James Anderson then asked him how much money was in the house at the death of his sister, and if he was aware whether Mr. Duncan

had taken away £960? Upon which Charles Scott interfered, and told Dr. Anderson, that Yoolow was not aware of Duncan having carried away any money from the house, and that if that question were asked, it might throw him into a fit. I asked him with regard to the number of his cattle and horses, but he did not seem to know anything about them. My opinion of his being of unsound mind was confirmed by what passed at this interview. I again saw him on the 15th November, when the line of questions was the same, and my opinion of his imbecility again confirmed. I again saw him on Wednesday last, and from what then passed, I continued to be of the same opinion. I saw him again on the twenty-sixth day of this month, at the desire of Mr. Kerr, agent for Yoolow, and Mr. Kerr was also present: but my opinion was nowise shaken by what then took place. Imbecility of mind is compatible with acquiring things by rote. Yoolow has a great memory. At last interview, he could answer questions that he could not answer at the former interviews. At one of the interviews after the first, I resumed the subject of the Reform Bill, and he said he knew that the Reform Bill had passed. He also knew the price of meal. He appeared to have been told that. I also saw him yesterday, along with Dr. Christison, and my opinion remains the same. He never originated any subject of conversation at any of those interviews. I don't think he is in a condition to buy or sell, or enter into any ordinary transaction. He seemed to be perfectly under the influence and control of two servants, to whom he referred at all times when the questions were put.—I am of opinion that David Yoolow is a man of unsound mind, and incapable of managing his own affairs, and this is my unqualified opinion. In my opinion, there is no chance of his recovering or improving. On one occasion, I asked him, how much the weight of a boll of meal was? He answered "Sixteen pounds," and he adhered to this after the question had been two or three times put to him. I think this was at the interview at which Mr. Kerr was present.

Cross-examined by Mr. D. McNEILL:—The question last alluded to was put in these terms—"How much is a boll of meal?" The question was repeated, supposing that he had mistaken pounds for pecks. It was repeated in the same words. I understood that Yoolow had been brought up to farming all his life.—I understood him to have been the tenant of the farms and of the two mills since his father's death. I thought that he was in possession of the farm as tenant, when I said he was entitled to vote under the Reform Bill.—If you had been aware that the farm is held by trustees, would you have considered Yoolow as entitled to vote?—I am not a lawyer, and am not able to answer that question. In the Perth Asylum, there are two or three lunatics who have great

knowledge of the Scriptures. One of these is insane on every other point; and if you ask him a question on any subject, he answers by quoting a passage from the Bible, mentioning chapter and verse. Another of the persons in the same asylum, to whom I alluded in my examination-in-chief, as conversant with the Scriptures, is a monomaniac, and thinks that people are laying plots to poison him. There is another person there also, conversant with the Scriptures; he is about fifty-two years of age, and has been insane for about twelve years. The person who answers you by quoting a passage of Scripture, has been about fourteen years insane, and he is between forty and fifty years of age.

JOHN CALEB SYMMONS, Superintendent of the Perth Lunatic Asylum, *sworn*.

Examined by Mr. ALEXANDER McNEILL:—I have been ten years in my present situation, and was five years in a similar situation near London. I have been compelled to turn my attention to the moral treatment of mental diseases. I saw David Yoolow last evening for about three quarters of an hour. I took such steps as I thought proper for testing his state of mind, and my opinion is, that he has the mind of a child of from eight to ten years of age. I found him reading the Bible, but very indistinctly, and I could not understand him. He had a Bible before him. I was of the party along with Dr. Christison and others. I formed my opinion from questions put by Dr. Christison and myself,—from his gestures, general appearance, and conduct. His appearance was decidedly what appears in a person of imbecile mind. My opinion is decided, that he is totally incapable of managing his own affairs. From his age, he is not likely to admit of any amelioration or amendment. I am most decidedly of opinion that he is a man of unsound mind. From my experience, I have found that in many cases great memory is not inconsistent with imbecility of mind. Very frequently religious books are the subject of their reading, and perhaps more frequently than any others. Sometimes from nature, and sometimes from disease, the minds of such persons as David Yoolow cease to develop themselves, and never arrive at perfection. This defect will be increased by paralysis—but idiots are born without understanding or memory.

JAMES MILLER, Surgeon in Perth, *sworn*.

Examined by Mr. A. McNEILL:—I have been in practice for the last twenty years. I yesterday visited David Yoolow, for the purpose of satisfying myself as to his state of mind. I was there for about three quarters of an hour. I came to the conclusion that he was a person of weak intellect, by which I mean, one of unsound mind. I do not think

he is fit to manage the ordinary affairs of life. He is not capable of buying or selling, or protecting himself in a bargain. He has the look, manner, and conduct of a person of imbecile mind. I think his intellect something worse than that of a child from ten to twelve years of age. He does not appear capable of reasoning. Apparently he is perfectly good humoured. His mind would be easily swayed or controlled by those about him. I put questions to him for testing his capacity, and, from the answers to these questions, I formed my opinion.

Cross-examined by Mr. D. M'NEILL :—I made my visit along with Drs. Christison and Malcolm.

The Reverend CHARLES BLAIR, *sworn*.

Examined by Mr. ALEX. M'NEILL :—I have been assistant to the Rev. Mr. Symmers, of the parish of Kettins, for several years. The Mill of Peattie is within that parish. I have lived in the parish for the greater part of that time. I have seen Yoolow, in all, about seven or eight times, either in his own house, or in the garden, or about the offices. I visited during Miss Yoolow's lifetime, and as clergyman during her last illness. David was in the room on one occasion. I visited her on two occasions, and this was on the first occasion, in the evening, and in her bed-room. David was sitting at the window with a book before him, which I understood to be the Bible. He was reading it with a muttering voice. On that occasion I offered up prayer, and my impression is, that, when I began, David ceased to mutter. I am not aware whether he joined in the devotion. At Miss Yoolow's request I conversed with David, but his articulation I did not well understand. On the second occasion, I also saw Yoolow in his own room, and nothing farther passed between us, than perhaps each of us asking the other how he did. I had no particular means of ascertaining his precise state of mind, but my impression was, that he was of weak mind, and quite incompetent to manage his own affairs. I live about a quarter of a mile from Yoolow's house.

Mrs. EUPHEMIA EASSON or BLAIR, *sworn*.

Examined by Mr. ROBERTSON :—I was at school with David Yoolow. I am a little older than he. He was between seven and nine when at school. It appeared to me at that time, that he was a person of weak intellect. He was able to go about well enough, this being before he was affected with paralysis. When we were angry with him, we called him "Daft Davie Yoolow;" which was a common way of speaking of him in the country. I knew his sister, Miss Yoolow, and have talked with her about David, down to a short period before her death. I was all my life acquainted with Miss Yoolow, but never with David after he

left school. The last time I talked with Miss Yoolow, she said there was nothing gave her more care and concern than leaving David—"you know he is such an object;" and regretted that he had not been able to give her any advice about her business. She never talked of him as a person capable of managing his own affairs, and I never attempted to have any conversation with him since he was confined.

ISABEL FERGUSON, *sworn*.

Examined by Mr. ROBERTSON :—I was a servant in David Yoolow's house, and left it at Martinmas last: I had the charge of him week about with the other servant, Catherine Henderson. He employed himself in reading books, such as the Bible, Testament, Hymn Books, and Catechism. He occasionally came to the kitchen, before and after his reading. I have heard him say to myself, and to the other servants, "Shall I *grose* you?" and when he said so, he took hold of them by the shoulder, and gave them a shake. I have heard him occasionally spell two words, that sound like each other, as d-a-r-k dark, p-a-r-k park. From the defect in his hands, I, or some other person, fed him. I cannot say that he was ill-tempered. I remember that when Miss Yoolow died, after David was told of her death, he took one of his fits and went to bed.

WILLIAM SMALL, *sworn*.

Examined by Mr. ALEX. M'NEILL :—I was in Miss Yoolow's service for twelve months, previous to Martinmas, 1831. I was a farm-servant. I saw David Yoolow almost every day, sometimes in the houses, and sometimes in the *bothy* (outhouse), but he took no charge of the farm, and gave no instructions to me or any of the other servants. He was neither capable of taking charge of himself nor capable of managing business. He was generally attended by a female servant. Every day that he saw the servants, he asked them "how they were, and if they had travelled far," and would say that to them, suppose that they had gone in a dozen of times in one day. His manners were like those of a child. He was in the practice of rubbing his beard on the servant's faces or hands, both male and female servants. I have seen him attempting to grip (take hold of) the servants, but he could not hold them. I have seen him hold something in his hand, and bid us draw it: and when we said he was strong, he said he was not weak. He took no concern with the servants, and they just humoured him like a child. When he was disappointed or crossed in any way, he went to bed. When I went home to Miss Yoolow's service, she desired me to make little noise, on account of the "weak man" in the house.—Had he any likings or predilections about cattle? He liked the cattle to be all white, also the dogs. I have seen him "*grosing*" the

servants, by which I mean, putting their heads under his arms, "and "birsing (squeezing) them." The whole servants, men and women, humoured him in this. I never contradicted him in any thing, and avoided doing so. I never interfered with him when he was reading. He had no shame or sense of propriety in regard to calls of nature, before the servants, male or female, or before his sister.

By the Court:—He could not undo his clothes, and was assisted on these occasions by one of the maids.

Examination continued:—I have often seen him laughing and enjoying himself after doing any thing indecent, as if it were a good joke. I have frequently seen him commit indecencies before the servants. I never heard any one speak to him in regard to markets, or the prices of cattle, or farm affairs; and I think he could not have understood any thing on these subjects. He never went to church.

ANN STEWART, *sworn*.

Examined by Mr. ROBERTSON:—I was a servant for two years to Miss Yoolow before Martinmas 1833, and was engaged by her. Miss Yoolow said her brother was weak and childish. My duty was to take care of him, week about, along with the other servant. But David gave me no orders or instructions of any kind. He was in the habit of spelling little words, such as "dark." He was sometimes in the habit of imitating the barking of a dog. He was in use to ask every day "Are you coming?" "and "How do you do?" He did this very often in the course of the same day. He has asked the servants "if they were far travelled?" and he used to do so frequently in the course of the same day. We were in use to humour him as we would have done a child. I have seen him, if a person went between him and the light, go to bed; and he had an aversion to people going betwixt him and the light. The other servants also humoured him. There was a person of the name, or rather that went by the name of "Errol," of whom David was very much afraid, and his reason was, that that person swore. If he heard any person swear, he left them and went to his own room, and this he called "going hame," (home.) There was a person of the name of Richardson, whom he did not like because he swore. When the servants were going anywhere, he bade them "take care and not fall," and this was his constant practice. He never went farther than the garden or bothy, which last is a small way off, and on these occasions he was attended by a female servant to take care of him. He sometimes shut his eyes and asked me if I saw him. I never saw any person talk and go on in the same way he did.

ELIZABETH ROBERTSON, *sworn*.

Examined by Mr. ALEXANDER M'NEILL :—I was a servant to the late Miss Yoolow some years ago. I know David Yoolow quite well. He would not eat fruit, because the eating of fruit caused the fall of man. He was unable to take charge of or manage himself at that time, nor did he understand what was going on at the farm. It is about a dozen of years since I was a servant at the Mill of Peattie. It is about three years since I last saw David Yoolow, and he was then the same man as before.

AGNES ANDERSON or SMALL, wife of William Small, a former witness, *sworn*.

Examined by Mr. ALEXANDER M'NEILL :—I was servant with Miss Yoolow for six years and nine months. My employment was to take charge of David Yoolow, week about with another servant. When I was engaged by Miss Yoolow, she told me that her brother was weakly both in body and mind. I found that he could do nothing for himself. I never saw him take charge of the farm, nor do I think he would be capable of doing so. He was fondest of white cattle, but I cannot say that he disliked other colours. When he saw the servants, he generally asked them if they were in good health, and he generally did this as often as he saw them in the course of the day. When anybody came between him and the light, I have seen him go to bed, and this was his practice. There were certain people of whom he was afraid, and I thought this childish. He did not like to hear any person swear, and he understood that the persons alluded to were swearers. He has often in the course of the same day asked me "Are ye canny?" and I humoured him as a child. In some things he shewed more mind than a child—by which I mean, that he explained the Scriptures to us. He has often told me not to fall, when I went away to any place, by which I understood he meant not to stumble on the road. He gave the same advice to all the other servants when they went to any place. When he went to the bothy or garden, he was under the charge of a female servant. He had no other occupation than reading his Bible. He was not a person capable of managing his own affairs. I saw him last in the end of last harvest. I was there about a year ago, and had with me a child about four months old, and he asked me if that child could read the Bible.

Cross-examined by Mr. D. M'NEILL :—Was it before you were married that David Yoolow used to desire you to take heed lest you should fall, when you were going away to any place from home? Yes, it was.

JAMES BRUCE, Messenger at Arms, *sworn*.

Examined by Mr. ROBERTSON :—I was at school with David Yoolow,

and considered him then a silly boy,—that was before he had his paralytic stroke.

Cross-examined by Mr. D. McNEILL.—I will not swear that David Yoolow was not as clever as I was when we were at school together.

GEORGE ANDERSON, Surgeon, Coupar-Angus, *sworn*.

Examined by Mr. ROBERTSON :—I am seventy-six years of age. I first saw David Yoolow about forty-three or forty-four years ago. I was called then, along with the late Dr. Crockatt, to visit Yoolow, in consequence of a paralytic stroke he had just suffered. He was then a boy about nine years of age. He had no fever, just a paralytic stroke; and he was under our care for four or five weeks, and every remedy for his recovery was tried. After he went home, I and my partner continued to visit him for some time, but we soon found that he was not likely to recover. I saw him three days ago. I then held sufficient conversation with him to ascertain the particular state of his mind; and I have seen him several times between Miss Yoolow's death and my last visit. I have all along been of opinion that he was of a weak intellect and imbecile mind. I formed that opinion forty-three years ago. He was at no time capable of buying or selling, or transacting ordinary business. He was childish in his manners and habits. He was timid and excitable in his temper. He did not converse on ordinary topics, as persons in possession of their ordinary faculties do. I put questions to him, whether he read any newspaper or history books? but he said he read nothing but the Bible. His memory was pretty good; but that is not incompatible with unsoundness of mind. He followed no pursuit, except reading the Scriptures. I put questions, but he did not seem to be aware of the state of the crops or markets. When questions were put, he did not rely on himself, but looked to Charles Scott, who hinted what he should say. I rather think he could have been tutored to repeat things by rote. I asked him about the Reform Bill; but he seemed to know nothing about that, and added, that he only read the Bible. The attack which he had suffered in early life, was precisely one likely to bring on a weak state of mind. Dr. Stewart of Dundee, who was consulted, and who is now dead, was of opinion that Yoolow's case was that of an imbecile person, which nothing could cure, and that it was unnecessary to incur expenses, either in medicine, treatment, or education; and upon that opinion his friends acted. I know that his father and mother were perfectly satisfied of the weakness of his mind. I do not know whether Miss Yoolow had the same opinion. I can clearly declare, from all I have known of Yoolow, it is my unqualified opinion that he is a person of unsound mind, and incapable of managing his own affairs. When I saw him last, his bodily health seemed to be in the usual state. Dr. Crockatt,

my partner, and Dr. Stewart perfectly agreed with me as to his unsoundness of mind.

Cross-examined by Mr. D. M'NEILL :—I think there are some things that David Yoolow does understand. What are those things? I think he understands *some* of the things that he reads in the Scriptures. Do you understand *all* of the things that you read in the Scriptures? I do not. What are the other things that you think David Yoolow understands? I am not sufficiently acquainted with him to know what are the other things he understands. He understands the difference between five shillings and ten shillings. I am not sure that he understands how many pence are in a shilling. Did you put questions to him to try whether he knew the value of money? I did. What questions did you put? I put the questions to him, how many shillings were in five shillings, and how many shillings were in ten shillings; but he had difficulty in answering how many shillings were in ten shillings, though he said that ten shillings was half a pound. How did you put the question to him as to how many shillings were in ten shillings, or in five shillings? What words did you use? I used the words, "How many shillings are in ten shillings?" and "How many shillings are in five shillings?" And did he not know how many? He did not. Then he knew that ten shillings was half a pound, but he did not know that ten shillings was ten shillings; was it so? Yes. You may take time to answer the question I am now going to put:—If £1200 is laid out at interest, and yields £20 of interest yearly, how much is that per cent. by the year? I am not able to calculate that without pen and ink, not being conversant with such matters. If you had the use of pen and ink, could you calculate it?—there are pen and ink, take them. I cannot say that I could calculate it with the use of pen and ink. Did you put any questions to David Yoolow to ascertain his notions of right and wrong? I did not. Did you ask him if he had any knowledge of, or belief in a future state? I did not.

Re-examined by Mr. ROBERTSON, and desired to explain his answers relative to the ten shillings :—I must have meant to say, that Yoolow did not understand that ten shillings made half a pound, but that he did know how many shillings were in ten shillings.

Re-cross by Mr. D. M'NEILL :—You said that you also asked him how many shillings were in *five* shillings, and that he did not know—what explanation do you give as to that? I must have fallen into a mistake, when I said that I asked how many shillings were in five shillings. What, then, was the question you asked David Yoolow relative to the five shillings, and what was his answer? I am embarrassed, and cannot tell.

WILLIAM PURVES, Surgeon, Coupar-Angus, *sworn*.

Examined by Mr. A. M'NEILL :—The first time I saw David Yoo-

low was in May last, when I was called to see Miss Yoolow. I attended her about a month. At these times I occasionally saw David Yoolow, and after Miss Yoolow's death also. I saw him in September, and in November and December, and down to yesterday. I was asked last summer by Mr. Ballardie, one of the trustees of Miss Yoolow, to visit David. I consider his mind to be imbecile. I do not think him capable of buying or selling, or capable of transacting or managing his affairs. I draw this conclusion from his ignorance of affairs generally, and from his utter ignorance of the affairs of his farms; and from his manner and conversation being entirely childish, and from his asking childish questions, and from his being pleased with trifles. He is timid and excitable by trifles. He has good memory as to dates, and as to chapter and verse in the Bible. I do not consider that incompatible with unsoundness of mind. I used to put simple questions to him, as to the Bible, to please him and gain his confidence; and he would ask me sometimes if I was a good doctor, and he would do this twice at the same interview, and he would interrupt me and do this when I was asking other questions. I was present with Mr. Ballardie; and Mr. Ballardie had shining buttons on his coat. Yoolow took hold of them, and said, they were "braw but-tons," or "bonny buttons." I asked him if ever he read the newspapers? and he said, "not very often." I asked him, at different times, who was prime minister? when he said, "the Duke o' —," and then looked to Charles Scott; but, on the last visit, he told me it was "Mel-bourne." At the time he said "the Duke o' —," Lord Melbourne was prime minister. At the latter interview, I found he answered some things correctly, which he could not formerly do, and some things he could not answer which he had formerly answered. When I put questions to him, both Scott and the maid-servant occasionally interfered, and enabled him to answer the questions; and he seemed to refer to them whenever he was puzzled. When he was asked who was member for the county, he turned round to the servants, and asked, "Is it Mel-bourne?" Mill of Peattie is on the estate of Lord D. G. Hallyburton, who is member for the county, and whose residence is within two miles of Mill of Peattie. Yoolow is a person liable to control, and who might be easily imposed upon.

Cross-examined by Mr. D. McNEILL :—When Yoolow turned to the maid-servant, and asked her who was member for the county, could she tell? No, she said she could not.

JAMES ANDERSON, Physician in Coupar-Angus, *sworn*.

After this witness had, in answer to the usual questions put

by the Judge, sworn that he had no ill-will at either of the parties, —that no person had instructed him as to his evidence, or had given or promised him any reward for being a witness,—he stated that there was one of these questions he perhaps ought not to pass over, and that he thought it right to mention that an attempt had been made to get him over to the other side. But no further explanation upon that subject was given or asked.

Some initial questions were then put to him by Mr. D. M'NEILL :—Are you brother to the solicitor for the claimant ?

WITNESS.—Yes, I am, but my brother and I are not good friends.

Mr. D. M'NEILL.—I am sorry to hear it, Sir.

WITNESS.—I have no feeling in regard to this cause but to speak the truth. I am quite neuter on both sides.

The evidence of the witness was then taken.

Examined by Mr. A. M'NEILL :—For the last seventeen years I have attended David Yoolow, at Mill of Peattie, as a professional man. During that time I have had abundant opportunity of ascertaining the state of his mind. I consider him a decided imbecile, but still he is capable of answering a simple question, but not an abstract one. He is a harmless, inoffensive creature. His bodily health is perfectly good, and he has hardly ever had any medicine from me for the last ten years. He was, however, some time ago afflicted with a complaint, the nature of which I shall state, if desired. It was a disease peculiar to Scotland.

Counsel for the Defender :—Peculiar to Scotland ? Yes, a disease peculiar to Scotland. Do you give it as your medical opinion, on oath, that the disease you allude to does not exist elsewhere as well as in Scotland ? No, I don't mean to say that.

Examination continued :—I attribute Yoolow's imbecility of mind to disease, congenital as well as acquired. He had had a paralytic affection in early life, and I understood from Miss Yoolow that he was born weak ; and his father, in talking of him, said he was " a poor silly lad," and " an unright " lad ;" and Miss Yoolow said, he was " a poor silly being, but did not want " good qualities." The disease produced weakness of body as well as of mind, —his organs of speech have also been affected by the disease to a great extent. I understand he is employed in reading his Bible for four or five hours a-day. His memory is excellent, and particularly upon those matters that occurred in his infancy. I do not consider this as indicative of any great strength of mind. He has a memory without understanding. He is incapable of following a train of thought for any considera-

ble time, or of reasoning with accuracy or judgment. I learned from his family that he had had, in early life, a severe fall on the ice. I learned from his father, his sister, and himself, that he had been closely confined for eighteen years in consequence of this fall. He has a great repugnance to meet strangers at first, but after once or twice meeting with them he becomes indifferent. I was present when Dr. Malcolm was first introduced to him, and I went there an hour before to prepare him for his visit, and he was made to understand that Dr. Malcolm was to call. The sound of a cart having been heard, it was supposed to be Dr. Malcolm's carriage coming; and the maid-servant having attempted to go out to meet him, David Yoolow looked up to her piteously, putting a chair in before her to intercept her, and cried out, "O dinna (don't) leave me, dinna leave me!" The maid said, "I am not going to leave you, David, I am only going to see if they are come." To which he said, "Are they canny, are they canny?" He was in great agony. The servant girl endeavoured to soothe him, and said that I would take care of him, and that they were as canny as I was; and while she was absent, he drew in his chair, and began his usual string of questions to me, "Are you a good doctor,—are you a good doctor?" I succeeded in soothing his mind at that time. He was in the habit of repeating the question, "Are you a good doctor?" very often, sometimes as often as six times in as many minutes. He was accustomed to put other questions to me, such as, "The hills, are they as far as the end of the world?"—and sometimes, "The hills, are not they as far as the end of the world?" He sometimes asked, if "Coupar was as far as the hills." "Dundee is farther than the hills, is it as far as the end of the world?" These questions were all put in a string and by rote. There was another set of questions he was in the habit of asking, such as "Are you a doctor?" I suppose some person had informed him that I was the only "Doctor" in Coupar-Angus, the others being surgeons only; and he used to ask, "Are you a doctor? Manna (must not) doctors rise "when they are bidden?" I answered, "Certainly." Then David asked, "Must they do so when it's snawing?" (snowing) "Certainly." He then turned to the maid-servant, and said twice exultingly, "I hae na (have not) to rise when it's snawing." The servant thereupon said, "Na, David, ye have not to rise when it's snawing; you're better off than Doctors," which appeared to give him great delight. He was in the practice of very frequently putting those questions to me. He is subject to control, except when contradicted, and then he falls into a nervous fit, which is of the nature of maniacal. He is decidedly not capable of buying or selling, or conducting the ordinary business of life. He might be very easily imposed up-

on. This malady is such, that at his period of life, he is capable of a little improvement, but very little. Do you consider him to be of sound mind? In the *literal* sense of the word, he is not of sound mind; but in the *medical* sense of the word, as meaning *insane*, it has no application to him, except when in a state of excitement from passion. Fatuity, as a medical term, and in ordinary language, is properly applicable to the case of David Yoolow.

The counsel for the pursuer now called for production of certain writings, which were accordingly exhibited by Mr. Kerr, agent for the defender, conformably to an inventory; and copies of some of them were taken and authenticated at the sight of the Sheriff.

Mr. ROBERTSON then declared the pursuer's case closed.

EVIDENCE FOR THE DEFENDER.

The following witnesses were then adduced on the part of David Yoolow.

The Reverend JAMES FLOWERDEW, Minister of Eassie, *sworn*.

Examined by Mr. NEAVES:—I this day visited David Yoolow, at Mill of Peattie. I found he possessed a very considerable acquaintance with the Scriptures. I shaped my questions to him, so that I might discover whether he knew the Scriptures mechanically merely, or whether he was intelligent upon the subject. I paid less attention to his quotation of texts than to his application of them. I examined him both on the Mosaic and Christian dispensations; and I put questions to him in regard to the doctrines of the Gospel, with the view to ascertain whether he understood them; and I found that he not only thoroughly understood them, but gave reasons in support of his belief, not from texts merely, but other reasons which satisfied me he had reflected and reasoned on the subject. I examined him in particular upon the Fall, upon the Remedy or Atonement provided, upon the Divinity of our Saviour, upon the Resurrection of man, upon Miracles, and the Second Advent. I also examined him as to whether ignorance was a plea or excuse for the want of religious character and principles. On these subjects I found that he could give sound reasons, which shewed more than an average understanding of the subject. I asked him why he believed in the divinity of Christ. He said, because the Scriptures said so, and he quoted a text which was quite appropriate, and then said, that was enough, "the word of God hath said it." I asked him

if he had any other reasons for believing in the divinity of Christ. He answered, that Christ had done certain things, such as opening the eyes of the blind, and performed other miracles, which he mentioned. I asked him whether any miracles were performed under the Jewish dispensation. He said there were. I then asked him if there was any difference between the miracles under the Jewish dispensation and those under the Gospel. He said there was. I asked what that difference was. He answered, that the first were miracles of judgment, and the others were miracles of mercy and compassion. There was another question I asked him, the answer to which struck me very much, and satisfied me that he was capable of something like a process of reasoning. I asked him if the apostles wrought miracles. He said they did. I then asked him if they used any name in working their miracles; and he said they did;—that they used the name of Jesus, saying “in the name of Christ or Jesus,” when they wrought their miracles. I then asked him if Christ used any name when he was going to work miracles, and he said “No.” I then asked him what he would infer from the different mode in which Christ wrought miracles from the apostles—and he replied without the slightest hesitation, “a divine person.” I then said, that according to his idea the power of Christ to work miracles was inherent in himself, while that of the apostles was derived from another; and he answered, “Yes.” I don’t give the precise words of the conversation; we talked in homely language; and I do not recollect the very words that were used, but I state the substance correctly. I don’t think that his answers arose from any mechanical acquaintance with texts, but that they shewed a species of reasoning applicable to the subject; and the questions I put were such as occurred to my own mind, and were not dictated or suggested by others. I asked him, and he shewed that he was quite aware of a future state; and he quoted a very appropriate text. I made reference to the story of Ananias and Sapphira, and I asked him whether the sudden death was a punishment for the sin; and he answered that it was, and that it was due for the sin. In reference to the punishment of Sin, he said that Sin was misery in this life, and misery in the life to come. In order to shew how sensibly he spoke on the subject, I may mention, that when I asked him whether the punishment for the Fall was not greater than the offence, he replied, “I cannot answer that; it was the will of God.” So far from shewing any trace of imbecility or weakness of intellect, I considered that the answers given to my questions evidenced an average degree of information and intelligence, upon the points on which he was questioned.

Dr. JOHN ARGYLE ROBERTSON, Physician in Edinburgh, *sworn*.

Examined by Mr. D. M’NEILL :—I have turned my attention to the

subject of diseases of the mind, and in part to matters connected with medical jurisprudence. I visited David Yoolow to-day, and I endeavoured to satisfy myself as to the state of his mind, whether sound or unsound. I conversed with him on various subjects, bearing on his memory, his judgment, his powers of comparison, and his habits of life. The general result is, that his memory is good,—his powers of comparison are good, but his means for drawing comparisons are, from the habits of his life, not equal to those of the generality of men. By his habits of life, I mean his seclusion and want of experience and intercourse with the world. His attainments are therefore limited. He has a good capacity for receiving information, and a memory to retain it. In testing his powers of comparison, I put questions to him,—for example, comparing the value of the Apocrypha with that of the Old and New Testament, the relative punishments likely to follow according to the knowledge of good and evil, and in regard to money matters. He understood money matters very well. I asked him the meaning of a receipt? He answered, it was a discharge for sums paid. I asked him what was the use of a receipt? He said it was to prevent a second demand being made for payment. I asked him what would be the effect if I destroyed a bank note? He said you would be a loser. I asked him what effect it would have upon the bank? He said, the bank would be gainers. I asked him what was the meaning of being a cautioner? He said it was being a guarantee for another's debt. I asked him if the principal could not pay, what would happen? He said, if the cautioner could not pay, he would be put in jail. I asked him if he could count money? He said he knew little of arithmetic, he had never been taught it, but he could try it; and he did perfectly correctly some operations in addition and subtraction, proposed by me at random. I asked him, if he shewed me a sample, was he bound to give the same article in the stock? He answered, yes. I asked him what would be the consequence of his not doing so? He said, he would be cheating. I asked him, if two things were given in exchange, not of equal value, what would take place? He said, something must be given to boot. Was the conclusion you came to, that the man was fatuous or an idiot? No, but quite the reverse. What I mean is, that he has all the capability of acquiring knowledge, but has not had the opportunity. By fatuity and idiocy, I understand the want of power and capacity to acquire knowledge. When I was with him, Dr. Bell and Mr. Kerr, and a female servant, were also present. Mr. Kerr put some questions, but I pursued my own line of examination, and formed my opinion from the answers which he gave.

Cross-examined by Mr. ROBERTSON :—Yoolow was a little shy when I first went in, and said he had never seen me before; “but I saw *you*”

(he said, pointing to Dr. Bell,) "last Tuesday." Every question that I asked him, he answered clearly ; but I cannot answer the question as to his being a man of firm mind and purpose, as I did not ask him as to his purposes or intentions. One thing I recollect upon the subject of his purpose. I asked him whether it was a good thing to extend Christianity over the heathen world ? He answered, "Certainly." I asked him how that was to be done ? He said, "By those who could afford it subscribing money." I asked him if he would subscribe money himself ? He said, if he had any thing to spare, perhaps he would. In regard to truth he was very decided ; but I had no opportunity of judging whether he was a man of firm will, or could be easily imposed upon or not. He told me that some medical man had been plaguing him very much, and that he had said to him he had better go home and look after his pills, and not fash (plague) him. I asked him something upon the subject of farming, and he said, "I know nothing about it, and you may as well ask me about Latin or Gaelic, which I have never learned." I also asked him with regard to the hours on different watches shewn him, and he pointed out the difference—some watches differing seven or eight minutes. I asked him the difference between home-made stockings and stockings bought in shops ; and he explained to me the difference. I was introduced by Mr. Kerr, who said I was a friend, and a doctor from Edinburgh. Did he make any remark as to Edinburgh ? He said it was a far-away place, and he had never been there. I don't think the purpose of my visit was mentioned. The subjects were originated by me and the others present, and none by Mr. Yoolow. I asked him, if he read the Apocrypha ? He said he had it in his power, but did not read it. I asked him the reason, and if it was because it was doubtful whether it was inspired ? He said, that was just the reason. I asked him about faith and good works, which he seemed to understand perfectly.

Re-examined by Mr. D. M'NEILL :—He is very decrepit in his hands and limbs, and the movements of his limbs are irregular and frequent. Do you consider his state of body incompatible with mental capacity ? Certainly not. Do you consider that an increased intercourse with the world would increase his powers of mind ? I do. My reason for saying so is, that the subjects he has attended to he has mastered.

Mr. ALEXANDER BELL, Surgeon in Dundee, *sworn*.

Examined by Mr. NEAVES :—I am a medical practitioner in Dundee, and a member of the Royal College of Surgeons, and have been nearly thirty years in practice in Dundee. I saw David Yoolow on Tuesday last, in company with Dr. Nimmo, and this day with Dr. Robertson. Mr. Kerr was present on both occasions. I put questions on both occa-

sions, but chiefly on the first. We were at least an hour and a half in his company. We directed our attention as to whether we could estimate his capacity of mind. The opinion I formed is embodied in a Report by myself and Dr. Nimmo, drawn up at the time. It is as follows :—

“ WE, the undersigned, at the request of Christopher Kerr, Esq., visited David Yoolow, residing at the Mill of Peattie, in Strathmore, on the 24th instant, whom we found to be above fifty years of age, very much paralyzed, and also greatly afflicted with spasmodic twitches of the legs and arms, as well as in the muscles of the face. He stated that the complaint began in the right side, in his eighth year, and that he had a more severe attack about twenty months after, which deprived him in a great measure of the use of his left side, and the power of articulation. Medical gentlemen both in Coupar and Dundee were consulted in his case, but he appears to have derived little benefit from their advice.

“ His impression is, that these complaints were occasioned by a fall, but they may have arisen either from natural causes, or accidental injuries ; from which of them, it is not easy at this distant period, nor do we consider it at all necessary, to determine. However, until these attacks, we are informed that he had enjoyed a moderate degree of health. Previous to his illness he had attended the parish school of Kettins, and was a short time with a private teacher in his neighbourhood, but since that time, we have every reason to believe he has never had the benefit of any teacher.

“ His great bodily debility, accompanied with the frequent and disagreeable convulsions of his features, as well as of the whole frame, may then have been the cause of inducing his mother to confine him to his apartment, and to exclude him from all, except her own family. In consequence, he was deprived of air and exercise, and therefore had little or no opportunity of regaining strength, or improving his mental faculties. As he grew up, he became very religious, and employed much of his time in prayer and reading the Scriptures, with which he is most familiarly acquainted ; so that we found, when his servant read to him, he readily checked any omission or misnomer that she made, and at once told us the book and chapter which she was reading, although these had been promiscuously turned up. He also explained distinctly what he read himself. At the same time we learned that he was in the practice of teaching the younger servants to read ; and the one present said, that she was much improved by his instructions.

“ The questions put to him regarding his relations, the value of different coins, and his knowledge in various matters, were answered in a

manner beyond what could have been expected from one whose opportunities of acquiring information have been so very limited.

"We therefore have no hesitation in declaring it as our most decided opinion, that David Yoolow is neither an idiot, fatuous, or non compos mentis; but, on the contrary, that he possesses a strong though uncultivated mind, and is therefore perfectly competent to select proper persons to manage his affairs, or to bequeath his property.

"All which we declare on soul and conscience.

(Signed) PATRICK NIMMO, M. D.

ALEXANDER BELL, F.R.C.S. *London.*"

DUNDEE, }
26 January 1837. }

I examined David Yoolow again to-day, along with Dr. Robertson. Having formerly visited him, I left Dr. Robertson to take the lead in examining him. From what passed to-day, I was confirmed in the opinion I had previously formed. He has a distinct notion of the relations of time. I asked him where he was born, and he answered, "On this *town*," (farm,) meaning Mill of Peattie. He said the present house was built, in the year after his birth. He can count on progressively to twenty very well. He was asked about his money in the bank in my presence, on the first occasion; and £1200 was spoken of as the amount of his money. He was asked to take £500 from it, and to say what remained. He at once said £700; but whether this was asked by Mr. Kerr, or Dr. Nimmo, I cannot recollect. Dr. Nimmo asked him, if he was to get £1150 for his £1200, would that satisfy him? He answered, "Na, "I would like the whole sum; would you" (meaning Dr. Nimmo) "take that sum?" He was asked how much more he would require to make up his £1200? He at once said, £50. He was asked the value of ten quarters of oats, at thirty shillings a quarter? He answered, "Ten times thirty is 300—that is, fifteen pounds." That question, I think, was asked by Dr. Nimmo. Mr. Kerr did not take a lead in the questioning. Yoolow was questioned as to his knowledge of the Scriptures, and his answers were pointed, and not loose or disjointed. Mr. Kerr made him read part of the history of Joseph,—in the course of which he said, the reason that Joseph loved Benjamin so much was, that he was his complete brother. We asked the meaning of this, and he said they were children of the same father and mother,—his other brothers were by the father only. I have no doubt that he has a sense of right and wrong. He has rational ideas on the existence of a Supreme Being. He has a high sense of adherence to truth. He was very correct in the account he gave of

his relatives. There was no one answer given by him that indicated a wandering of the mind, but quite the contrary.

Cross-examined by Mr. ROBERTSON:—An accuracy of memory may accompany an unsoundness of mind; but I have not turned my mind much to the subject of insanity, although I have seen a good deal of it. —Is an acquaintance with the Scriptures inconsistent with being of unsound mind? A person who could converse and give opinions, such as David Yoolow did, must be possessed of judgment as well as memory. I think it is possible that a great memory and knowledge of chapter and verse may not be inconsistent with an unsound mind. I do not at present recollect of any case of that description, nor do I recollect of having read of any such. Yoolow was not asked to count progressively farther than twenty; but he knew that twenty-one shillings were a guinea. I thought him a man of a strong mind, from the ready answers he made to the questions put to him. From the situation in which the man was placed, and from his bodily infirmities and uncultivated mind, he was naturally led to look for assistance from others. He is of a timid and easily excitable temperament, from the nature of his bodily ailments. From what I saw of him, I think that where his interest was concerned, he is a man not likely to be easily imposed upon, and who would resist where he saw any thing improper. I think he possesses a good deal of caution, and attends to his own interest. From the nature of his complaints he could not look actively after his own affairs, being unable to go abroad. He shewed a knowledge of money transactions; but I do not think he could overhaul accounts, as he had not a knowledge of arithmetic, and intrusted his affairs to others.—As he intrusted his affairs to others, and could not overhaul accounts, in what respect did he show caution in regard to his own interest? He seemed to have confidence in the character of those who had the management of his affairs, and into whose character he seemed to have inquired. Did he inquire at you regarding the character of any of those who managed his affairs? He did not. How do you know that he inquired? He seemed to have confidence, and expressed himself satisfied. In what respect did his expression of confidence seem to indicate caution in the management of his affairs? I think that question has been put and answered already. I do not know whether he can read manuscript, but he read a bank note. From the state of his hands, it is impossible that he could write.

Dr. PATRICK NIMMO, Physician in Dundee, *sworn*.

Examined by Mr. D. McNEILL:—I am a Physician to the Lunatic Asylum of Dundee. I have been thirty-seven years in practice in Dundee. I visited David Yoolow on Tuesday last, along with Dr. Bell. We

examined him with a view to ascertain the state of his mind, and took all the means we thought proper and requisite for doing so. I considered him to be a perfectly sane man—a man of sound mind—by no means an idiot or fatuous. I put questions of my own accord, and not from previous arrangement or the suggestions of any other person. I put such questions as an idiot could not answer, even by tutoring. He seemed to have a perfect knowledge and perception of right and wrong. I examined him as to his knowledge of the value of money. I talked to him of sums of money and their proportions, which he perfectly understood. I also presented pieces of money to him of different values, and he understood their value and relative value, telling me the value of each piece. I asked him the value of ten quarters of oats at thirty shillings per quarter? He answered, ten times thirty is 300 shillings, that is fifteen pounds. He seems capable of selecting proper persons to look after his affairs. He has a lively perception as to truth and falsehood. I asked him as to the origin of his own disease, to which he gave me satisfactory answers. I asked him if he would take £1150 for his £1200? He answered, “No : would *you* do that?” I repeated the question, when he said, “I must have fifty more.” In my opinion, there is no question, but he has a mind capable of receiving information, and a memory quite capable of retaining that information, and faculties capable of using it.

Cross-examined by Mr. ROBERTSON:—I cannot say that I have known a case of accurate and correct memory, and even remarkable memory, consistent with an unsound mind. I have been only two years attending the Lunatic Asylum. I have turned my attention a little to cases of mental insanity. I may probably have read of such cases of memory, but I cannot say whether there are such cases or not, nor can I speak to any such cases in the Lunatic Asylum in Perth.—Has David Yoolow a knowledge of the affairs of the world, or is he remarkably ignorant of the ordinary affairs of the world? He seemed to know his own affairs perfectly well. He takes no management of them, but leaves them to his trustees, with whom he seems highly satisfied. I think he is a cautious man. He mentioned no grounds for being satisfied with his trustees. He exemplified his caution by not agreeing to accept the £1150 for £1200. I have no other reason for considering him a cautious man. I cannot say that he would be good at making a bargain, as he has not had opportunities, having been shut up in his house almost all his life. I do not think that he would be easily led to give away any thing—this I infer from the value he sets on money. I do not know whether he has any money under his control.—How do you know that he sets a value on money, and has a desire to keep it? I think so from what I have already said. I did not put any questions to him as to the selling price of

ordinary articles. I do not know if he can read manuscript.—In what respect do you consider him a man of strong mind? From his knowledge of the Scriptures and the explanation he is able to give on that subject, and from his capability of teaching others to read, and his capability to correct the errors of others in reading. The corrections referred to were in reading the Bible. I was told of his teaching others by the servant maid, in his presence, and also by himself. Besides Dr. Bell, there were present Mr. Kerr and the servant girl, on the occasion of my visit. I do not think he originated any subject of conversation during my visit. He seemed to rely for his answers to my questions on the resources of his own mind; but he occasionally turned to the servant maid, and looked at her. He did not read any ordinary book of literature, or any book except the Bible and some hymn-books, so far as I saw. He talked of the Pilgrim's Progress, but did not like it, as it contained visions which disturbed him. I did not converse with him on any subjects of general or public interest. I daresay I was about an hour and a half with him altogether. I did not talk of any matters of history with him. The tendency of paralysis is sometimes to affect the mind; but in this case it does not seem to have done so. I think his mind as entire as if he had had no paralysis, and as if his body were in vigorous health and strength, and had no deformity.—Why has his mind not increased in strength like the minds of other men, while books were within his reach? Perhaps he had no books, and he seems to have dedicated his whole time to the Bible.—As he is a man of strong mind and of sufficient means, and has not suffered in his mind from paralysis, can you assign any reason why he has not followed such pursuits as would cultivate his mind and improve his understanding? I can assign no reason—that depends on the man himself and his inclinations.

It being now past midnight, it was agreed to adjourn the trial till Monday morning at ten o'clock; and, by consent of the counsel on both sides, the Jury, instead of being detained in the custody of an officer of Court, were allowed to return to their respective houses, but they were specially cautioned by the Sheriff, not to hold communication in the interval upon the subject, either with each other, or with any other person.

MONDAY, 30th *January* 1837.

The COURT met at half-past ten o'clock, and the evidence for the defender was resumed.

Dr. DAVID COLVILLE CARRUTHERS, Physician in Dundee, *sworn*.

Examined by Mr. D. M'NEILL :—I am a physician in Dundee, and served my apprenticeship there with the late Dr. Ramsay : I afterwards graduated at Edinburgh, and returned to Dundee, when Dr. Ramsay was still alive. I graduated about seven years ago. The Lunatic Asylum at Dundee was organized under Dr. Ramsay, who was physician to that Asylum, until his death about two or three years ago. I assisted him in organizing that establishment. I did not continue to visit along with the Doctor there, down to his death ; but I visited along with him for some years. The duty of classifying the patients was devolved on me, under his directions. Dr. Haslam of the Bethlehem Hospital, London, was in use occasionally to visit Dundee, and the Asylum there ; and we had the benefit of Dr. Haslam's advice, as to the Asylum, when he was in Dundee. I have visited other lunatic hospitals, namely, the asylum at Perth, and Dr. Smith's at Newcastle. I have also visited, at Paris, Esquirol's hospital, the Bicêtre and the Salpêtrière. I visited Esquirol's hospital along with himself. In it there are about 400 patients. Esquirol is the highest living authority on diseases of the mind. I visited occasionally, while in France, Professor Majendie, whom I had known in England ; and he gave me an introduction to Esquirol. I resided for about a month in Paris, and I several times visited the different hospitals during that period. I did this principally at Dr. Ramsay's request, to assist him in the management of the Dundee asylum. I have seen David Yoolow three different times, and conversed with him on all these occasions, in order to ascertain the state of his mind as to soundness or weakness. On the first occasion I was accompanied by Dr. Halkett, Dr. Cochran, and Dr. Low. On the second occasion, the Reverend Mr. Flowerdew was present ; and, on the third occasion, I was alone. The third occasion was this morning. The result of these visits was, that I did not find him in a state of fatuity or idiocy, but quite the reverse. I am aware he has lived a secluded life. I conversed with him about his own case, his habits, and disease. He has a mind capable of understanding subjects to which he has directed his attention. He has a very high sense of religion, and an astonishing acquaintance with the Bible. He perfectly understood what we talked to him about, on the subject of the Bible, and it was not a mere repetition from memory. He assigned rational and proper reasons for his belief.—Do you consider that an idiot could exhibit the degree of knowledge upon that subject, that David Yoolow does ? Decidedly not. An idiot might exhibit a knowledge of chapters and verses of the Bible, so as to repeat them. The distinction between David Yoolow and an idiot, is that he understands what he reads ; but an idiot cannot stand an examination on the meaning of what he reads or repeats. I consider, that religion is one of the best subjects for testing whether a person be an idiot or not. David Yoolow seemed to have

a great aversion to Roman Catholics, in point of faith ; but in other respects, he seemed to exhibit a liberality to persons of that persuasion, of which I give the following instance. Dr. Cochran asked him, of what persuasion the tailor was, who made his clothes, to which he answered, " Oh, a Roman." Dr. Cochran then asked him, " why he employed a person of that persuasion to be his tailor ?" His answer was, " I always found " him discreet yet, and his religion canna fash (affect) my garments." Yoolow also seemed to have a proper sense of moral conduct and honesty. At the interview at which Mr. Flowerdew was present, Yoolow exhibited a perfect knowledge of the subject which was discussed. I have talked to him of his own affairs, and the disposal of his means in the event of his death ; and he gave rational and intelligent answers about these matters. I asked him whether he liked or had a regard for his late sister, Miss Yoolow. He said he had, and that she had managed his affairs. He said that a person of the name of Charles Scott, whom I understood to be the foreman, was the person who generally gave him information about his affairs. He mentioned the names of some of his trustees. I went to-day of my own accord to visit him, and no person knew that I was to be there. He was in bed. He recognised me again. He said I was one of the doctors from Dundee. He asked me, if I knew any thing of how the present cause was going on, and whether I had been examined, and expressed great anxiety about the result of the cause. I shortly conversed with him about other matters. In particular, I put the following questions, and received the following answers, which I noted down with a pencil at the time. " Have you complete confidence in your present " trustees?" Answer: " Aye, hae I." " How, David, do you give them " so much of your confidence?" " Because I believe them to be honest " men." " How do you know them to be honest men?" " The maist " o' folk say sae o' them." Suppose now, David, any one of them should " die, what are you to do?" " I would seek anither." " What kind " of a man would you like?" " An honest, and true, and skilly " (skilful) man." " Are you sure, David, that your present trustees are " managing your affairs rightly?" " Aye am I, for they manage their " ain unco' weel," (very well.) " Now, David, how could you be cer- " tain that a man is honest, and capable of managing your affairs?" " I " would need a certificate for that." " Is there any other way of judging " of a man than that, David?" " His character among men." I told him that I disturbed him so early because I had to be examined to-day, and he said, " Be sure and speak the truth." On some of the occasions on which I visited him, his knowledge of the value of money was tested, and found to be accurate. He knew the value of the several coins shewn him. In particular, he was asked how much fifty quarters of oats, at thirty shillings a quarter, would come to. His answer was, 50 pounds and fifty

ten shillings is £75. He was asked, if he was to get a £1000, what would he do with it? To which he answered, he would "neither throw it into the dam, nor yet into the fire." He was asked if he had got a wife. The question put was, "Have you never, David, thought seriously of taking a wife, since you have been so much alone?" His answer was, "Na, na, I could na fash wi that," and added jocularly, "but tak' ane yoursel, if you hav'n't ane already." I think he has a sound and reflecting mind; a capacity to receive information, and the capability of applying the information he receives. The range of his information is greater than I should have expected in a person so long secluded from society. He is capable of improvement, of acquiring further information, and of applying it. I found my opinion upon this, that his faculties are sharpened, and his mind improved, since I first saw him, upon the 8th of this month. In the course of the conversations I had with him, he said nothing that indicated either insanity or idiocy. In all my examinations at the hospitals I have mentioned, I never found a person with such a mind, under restraint as an idiot, or insane person.

Cross-examined by Mr. ROBERTSON:—On the first visit I made, Mr. Kerr was present, and also a female servant, besides the persons formerly mentioned. On the second occasion, Mr. Kerr was not present, but the female servant was present. This morning the female servant was also present during part of the time, and I have no doubt the whole, though I did not observe her. Memory to a great extent is quite compatible with unsoundness of mind. I have seen great memory in regard to the Scriptures in persons of unsound mind; but, when examined upon the meaning of what they repeated, they always broke down.—How did Yoolow express his aversion to Popery? It arose out of some questions put to him by Mr. Flowerdew. At first, he said that he knew little about it. He said something more:—I do not recollect the words, but I understood he expressed a dislike to Roman Catholics. He gave no grounds for that dislike. I do not recollect that he originated any subject. The examination was conducted in the way of question and answer; and he waited generally till the question was put, and then answered, and sometimes he continued the subject after the question had been answered. What did he say with regard to disposing of his property? This question was put by Mr. Kerr: "Supposing your trustees should advise you to leave any of your property to any of them, or to any one else, myself, for example, what would you think of that?" His answer was, "Ye're neither kin nor blood." Did you infer from what he said, whether he understood that he was to lose any thing by this cause? He did not express himself to that effect, but he understood that there was to be some interference with the

management of his property, which he did not wish. What do you understand by the term Idiot? I understand by that term a deficiency of the mental faculties, to that extent which renders the person incapable of mental offices. I would infer from the answers Yoolow made, that he had firmness; but I would not just say he was a firm-minded man. I did not try this, but I inferred he had firmness from the answers he gave to the questions put to him. Did you come upon any subjects of general interest, apart from religious subjects, and what has already been mentioned? I heard questions put to him regarding corn and cattle, and the like,—and expenses,—and different things. I asked him if ever any of his neighbours came in of an evening, and talked politics? and he said, “Na, I never fash with that.” Did you ask him any thing upon the subject of history or literature? I did not, as I did not expect that he was acquainted with such things. The Pilgrim’s Progress and Catechism, besides the Bible, were talked of; but I do not recollect that any other books were mentioned. Putting out of view his knowledge of religious matters, was there any thing from which you inferred that he had a greater range of information than might have been expected from his state of seclusion? I recollect that some person put a question about the price of a breakfast, and he said it would be about “four bawbees” (four halfpence) for *porridge*. The person putting the question, asked him if he included the milk also? To which he replied, “Na, I think you would require a penny more for milk.” He also shewed a knowledge of coins and bank notes. I recollect nothing more. Can you assign any reason why he paid such exclusive attention to the Bible? Country people in his class pay more attention to the Bible than people of that class in town; and I saw no other books in the room. In talking of the Pilgrim’s Progress, I heard him saying something about his not liking visions; but I took no note of this. Does he appear of excitable temperament, or of firm nerves? I was surprised to find him so little excitable on particular occasions, by which I mean, that when he was examined on questions, such as how many pence are in a sixpence—twice one is two—and twice two is four—I expected to have found a man of his understanding excited by such questions being put, but he was quite calm. Did you see him excited at all? Dr. Cochran’s question about taking a wife seemed at first to irritate him a little, which led to a movement of his hands, and eyes, and face, and body. Did he show any knowledge of local distances? Dr. Cochran asked him if he would like to see Dundee again? And he said, “Na, its owre far awa,” (too far away.) I asked him this morning if it would take me long to go to Coupar-Angus? and he said, “Na, not long.”

Re-examined by Mr. D. McNEILL:—The question by Mr. Kerr, as to

leaving his property, was preceded by the following question, which was the last put by Dr. Cochran,—viz. “Suppose your case settled to your satisfaction, would you consider it necessary to make any farther arrangements afterwards regarding your possessions?” To which he answered, “I have every confidence in my advisers.” Dr. Cochran attended here on Saturday to give evidence, but is detained in Dundee to-day by the death of a relative.

JOHN M'LAGAN, *sworn*.

Examined by Mr. NEAVES :—I know David Yoolow. I was at school with him. I am older than he. I assisted in hearing the younger boys say their lessons. I heard David Yoolow say his lesson in reading. Did you think him as clever as other boys? I saw nothing wrong about him.

THOMAS HERALD, *sworn*.

Examined by Mr. NEAVES :—I know David Yoolow, and was at school with him. In mind he was like other boys.

JOHN DUNCAN of Wellton, *sworn*.

Examined by Mr. D. M'NEILL :—I know David Yoolow, and have known him thirty-four years. I have had frequent conversations with him during that period, with the exception of about ten or eleven years, from 1812 to 1823, during which I was in England. I do certainly consider him a person of sound mind. He understands perfectly what I talked to him about. I never could consider him an idiot in any way, but quite the reverse; and he had a perfect sense of propriety, honesty, and fair dealing.

Cross-examined by Mr. ROBERTSON :—I consider an idiot to be a person that cannot talk rationally on any one subject.

Re-examined by Mr. D. M'NEILL :—David Yoolow never talked irrationally on any one subject.

JOHN HAGGART, *sworn*.

Examined by Mr. NEAVES :—I know David Yoolow, and have known him for about five years. I have repeatedly conversed with him, and he understood every subject I conversed with him about. I considered him a man of sound mind, so far as I conversed with him—I did not consider him an idiot.

Cross-examined by Mr. ROBERTSON :—I conversed with him mostly upon moral or religious subjects.

JOHN LOWE, Surgeon in Coupar-Angus, *sworn*.

Examined by Mr. D. McNEILL :—I have been a Surgeon for about thirty-six years, and have practised in this place for about thirty years. I attended the late Miss Yoolow about nine months ago, and I had an opportunity of seeing David Yoolow frequently. I have directed my attention to ascertain the soundness or unsoundness of his mind. The result of all my experience is, that he is of a sufficient degree of soundness of mind to give direction to others to act for him : from his decrepitude of body, he is unable to act for himself. I have conversed very little with him upon subjects of religion. But I have conversed with him upon practical subjects. He informed me he had never been taught arithmetic. I have put questions to him as to the value of sums and numbers. Upon the 15th day of January, I took a note of some things that passed, which I shall read : they were as follows. Q. "How many shillings does it take to make a pound Sterling?" A. "Twenty." Q. "Suppose beef at 6d. per pound, how many pounds of it would a pound Sterling buy?" A. "Twa twanties, forty." Q. "What proportion of a year is a week?" A. (After some calculation,) "There are 52 weeks in a year, 365 days, and 366 in leap year." Q. "What proportion of a year is a month?" A. "Twelfth." Q. "Whether are two-thirds or three-fifths of any thing, the greater proportion of it?" Could not get him to answer farther than that any thing divided into a greater number, each part was less than when divided into three. Q. "Suppose you receive 30s. for a quarter of barley, how much should you expect for five quarters?" A. "£6 and 30s.—£7, 10s.,"—after calculating and considering for a considerable time. Q. "Whether do you consider £5000, or fifteen hundred pounds, the greater sum?" The "fifteen hundred" evidently struck him forcibly at first ; but, upon a little consideration, he corrected himself, and said that if he had to receive the sum, he would prefer the £5000. Q. "How many pounds are there in a hundred weight?" A. "I cannot tell, I have no arithmetic." Q. "Which is the largest of the two—a pound, or a hundred weight?" A. "A hundred weight." Q. "In which month of the year is the term of Lammas?" A. "In August." Q. "Which day of that month is it on?" A. "The second." Q. "What do you consider the difference between honesty and dishonesty?" A. "The difference between an honest man and a thief." Q. "If a man was to sell you oats said to be similar to a parcel shewn you, and to deliver grain of a quality different from that sample, what would you consider that man's conduct to be?" A. "Dishonest, and deceiving me." Q. "Can you tell me how many stones, of fourteen pounds to the stone, it takes to make a hundred weight?" A. "I am not used to count by stones." I found he had been bargaining

about a cow he wished to sell, for which he wanted £14, and had been offered $11\frac{1}{2}$ bolls of oatmeal; upon which I proposed the following questions to him: Q. "What is the price of a boll of oatmeal?" A. "22s." Q. "How much money does $11\frac{1}{2}$ bolls meal amount to at that price?" A. "£11. 10s. and 23s." Q. "Then what was the difference between what you wanted for the cow, and what you was offered?" A. "20s. and 7s." Q. "Suppose you had got the sum you wanted for her, how much luck-penny would you give?" A. "Maybe five shillings." Q. "What money would you put in your pocket then?" A. "£13, 15s." In reference to this question regarding the cow, I have to explain that I had been asking him what he had been doing since I last saw him, when the maid said he had been trying to sell a cow; and it was from himself that I learned he had been asking £14, and that he was offered $11\frac{1}{2}$ bolls of oatmeal. I have seen him twice since then, and I am very much disposed to think he has shewn more capacity of acquirement, which I ascribe to his having more frequent intercourse with individuals. I do not consider him an idiot.

Cross-examined by Mr. ROBERTSON:—There was no other person present but the servant, on the 5th of January; but before I left the room, Charles Scott came in, apparently dressed for the market, and he asked David if he had any more messages. David said he had not, but to be sure not to sell the cow under the £14. The questions I put were entirely of my own suggesting. When the question was put to him, whether he would have £1500 or £5000? he was evidently struck at first with the words "fifteen hundred," and repeated them as talking to himself; but, after a little consideration, he corrected himself, and said he would prefer the £5000. He sometimes looked to the maid, as if appealing to her, whether his answers to the questions were correct; but there was not the least interference on her part. I never saw him excited. Upon some of the occasions I saw him, I had conversations with him as to the value and extent of his farm. He considered the farm as his own, and he knew that he had more than one farm; and I know that there are more farms than one that belonged to his late sister.

DAVID HALKETT, Surgeon in Perth, *sworn*.

Examined by Mr. D. McNEILL:—I have practised as a surgeon twenty-nine years, and have been for the last twenty-one years in Perth. I have visited David Yoolow five times. I first visited him on 22d December last. My visit was for the purpose of ascertaining the soundness or unsoundness of his mind. At my first visit, none but the maid-servant was present. My second visit was upon the 31st of last month, when Dr. Lowe and the servant-maid were present. My third visit was

on the 11th current. I went by myself, and when I was there, Dr. Lowe accidentally came in; and nobody but the maid-servant was there. My next visit was on the 18th of this month, when there were present Dr. Cochran and Dr. Carruthers, from Dundee, and Mr. Kerr and the maid-servant. My last visit was on the 25th of this month,—there were present on that occasion, too, Dr. Sanderson and Dr. Malcolm, Mr. Anderson, writer, Coupar-Angus, (agent for the pursuer,) Mr. Kerr, (agent for the defender,) Mr. Roy his assistant, and the maid-servant. When I was leaving the room, I found Dr. Purves in another room; but I do not know whether he was present during the visit. On these several occasions I conversed with David Yoolow on different subjects, such as the state of his health and the commencement of his disease—who had attended him—and how he was treated. I then asked him about many old people now dead, whom I infer he must have known, and some of whom I knew, being myself a native of this part of the country. I asked him what like they were, where they lived, and when they died. I asked him also about his farm, who was the landlord, and what number of acres it consisted of. I also asked him about weights, and prices, and fat cattle. In his answer to one of the questions, he referred to the Bible. One question I put to him was, if he fed cattle on his farm? He said he did. I replied, that if he made them fat, he would get good prices for them this season. He said he liked good prices, and that he thought good prices were best for the country; but, he added, he would not like the “shekel without the epha.” I did not at first understand what he meant by “epha;” and he said, “You will learn what I mean from a chapter in Amos. You will find it in Amos, the eighth chapter, and fifth and sixth verses.” After I went home, I turned up the Bible, and found the passage quite applicable:—His idea being, that he would not like the price without the value. I asked him about the weight of meal. I asked him the weight of a boll of meal. He instantly said, “There is no such thing as *bolles* now, “but *sacks* ;” and I asked him the weight of a sack. He told me, “280 pounds.” I did not myself know this. Upon going home to Perth, however, in order to ascertain the point, I sent to a meal-seller, who said he could not tell the weight of a sack, but that half a sack was equal to ten stones at fourteen pounds per stone, and that I might calculate that, as he had no time to do so. I asked David Yoolow how many pecks of meal would be produced from a boll of oats, to which he replied, that “all oats were not of the same quality.” I then asked him what ordinary oats would produce in meal? On this he turned to the maid, but she said nothing; and he then said, “I’m thinking, sixteen pecks.” I think his mind is improved since I first saw him, which I ascribe to increased intercourse with others of late. I consider him capable of re-

ceiving information, and of using it. I consider him sane, and not an idiot or fatuous.

Cross-examined by Mr. ROBERTSON :—At the meeting on the 26th something was said about Miss Yoolow's will. I do not recollect who the person was that put the question. The subject was entirely out of my province ; but I think the question was put upon the side of Mr. Anderson, writer. David Yoolow said he had never heard anything of it till Thursday last. He told me the time when his sister died, which I do not remember ; but I understood it to be some months before. Did it not strike you as something extraordinary, that Miss Yoolow having died some months before, he should not have heard of the settlement till last Thursday ? It did not strike me one way or another. Was any thing said with regard to his money ? Yes : he said it was in the bank. Was any thing said as to the Duncans taking any part of his property from him ? I do not recollect whether any thing upon that subject was said or not, as it was entirely out of the medical department, and I paid no attention. Was any thing said with regard to Mr. Kerr taking any thing from him ? There was a good deal of recrimination betwixt Mr. Kerr and Mr. Anderson ; but I did not pay any particular attention to it, being out of my department. I was not prevented by any body from attending to this. Don't you think that the extent of his knowledge of the state of his own affairs was a good test of his capacity ? That depends upon the state of ignorance in which he was kept. David Yoolow took a good deal of interest in what passed between Mr. Kerr and Mr. Anderson. Would his knowledge of these matters have been a good test of his capacity ? That depends upon the state of ignorance in which he was kept regarding his affairs. Although his ignorance of his affairs might not be a test of incapacity, would not his knowledge of them have been a test of his capacity ? I think it might. Then, if you considered that his knowledge of his own affairs would have been a test of his capacity, why did you not examine him regarding the state of his own affairs ? My business, on that occasion, being to accompany Dr. Malcolm, I did not think it my duty, to put questions regarding his own affairs. How did you consider the question put to David Yoolow, as to his sister's settlement, not to be a medical test ? I did not say that it might not be a medical test ; but in the way it began, and from the bantering going on, the thing went on so rapidly, that I paid no attention. When we first went into the room, Dr. Anderson, the brother of Mr. Anderson, began to talk about "*grosing*," which, from the way he talked of it, I at first supposed to be something indecent. Mr. Anderson afterwards spoke of a farm that had belonged to his sister and had been given up, being the farm of Kinochtry, and said there was £2000,

which David Yoolow should have got for that farm, on its being given up ; and that Mr. Kerr and his friends were using him ill, and he ought to have it. It appeared to me that David was doubtful about his right to the £2000, and Mr. Anderson said, " David, would you not like the £2000 ?" David instantly said, " If you would hand it out to me, I would take it." I do not recollect whether this conversation about the £2000 took place before or after the conversation about his sister's settlement. With regard to the £2000 for the farm, he said, that Anderson was only joking. I think Mr. Anderson said, that the renunciation of the lease might be set aside on the head of deathbed ; and this was the foundation of the remark relative to the £2000. It strikes me that Mr. Anderson also said, that he had the opinion of eminent counsel, that the renunciation might be reduced on the head of deathbed. I understood that the renunciation was in favour of Mr. Murray of Lintrose, the proprietor of the farm. Mr. Anderson said that Mr. Kerr and his friends were his (David's) enemies, but that " we are your friends." David then turned round and looked at Mr. Kerr, but said nothing ; and he very soon after, looking to Mr. Anderson, said, " this is a joke." A great degree of memory is sometimes compatible with unsoundness of mind. I understand by an idiot, a person void of understanding from his birth. I don't think Yoolow is a person very easily excited, nor do I think him easily imposed upon, in matters where he has had an opportunity of judging.

Re-examined by Mr. D. M'NEILL :—When Dr. Anderson mentioned "*grosing*," he said something which produced a sensation in my mind, and in that of Dr. Malcolm and others present, that it referred to indecent practices between David Yoolow and the maid. David Yoolow said, that no sinful practices passed between him and the maid ; and this he repeated twice, and seemed indignant at any thing of that kind being supposed.

Mr. D. M'NEILL then declared the defender's case closed.

Mr. ROBERTSON then addressed the Jury as follows :—

Gentlemen of the Jury :—If the sole inquiry in this case were, whether David Yoolow was entirely bereft of reason, whether he was unable at all to exercise his mental powers, and an idiot incapable of understanding any thing, I should not occupy your time long. There would be no inquiry here, if that were all the question. If this man was possessed of no mental powers, or faculty of thought, it would be as vain and useless to inquire into his state of mind, as to investigate the dumbness of a man

without a tongue. The abstract question of total idiocy is not the point that is here raised.

The question is, whether Yoolow is possessed of that degree of capacity, which enables him to conduct the ordinary affairs of life, or whether his condition requires the strong and paternal arm of the law, to protect him from advantage being taken of his defects.

It would be ridiculous to deny, that the evidence in this case has been very contradictory; and I should not be surprised, if your minds were prepossessed, or puzzled, by much that has taken place. I fairly acknowledge, too, that,—after the picture of Yoolow, drawn by the opposite counsel, in his address to you, and in which he judiciously overstated what you were to expect, and after the interview which followed,—the exhibition made by this unfortunate man could scarcely be favourable to the claimant's case, under the feelings with which you were likely to approach it. But it is not from that cursory observation, made in such peculiar circumstances, that you must judge of this question. It is very probable, that the appearance of Yoolow, at that time, operated against the claimant, just because those who had heard so much of his aspect and defects thought it wonderful that he should seem so little of an idiot. It is your duty, however, to look at the whole evidence in this important and difficult case. And it is my business now to comment on the evidence led by the defender; and to resume that formerly adduced for the claimant, which, after the interval that has elapsed, you may have begun to overlook.

The first point to which I direct your attention is, the general history of Yoolow's life, as admitted on all hands.

If it were true, as some of the opposite witnesses have not hesitated to say, that Yoolow was a man of *strong* mind,—if that mind had not been at all affected by his bodily state of decrepitude, I ask you, how you can account for the limited nature of his occupations? It might be right to give a due portion of time to the Scriptures, but why should he never have done any thing else?—or why did he only change from these to a Book of Hymns, or the Pilgrims' Progress, the visions of which, it appears, disturbed this vigorous intellect? The confinement of the mind to this one book, to the exclusion of every other subject, is a strong

indication of imbecility. I do not say that he was bound to know the merits of political questions, but he might at least have known that his own landlord was member for the county in which he lived. Most people, surely, so situated, would have known that fact. If possessed of any understanding, he must have heard of the Reform Bill, which it is proved he had not. But supposing him indifferent to politics, why, if a strong-minded man, or a man of sound mind, did he not betake himself, in some degree, to other subjects than religion? Why did he confine himself to that single topic, to which it is notorious that persons of unsound mind so often recur, and of which such striking examples were mentioned to you as existing in the Perth asylum?

I will not enter into the question, whether he was imbecile from early infancy. I will allow, that, in boyhood, he was like ordinary boys; he has unquestionably learned to read, but he has made no other progress in education. His history on this point is important. It is proved, that there was no unkindness towards him on the part of his parents; and you have seen how they treated him, and in what light they considered him. Dr. Anderson, who, though my learned friend succeeded in puzzling him at a late hour on other points, was decided as to this matter, told you that he, as well as Dr. Crockett, and Dr. Stewart, men of undoubted ability, thought Yoolow's case desperate. They gave it as their opinion, that it was equally hopeless to improve his limbs and to cultivate his mind. His education was abandoned accordingly, from the conviction that there was nothing to work upon,—that his faculties could not be brought up to the ordinary standard. He was treated as a person weak in mind; and such was the recorded opinion, both of his father and of Miss Yoolow, his sister. The idea certainly did not occur to them, that he was ever to be a man of that *strong* mind, which the Dundee doctors would ascribe to him.

This *real* evidence is more important than any testimony that could be adduced. The fact is undoubted, that his father and sister considered him inferior in mental power, and treated him accordingly;—and the result agrees with their opinion. He is able, indeed, to read the Scriptures, and, I trust, to derive some consolation from what he reads. But beyond this his mind has not travelled. He is insensible to all other objects of in-

terest ; the finer pursuits of literature, the history of his country, or of mankind, are to him a total blank.

This, then, is his early history, and the progress of his education. Then, as to the important question, how far he is capable of managing his own affairs, or has ever attempted to do so, except the solitary purchase of a cow, mentioned by one witness, there is no evidence of his ever having been engaged in any business transaction with any human being. This, surely, is very odd. Though unable himself to move about, yet why did he never take a part, or exercise a control, in the daily transactions that were going on around him? I don't, I confess, much like the story of the cow. It looks as if got up at a late stage of the proceedings, with the view of giving this poor man the appearance of some ability to make a bargain.

Then, gentlemen, it is important, that, although he seems to have submitted with wonderful calmness to the most ordinary and even silly questions, not one witness has stated that he ever originated any subject of conversation. He uniformly sat muttering and murmuring what answers he could give to the questions asked. Perhaps I should except one marvellous answer, which is ostentatiously brought forward. He talks as to prices, and he refers to Amos, 8th chapter, 5th and 6th verses, which are said to be applicable to this subject. Surely in such a matter there was no need to go to the Bible ; and it is no great proof of understanding, that he should be able to make this apposite quotation, from the book to which he had applied his whole life and his whole mind. I don't dispute that, having passed all his time in that study, he has made himself acquainted with the Bible, and has mastered its chapters and verses, and, to some extent, the application of them. But it is very remarkable, that with his long exclusive and well-known attention to this subject, he seems not to have acquired any great reputation for Scriptural sufficiency, and no clergyman appears ever to have visited him, or even seen him, with the single exception of Mr. Blair, who, while attending Miss Yoolow in her last illness, found this unhappy man sitting muttering in the room, but without participating in their devotions, and without its being supposed that he was competent to do so, much less that he was able to hold any intelligent conversation on the subject.

With regard to his fitness to conduct business, you have the best of all evidence in his father's settlement, where he is described as a person of weak mind, and on that account provided for merely as a helpless child, without any right of management or interference. The leases of the old man, accordingly, are left entirely past Yoolow, and made descendible to the daughter. This is the expressed opinion of the father, in 1805 and 1810; and in 1834, Agnes Yoolow takes the same course, and leaves the leases to the trustees, under the obligation merely of supporting her brother.

He thus appears, from the first, to have been set aside by all parties. You find him engaged in no occupation whatever, either of business or general reading;—and how does he spend his leisure hours? What are then his favourite pursuits? Spelling words—d-a-r-k dark, p-a-r-k park. To this is added the entertainment of “*grosing*.” I do not say that it is sinful, but it is certainly childish. It does not seem to me the occupation of a man of sound mind. Is this the “Cottar’s Saturday night” in the parish of Kettins? Is this the recreation of the farmers of Forfarshire? I should hope not. I presume it is the invention of Mr. David Yoolow, and as it may thus form the only proof of his originating any thing, I will give him the full benefit of it.

Then, it seems, he dislikes the visions of the Pilgrim’s Progress,—they disturb his mind. Is that a proof of soundness? He can’t eat fruit,—because by eating fruit our first parents fell! He asks people “Are ye canny?” What nonsense is this!—Does he believe in witchcraft?—Then comes his string of interrogatories—“Are you a doctor? The hills, are they as far as the end of the world? Manna doctors rise when it is snawing? I haena to rise when it’s snawing.—I am better off than doctors.” There is a strong-minded man! Then he submits to be asked how many two and two make; and, instead of being angry, he says—*four*. But of late it would appear that his power of calculation has become wonderful. How this recent attainment has been acquired, I know not: but he can now answer questions which puzzle every body, except my learned friend opposite, whose knowledge of figures is notorious. But will they succeed in making him a man of sense? What if my learned friend and I were to carry on such conversations, as seem to

have been Yoolow's delight; "Duncan, are ye canny?—Peter, "we haena to rise when it's snawing.—Na, Duncan, we are better off than doctors." Would this be the language of sense, or of imbecility?

I say, then, you have this man exhibited to you in a state, not of second, but of first childhood. His mind is not impaired, but it has never advanced to maturity. Those suspicious calculations I have referred to, and the story of the cow, are the only proofs of mental ability that have been attempted,—and I leave you to estimate their value.

The evidence of all his domestics establishes the imbecility of his mind. Fergusson, Small, Stewart, Robertson, and Mrs. Small, all concur in this. I need not enumerate the instances of his silliness;—his going to bed when vexed by the merest trifle,—his love of white cattle and dogs,—his want of any sense of shame,—his repeated questions on the same day, "Are you far travelled?" &c.—his shutting his eyes, and asking, "do you see me?"—his distress at any one coming between him and the light, and many more instances of the same kind.

These, gentlemen, you will observe, are facts, not matters of opinion. As to these the evidence is uncontradictory; and, in resolving the question as to the state of this man's mind, indisputable facts appear to me to be the best test.

You thus find this unfortunate person defective in all general attainments, cut off from all practical employment, devoted exclusively to one subject, which, however important in itself, was never intended to occupy a man's whole time. You find his only pastimes childish and mean, and his whole demeanour and conversation so senseless and silly, that, although it may make the unthinking laugh, it cannot but make the judicious grieve.

What I have now referred to is, as I already observed, evidence altogether uncontradicted; and, upon that evidence, I submit that the claimant's case is made out. Let us now look to that part of the evidence which is contradictory, and endeavour fairly to balance it so as to reach the truth.

I proceed to remark, first, upon the evidence adduced today; and, out of Dr. Halket's examination, I obtain one fact, which I submit is conclusive against the defender's case.

I am not going to enter into the scene of wrangling between

the agents—we have nothing to do with that here. But it is proved, that a statement was then made in Yoolow's presence, as to the opinion of counsel having been obtained, in favour of setting aside the renunciation of his sister's lease, and by means of which a large sum might be recovered. Yoolow, it appears, thought all this a joke. He thought that the parties suing this bribe were his enemies, though they are only acting for his protection. He knew nothing about the renunciation, or about the possibility of challenging it; and this special fact was proved, that, though his sister died some months ago, he had first heard of her settlement only on Thursday last. The unavoidable inference from this fact is, that these parties, the trustees and their agent,—and if, as I believe them to be, they are highly respectable, then the inference is the stronger,—did not think it worth while to tell her brother how Miss Yoolow had left her affairs. Men of their respectability could not have withheld information, so interesting and so necessary, from any one who was competent to understand it; and in not communicating it, they evince their consciousness, that he was not entitled or fit to receive it. Yoolow, however, seems to take every thing as it comes. This deep arithmetician, and skilful banker, is content with a return of £20 per annum for his £1200, which is not 2 per cent. He will find plenty of banks to deal with him at that rate. He is represented as cautious and considerate, and he trusts for information to others, who give him none. In my opinion, they acted well and wisely, in not telling this poor jabbering fool the circumstances in which he was left. His porridge and milk were provided him—his reading hours were to be undisturbed—he had Charlie Scott and “the maiden” beside him;—and, with the occasional relaxation of “grosing,” he needed and cared for nothing more.

Dr. Halket, however, states that he paid no attention to this discussion about the sister's will, because, he says, he did not consider Yoolow's ignorance on the subject a medical fact. But why is it not a medical fact? It is the best proof of his mental state. It is better than all that can be said of his religious knowledge.

As knowledge proves capacity, so ignorance is the best proof of incapacity. For, if capacity exists, why is it not exercised?

Why does Yoolow not know the state of his own affairs? Why does he not inquire into them? But the case is plain. He is fond of Charlie, and has confidence in Mr. Kerr; and for these reasons he remains in submissive ignorance of the settlement made by his sister, who died in the house where he lives, and to whom he was entitled to succeed. This want of information is a powerful medical fact, far better than any of his wonderful calculations about the price of meal.

Here, then, you have real evidence of his state of mind, from the ignorance in which he is kept by respectable gentlemen, his advisers, and who do not think it worth their while to make him acquainted with his own rights and interests.

I come next to Dr. Low, who states that he considers Yoolow possessed of a sufficient degree of soundness of mind, to give directions to others to act for him. I admit that Dr. Low is entitled to weight, but he proves very little. He put some questions in arithmetic to Yoolow, the answers to which do not impress me as strong proofs of soundness. He asked him whether he would have £5000, or £1500; and it is evident that, at first, Yoolow had a decided hankering after the £1500; although, no doubt, after explanation, he came round to the £5000. Then you have the suspicious story of the cow,—and that is the sum total of Dr. Low's evidence.

I pass over the unprofessional witnesses, and come now to Dr. Carruthers, whose respectability and intelligence I readily acknowledge. But Dr. Carruthers seems to have peculiar notions. When asked his definition of an idiot, he described him as a person incapable of mental offices. This is going too far:—It implies that the mind cannot work at all. It is clear that Yoolow does not fall under that standard;—but the true question is as to the degree of his imbecility and deficiency.

Dr. Carruthers says, that Yoolow possessed a greater range of information than might have been expected from one living in his state of seclusion. But when I asked him from what he drew that inference, it came to this, that, when some person questioned Yoolow about the price of a breakfast, he said it would be “four bawbees,” and a penny for the milk. This is the only instance that could be given of the great and unexpected mass of information, which Yoolow had accumulated. But what is there

wonderful in this, with a man living on a farm,—confined, indeed, to the house, but not shut out from conversation? The statement, like many others given, is unsatisfactory and inconclusive. Yoolow is possessed of no information of any kind, beyond, perhaps, his acquaintance with the Bible. I ask, is there any man in Forfarshire, or elsewhere, of sound mind, who devotes himself to the Bible, and to nothing else whatever? It is not intended that such should be the case. A competent knowledge of the Bible is required for our comfort and guidance, but the world could not go on for an hour if nothing else were thought of,—if the secular occupations of life were neglected. The exclusive devotion of Yoolow to this one subject, is a proof of that weakness of mind which is here required. The opinion of Dr. Carruthers, that he is possessed of any more extensive information, is not based on sufficient grounds.

I come next to Dr. Bell, whose cross-examination must, I think, have destroyed any impression produced by his examination-in-chief. Dr. Bell is very anxious to represent Yoolow as a man of caution. But his grounds for doing so are somewhat strange. He thought Yoolow cautious, because he seemed to have confidence in those into whose character he *seemed* to have inquired. When asked how he knew that Yoolow had inquired into the character of those in whom he seemed to have confidence, his answer was, that he seemed to have confidence, and expressed himself satisfied. It is clear, then, that the only proof of Yoolow's caution is, his having reposed confidence, where he does not appear to have made any inquiry. The report drawn up by Dr. Bell is obviously extravagant. Not content with stating him to be of sound mind, the reporters describe him as a man of *strong* mind, and perfectly capable of bequeathing his property. Why was that introduced, unless it was to serve a purpose?

Then you have Dr. Nimmo, who does not appear, from his experience, to be entitled to much weight. He admits, that he may have read of cases where there was great memory combined with unsoundness. But he is not sure; and he has not met with any such in practice, although it is notorious that they are of frequent occurrence. He concurs with Dr. Bell, both as to Yoolow's strength of mind, and as to his caution; and he does so, apparently, on the same grounds. He says, that Yoolow shewed a

knowledge of his own affairs ; but, when asked how he shewed it, all he can say is, that Yoolow would not accept of £1150 for £1200.

Next you have the evidence of Dr. Robertson, whose professional character, I admit, is entitled to every consideration. You will observe, that *he* did not state the case very high. His knowledge and good sense made him more cautious. I need not go into the details of his testimony ; but I do not think it decisive of the question, or incompatible with my plea. He spoke to little that is new, except the circumstance that Yoolow was acquainted with the hours. But some of his testimony affords proof as to Yoolow's childishness, particularly in what passed regarding the watches, and the distance to Edinburgh.

Last of all, you have the evidence of Mr. Flowerdew, which there can be no doubt is correct in point of fact, and which is entitled to due weight. But you must weigh it along with the other evidence, and take it along with the remarks I have already made as to Yoolow's ignorance and incapacity upon every other subject whatever.

This, then, is the whole of the defender's case, and I submit that it is inconclusive. I wish to speak with no disrespect towards his medical witnesses, when I say that they have not supported, by the details of their testimony, the opinions which they have given.—But now for the case of the claimant.

And first, you have the evidence of Dr. Christison, the most eminent man in Europe, in the department of medical jurisprudence,—possessed both of the greatest accuracy of observation, and the utmost depth of philosophical research. He saw Yoolow the day before the trial began, with all his improvements from that enlarged intercourse with the world, to which some of the defender's medical witnesses refer. But improved as he was, he pronounced him to be in a state of great mental incapacity, and unable to manage his affairs. I ask, if one witness on the opposite side, or more than one, has stated the reverse ? No question to this effect was hazarded by the defender's counsel to any of his witnesses ; while every witness for the claimant said that Yoolow was incapable of managing his affairs. He tells Dr. Christison that two bolls is a good return for an acre of land. He may have been better schooled since, but that was his answer

to Dr. Christison's inquiry. It is not a very profitable rate. Is there another man that would so talk? Independent of every thing else, this is enough. He may not be an out-of-doors farmer, but he should have known this.—Yet such is the man. He can refer to Amos for the shekel and epha, but he thinks two bolls a good return for an acre. This, I presume, he does by drawing, as we were told, on the resources of his own mind. What is here deponed to by Dr. Christison is matter of fact, not of opinion; and such an answer as this, is worth more than can be compensated by all the good answers he could give. The man who can thus speak must be a childish person. His utter ignorance is further proved, by his not knowing how many yoke, or what number of oxen he had on his farm.

Dr. Christison also speaks as to his arithmetic; and to him this skilful accountant, who does such wonders on other occasions, cannot say how many pounds there are in a hundred guineas. This is of a piece with his taking £20 a-year for £1200, which he does without a murmur.

I pass over his ignorance of the prime minister. I acknowledge it is often difficult to answer who is prime minister. Whether it be Lord Melbourne, or the Duke o' ———, or any other O', may be at times a puzzling inquiry to wiser men than Yoolow. But then it seems Yoolow knew who was king—and he announces his knowledge in a way incontestably proving his silliness. On the subject of the corn laws, of which he ought to have known something, all that Dr. Christison could extract from him, was a conjecture that they were to sell the corn.

Upon these, and the other answers given by him, Dr. Christison formed an unqualified opinion that Yoolow is a person of weak intellect, and incapable of managing his affairs. Dr. Christison founds also, upon the expression of his countenance, which you had yourselves an opportunity of seeing, and which he considers strongly indicative of idiocy. He founds, also, on his excitability, of which various instances are given in his evidence. You will recollect how Scott interfered to prevent him being disturbed at his reading, and the extraordinary scene which ensued. He had his five hours' reading at another period of the day—but he could not endure to be disturbed then. Then recollect his appeal to the maid-servant, and her telling him to order them

out. If a man of sound mind, why did he not dismiss them himself at once ?

Such, then, is the opinion formed by Dr. Christison, of Yoolow's state of mind ; and what is of still more importance, such are the facts which he had an opportunity of observing, and of which, as he has detailed them, you are yourselves competent to judge.

Next you have the evidence of Dr. Malcolm, perhaps the second best authority on such a subject that was within reach of the parties. He tells you, that he considers Yoolow a man of unsound mind, and incapable of managing his affairs. To Dr. Malcolm, he could not tell how much 50 and 50 made, or what had been the state of the crops. It would appear that he has either learned some of these things since, or that he had forgot them when Dr. Malcolm conversed with him. There is a good deal of evidence as to this process of tutoring. For instance, at one interview, his mind was a blank as to the Reform Bill, but he had got information about it on a subsequent occasion.

I will not go into farther details of Dr. Malcolm's evidence ; but I ask you, who is Dr. Malcolm ? He is a medical gentleman of the greatest talent and respectability, who has spent his life in the study of this branch of science ; and he gives you examples of Yoolow's peculiarities, from actual patients in the Perth asylum. You have, then, Dr. Malcolm's opinion, and the grounds of it,—and you will give the utmost weight to his evidence.

Next you have Mr. Symmons, the keeper of the Perth asylum,—a most intelligent man, who has spent his life in the charge of persons of unsound mind. He tells you, that Yoolow has the mind of a child of from eight to ten years of age, as if its progress had been arrested at that period of infancy. This, in my opinion, is the best description of Yoolow's condition that has been given ; and it is confirmed by the various acts of childish conduct that have been proved.

Dr. Millar of Perth concurs in this opinion, except that he thinks Yoolow worse than a child of ten or twelve.

Mr. Blair's evidence contains little in itself, but has an important negative effect. He visited Miss Yoolow, and I cannot doubt had every wish to do his duty to the rest of the family. But he did not communicate with her brother, from a conviction

derived, no doubt, from general opinion, that it was not worth while, and would be of no use.

Dr. Anderson, the medical attendant of the family, and who was himself cognizant of Yoolow's first illness, concurs in opinion with the other medical gentlemen. It is for you to consider how far the weight of that opinion is shaken, from the nature of the cross-examination which, at a late hour in the night, was so dexterously applied by my learned brother, to a gentleman of his advanced years.

Dr. Purves, the next medical witness, is very important. He is from the enemy's camp. Of course I do not use the word *enemy* in an offensive sense, as our opponents are only doing their duty. Dr. Purves, however, after being employed by them, does not suit the opposite party, but he suits us very well. He concurs with the other medical gentlemen to whom I have referred, and he gives some additional traits of Yoolow's imbecility. In the middle of a conversation on other matters, Yoolow cannot refrain from expressing how much he is delighted with David Ballairdie's buttons.

Gentlemen,—contemplate for a moment this picture. Here is a man of fifty-four years of age who, like the veriest child, is “pleased with a rattle, tickled with a straw,”—and gazes with infantine ecstasy at a brass button! The fact speaks volumes; and I may observe, that the beauty of these buttons is the only subject of conversation that Yoolow is proved ever to have originated. I beg pardon—I must correct myself. I understand it is not *David*, but *Saunders* Ballairdie, who is the gentleman with the buttons,—these buttons which are more interesting to Yoolow than the deed of settlement of his sister. Look, gentlemen, at this unhappy creature's estimate of different objects. He does not know that his landlord is member for the county. He does not hear of the Reform Bill,—though I should have thought that the noise of Coupar-Angus would have reached his ears at the first election. To all these things he is indifferent—he cares not what passes in the state—he sees no occasion for reform, so long as Ballairdie's buttons glitter in the sun.

You have next Dr. James Anderson,—long the family doctor—who gives a similar opinion as to Yoolow's imbecility. I have already adverted to many things brought out in Dr. Anderson's

evidence. I shall only notice now the terror with which he describes Yoolow to have heard the sound of Dr. Malcolm's carriage wheels. I take this as a closing picture of his mind. Harmonising with his childish tastes and follies, you have a corresponding degree of childish and causeless alarm. Why this agony, on such an occasion, in a man of sound mind? Was any harm intended him by Dr. Malcolm? Could Yoolow not have resisted—would he not have been protected?

Here, gentlemen, I close my observations on the facts and evidence of the case. And, in conclusion, I shall say something on the nature and principles of the inquiry in which you are engaged.

I maintain, gentlemen, that absolute want of intellect is not necessary to be supposed, in order to entitle me to a verdict in such a case. I refer his Lordship and you, on this subject, to the authority of Mr. Erskine, (B. 1, T. 7, § 48) who thus expresses himself: “It has been said that our law provides curators not only for minors, but for every person who, either from a total defect of judgment; or, 2dly, from a disordered brain; or, 3dly, from the wrong texture or disposition of the organs, is naturally incapable of managing his affairs with discretion. Of the first class are fatuous persons, called also idiots in our law,”—and so forth. And, at the end of the paragraph, after referring to some points of discussion noticed by Lord Stair, Mr. Erskine observes: “But, however this question ought to be decided, thus far must be allowed to his Lordship, that where such as labour under that infirmity cannot properly exert their reason in the conduct of life, curators may be appointed for them as well as for minors.”

In support of this view, I refer you also to the case of Scott, as mentioned in the note to Mr. Erskine, where the Court interfered in a case of incapacity. Also to Lord Kilkerran, p. 278, *Stark v. Stark*, where the law is thus explained: “The minority took the matter in too narrow a view, as if to cognosce one an idiot, he behoved to be fatuous or altogether incapable; whereas no more is necessary than that the person appear not to be endued with a disposing mind.”

It is enough to authorise a verdict in such a case, that the party is *non compos mentis*. This is well explained by Dr. Beck, who states that under this head are embraced all such as “are

“judged by the Court of Chancery incapable of conducting their own affairs.” *

In conclusion, gentlemen, I have to say, that in suing out this brieve, we have no pecuniary object whatever. We have renounced any claim to the office of curatory itself, leaving it to be filled up otherwise in a proper manner. We merely seek to give this poor man that protection which his condition requires, and which can be attended with no injury to him. The case is in your hands. From the manner in which it has been conducted, the opposite party have the advantage of the last word ; an advantage which I consider very great, considering the counsel by whom you will be addressed. But I do not grudge my opponents that advantage—it is their due,—as I acknowledge that the form adopted is, by the law of Scotland, the correct one. But, gentlemen, your duty remains behind, to consider the case deliberately, after hearing all that can be urged from the bar, and after listening to the observations of his Lordship. I confidently anticipate, that, upon full consideration of the whole, you will return a verdict in favour of my client.

Mr. D. M'NEILL then addressed the Jury:—

Gentlemen of the Jury :—After nearly two days of anxious investigation, we have arrived at that stage of the proceedings, at which it is the privilege of the defender, and my duty as one of his counsel, to make his last appeal to you, and to place before you, as clearly as I can, the grounds of our resistance to the demand upon you, with which these proceedings were on Saturday opened, and with which the speech of my learned friend has now been closed. My learned friend, towards the conclusion of that very brilliant speech, alluded to some supposed advantage, in point of form, possessed by my client, which he was pleased to describe as “the advantage of the last word ;” and he did me the honour to suppose that I had the ability to turn that advantage to some account. Gentlemen, I shall not here stop to vindicate the rule of practice in the Courts of this country, which gives to every man called upon to defend his life, his liberty, or his privileges, an opportunity of finally answering all that has

* Beck's *Medical Jurisprudence*, (Dunlop's Edition), p. 244.

been advanced in fact, or urged in argument against him. My learned friend himself admits the justice of the rule, and the propriety of its application to this case. But, Gentlemen, for myself, I may be allowed to say, that if I thought the result of this cause depended at all on any effort of mine, I should consider it any thing but an advantage to be compelled to solicit your attention after my learned friend, and while the impression which his address cannot have failed to have made upon your minds is yet fresh. The result of this cause, however, does not materially depend on any effort of mine : my reliance is not placed on my own power, but on the power of truth to make itself manifest, and on your ability to discover it. I rely on the great principle, that in every such inquiry, especially when conducted with that exemplary care and patience which you have displayed, truth and justice will prevail over any professional efforts that may be made to obstruct their course, however skilful those efforts may be.

Gentlemen, when I remember the great attention with which you listened to the evidence, and that each of you had an opportunity of seeing and conversing with the defender ; when I think of the time that has already been occupied in this trial, and the many inconveniences and discomforts to which you have unavoidably been exposed in the course of it, and how very little, if at all, the result of it now depends upon me,—it is with considerable reluctance that I trespass on your patience, or add another moment to the many hours of fatigue you have already undergone. But if there is any ground at all for the perseverance and the confidence with which the cause has been pressed on the part of the pursuer, I cannot but feel, that it may be fraught with fearful consequences to my unfortunate client. If the sad dispensation which, in early life, deprived him of bodily power, was attended with the farther deprivation of all mental faculties, then indeed would he be a fit object, not only for your greatest pity and commiseration, but for the protecting interference of the law, were it not that other circumstances, to which I shall have occasion to allude, render such interference in his case unnecessary. If he does truly labour under that double deprivation of bodily power, and of mental faculties, your verdict, whatever it may be, can bring neither gladness nor sor-

row to him. But if, as I firmly believe to be the case, there does dwell within that feeble and shattered tabernacle a reflecting mind, now watching with anxious solicitude the fate of this inquiry—a mind conscious of the disadvantages to which it is exposed, and yet sensitively alive to all the sympathies of our nature,—by circumstances accustomed, if not compelled, to rely on its own resources for employment, and in solitude driven to feed upon itself, unrelieved by those calls to active exertion which in other cases help to break gloom and banish despair,—if that is truly the condition of my client, I can picture no consequences more fearful, no fate more appalling, than that such a man should, through any mistake on your part, or through any failure of duty on mine, be subjected to the endless and countless mortification of unmerited degradation, of unjust control and subjection to minds perhaps weaker in power and in virtue than his own, and of sad and hopeless excision from the mass of rational beings. You will therefore, I am sure, pardon the anxiety which prompts me still to solicit your attention to the grounds on which I confidently ask your verdict in his favour. I doubt not that many of the considerations which I am about to submit to you must have been suggested to your minds from time to time, while the evidence was in progress; but it may be useful now to bring them before you in one connected view, along with such additional considerations, if there be any such, as appear to me to be likely to assist you in arriving at what I believe to be the truth of this case, and its proper termination.

Permit me, in the first place, to explain to you, under the correction of his Lordship the Sheriff, what really is the proper subject of your inquiry, and what is not so. The necessity of explaining this is forced upon me, by the manner in which my learned friend dealt, not only with what might be called the law of the case, but with its broader features. You are aware that the object of your inquiry is the state of David Yoolow's mind—and in a general sense it may be said, that you are inquiring into the state of his mind, as to soundness or unsoundness. But that is a very general and very loose way of stating it. Soundness of mind is a very indefinite phrase. It has no technical meaning in the law of Scotland, and when used in a popular way, it must be obvious to you that it admits of various distinctions in charac-

ter and in degree. But your duty and the subject of your inquiry is much more definite. You are here sitting as an inquest, under a particular brieve, which points out the precise object of inquiry, by putting to you certain questions, to which you are to return affirmative or negative answers. It is important that you should attend to the nature of some of those questions; and in order that you may understand them thoroughly, I shall take the liberty of quoting from a high authority, without mutilation, a passage of which my learned friend read only a part.

My learned friend rightly told you, that the law provides for the protection of those who, from defect of mind, are in that state which, in the estimation of law, calls for such interposition. But it is not every kind or degree of defect that warrants such interposition, nor is the nature of the interposition, when made, the same in every case. Undoubtedly in extreme cases, in cases of total defect of judgment, the law recognises the course of procedure which has here been adopted. It recognises the right of the nearest male *agnate*—the phrase used to denote the nearest male relation on the father's side—to take out a brieve for ascertaining by the verdict of a jury, the defect of mind of his relative, and for vesting in himself the office of his curator. In cases where the infirmity is of minor degree, there are other remedies which I shall advert to. But even in cases where the procedure is properly by a brieve and inquest, the law distinguishes between those who labour under what may be called a want of mind, and those who have mind, but so deranged and disordered as to make it proper that they should be placed under the curatory of others. That distinction, which may be shortly described as the distinction between idiots and madmen, is also perfectly well known out of the law, and has probably fallen under the observation of most of you. Accordingly, when a brieve is issued for inquiring into the state of mind of any individual, it is limited to one or other of these classes. It is either a brieve for inquiring whether he is, or is not an idiot,—or it is a brieve for inquiring whether he is, or is not a madman. There may be two brieves, one for inquiring whether he is, or is not an idiot, and another for inquiring whether he is, or is not a madman—but each of these is a separate brieve, to which a separate answer must be made. In the present case there is only one brieve, and that is a brieve of

idiotry. The distinction between the two brieves of idiotry, and of madness or furiosity, as it is called, is thus stated by Mr. Erskine in his *Institute of the Law*. “In the brieve of idiotry, the words are, *si sit incompos mentis, fatuus, et naturaliter idiota*; in that of furiosity, *si sit incompos mentis, prodigus, et furiosus*.” The phrase *incompos mentis* is common to both brieves, but in each it is qualified by particular words, which give to it a particular meaning and limitation. In the one the inquiry is, whether the party is *incompos mentis*, by reason of being fatuous, or naturally an idiot—in the other the inquiry is, whether the party is *incompos mentis*, by reason of being furious and reckless.

Having made these remarks, I now request your attention to another passage in the same work, which points out very fully and clearly, not only the distinction I have adverted to, but also the nature and extent of the inquiry in which you are here engaged.

“It has been said that our law provides curators, not only for minors, but for every person, who, either from a *total defect of judgment*, or 2dly, from a disordered brain, or 3dly, from the wrong texture or disposition of the organs, is naturally incapable of managing his affairs with discretion.” The third class here spoken of are deaf and dumb persons, who in these days were erroneously thought to be incapable, and who alone are alluded to in the last part of the quotation read by my learned friend.—The learned author proceeds, “Of the *first* class are *fatuus* persons, called also *idiots* in our law, who are *entirely deprived of the faculty of reason*, and have an uniform stupidity and inattention in their manner, and childishness in their speech, which generally distinguishes them from other men; and this distemper of mind is commonly from the birth, and incurable. Furious persons, who may be ranked in the *second* class, cannot be said to be deprived of judgment, for they are frequently known to reason with acuteness. But an excess of spirits, and an over-heated imagination, obstruct the application of their reason to the ordinary purposes of life; and their infirmity is generally brought on by sickness, disappointment, or other external accidents, and frequently interrupted by lucid intervals. Under these may be included madmen, though their madness may not discover itself by acts

“ of fury, but by a certain wildness of behaviour flowing from a
 “ disturbed fancy. Lunatics are those who are seized with pe-
 “ riodical fits of frenzy.”

The allegation in regard to David Yoolow is that he belongs to the first of these classes. It is quite clear that he does not belong to the second class. That is clear from the evidence, as well as from the course of pleading adopted by the pursuer. Accordingly the brieve to which you have to return the answer is a brieve of idiocy, not of furiosity. The question you have to answer is, whether David Yoolow be *incompos mentis* by reason of being *fatuous*, or naturally an *idiot*,—that is to say, whether he belongs to that class who, in the language of Mr. Erskine, are described as persons who, from “ a *total defect of judgment*, are naturally incapable of managing their affairs “ with discretion,—who are *entirely deprived of the faculty of reason*, and have a uniform stupidity and inattention in their “ manner and childishness in their speech.”

I have said that, in cases where the infirmity is of a minor degree, other remedies than that of cognition are provided. Without dwelling upon these, I shall content myself with reading to you the short and distinct enumeration of them which is given by the present learned Professor of Scottish law in the University of Edinburgh, in his work entitled “ Principles of the Law “ of Scotland.” In treating of “ Idiocy,” and of the point to be tried under the brieve now before you, he says, “ The character “ here is that of total incapacity ;” and then, under a separate head of “ Imbecility and partial incapacity,” he has this passage, “ There are many cases which require protection, and yet in “ which no remedy by cognition and curatory can be obtained. “ The power of interposing in such case, (one of the most delicate that can be committed to a judge), is vested in the Supreme Court. The occasions for its exercise are, 1st, Imbecility from age, from natural facility of temper, from organic affection ; 2d, Temporary incapacity, as delirium ; 3d, Absence abroad ; 4th, The interval before a cognition can take place ; 5th, The abuse of parental power and guardianship. “ In the four first of these cases, the judicial remedies applied “ are the appointment of a judicial factor as curator bonis.”

The pursuer has not chosen to deal with the case of his rela-

tive as one to which that milder remedy, that more lenient species of interposition, would be suitable. I shall afterwards explain to you why that would not have answered the pursuer's purpose. He has chosen to treat the case as one of absolute fatuity and idiocy, calling for the extreme measure of cognition through the intervention of an inquest; and as such you are now required to deal with it. You are asked to return a verdict which would have the effect of depriving the defender of all power whatever in relation to his own affairs. If you find a verdict affirmative of this brieve, cognoscing him as fatuous and an idiot, he will have no power of disposal or control over the most minute portion of his means, even to the effect of bequeathing the most trifling token of his regard or affection for those who have sympathized with his infirmities and endeavoured to mitigate his sufferings, or the smallest acknowledgment for kindness which it is proved he is capable of appreciating.

The law itself wisely distinguishes between that degree of mental power which is requisite for the making a settlement of a man's affairs, and the greater degree of mental power which is requisite to fit a man for entering into conflict with others in the competition of interests, the making of bargains, and the various dealings and transactions of life. It holds that a man, though not of sufficient strength of mind to secure him against imposition, against the cunning and mastery of stronger minds, may nevertheless be possessed of sufficient mind to enable him to dispose of his means and estate, and it will sustain the disposition which he makes of them. But I need not tell you, that if a man is cognosced as fatuous and an idiot, he is placed below the level of that capacity which would enable him to make any disposition whatever of his affairs. He is held to have no mind at all. That is the position in which you are asked to place the defender in this cause.

Is this man deserving of being placed in that position? Is he an idiot?—that is the question you have to try. You have seen him; you have conversed with him: and although eminent medical gentlemen have been brought before you to give their opinions as to the state of his mind, it humbly appears to me that this is a case in which the evidence of your own senses may be appealed to with as much safety and propriety as

the opinion of medical gentlemen, however eminent; and upon the result of your personal observation, I would gladly peril the cause. It is proper, however, to analyze the evidence which has been adduced; but, in connection with that analysis you must always keep in remembrance the circumstances which fell under your own observation, as the best guide to a just conclusion.

Before commencing that analysis, I shall take the liberty of reading to you, by way of caution, a passage from a work of a well known writer on medical jurisprudence, and particularly on diseases of the mind; and who has never, I believe, been suspected of too great a disposition to reject evidence of insanity. Dr. Haslam, in one of his treatises, has this passage: "Hesitation of speech, nervous and convulsive affections, uncouth gesture resembling St. Vitus's dance, absence of mind, dulness in comprehending a question, with tediousness and embarrassment in affording reply, have often induced a mistaken supposition that the party was insane." I quote this passage, not because I entertain any serious apprehension that you may have been misled by the external appearances exhibited by the defender, for which you were sufficiently prepared, and the causes of which have been sufficiently explained to you,—but because it may afford a key to the crude conclusions of hasty or inaccurate observers, of whom not a few have been examined on the part of the pursuer.

There is another consideration which I am desirous to press upon your attention, before proceeding to analyze the evidence,—and that is, the great distinction between the capacity to acquire knowledge, and the actual possession of knowledge. A man who has not the capacity to acquire knowledge, can never be in the actual possession of knowledge. The capacity to acquire must precede the acquisition. But, on the other hand, the capacity to acquire knowledge may exist, though the knowledge has not been acquired, or although it has been acquired only in a very limited degree. The actual acquisition of knowledge, and the extent of the acquisition, must depend on a multitude of circumstances;—the temptations or inducements to acquire,—the inclination to acquire,—the opportunities or means of acquiring, which may be more or less extensive,—the obstructions or obstacles to acquiring, which may be greater or smaller according to circumstances. Hence it is that we see men, born with equal

faculties, most unequal in the measure of their knowledge. The most knowing savage from the Sandwich Islands, or the shrewdest serf from Russia, would be found totally ignorant of many things which we know to be familiar to persons of limited knowledge among ourselves. We even see in our own country men of the strongest natural parts, who, from their avocations, their dispositions, or the position in which their lot has been cast, have not extended the sphere of their knowledge half so far as some who are infinitely inferior to them in natural sagacity and mental power. But in none of these cases does the absence of knowledge bespeak the absence of mind, or of a capacity to acquire knowledge; nor ought the one to be mistaken for the other. Now the inquiry you are engaged in here is, not as to the extent of David Yoolow's knowledge, but as to the existence in him of a capacity to acquire knowledge. I admit that there are many subjects of which he is ignorant. That is, in a greater or lesser degree, the condition of most men, even the most learned. I may admit, that there are few subjects on which he is informed. That, unfortunately, is the condition of too many. But ignorance does not prove incapacity. I do not mean to say, that total ignorance, notwithstanding every opportunity and inducement to acquire and every effort to infuse knowledge, may not be a proof of want of capacity to acquire. There the capacity has been put to the test in the only way in which it can be tested, and has been found wanting. But, as a general proposition, the want of knowledge is not a proof of want of capacity to acquire knowledge; and that is the consideration which I wish to press upon you, as one of the utmost importance in this case.

Connected with that consideration, there is another not less important. I have already explained to you, that this is not a case of insanity or derangement of mind. It is not the case of a man admitted to have been at one time in possession of a sound intellect which enabled him to acquire knowledge, but who has subsequently been afflicted with derangement. Such a person might, even under his derangement, display the knowledge he had previously acquired; and if his insanity, as not unfrequently happens, was monomaniacal or confined to one particular subject, it might even be difficult, especially for strangers, to detect it. In such a case, the thing to be sought for is the insanity. A display of knowledge, or of mental power, on one or even on seve-

ral subjects, is not in such a case conclusive. The insanity may still be there, and may and will exhibit itself if the proper chord be touched. But the case you have to deal with,—the case which the pursuer has attempted to make out,—is a case of original, or, at all events, of infantine incapacity : such a case excludes the idea of capacity to acquire knowledge at any time, or on any subject. If the pursuer's case be true, the capacity is not and never was there, and consequently cannot exhibit itself in any form whatever. If, then, you find capacity exhibited in any form,—if you find knowledge, necessarily indicating the existence of capacity, no matter in what department that knowledge may be,—your verdict must be against the pursuer. The distinction is obvious. Derangement, though it exists, may not be discovered ; it may even be dexterously concealed. But capacity cannot possibly be displayed in any form unless it actually exists ; and when the inquiry is as to the existence or non-existence of capacity, that inquiry is answered as soon as you find the capacity exhibiting itself upon any subject to which it has been applied, no matter what.

From the evidence, you have already learned, that in very early life David Yoolow met with a severe dispensation of Providence, in consequence of which his parents appear to have been advised by the late Dr. Stewart, that it was not expedient he should prosecute his education farther at that time. The advice was judicious and humane. The shock which he had then sustained made it proper that, for a time at least, his mind should not be strained or over-exerted, but should be allowed to gather strength in repose. Dr. George Anderson seems to have thought that the advice was given and acted upon, in the idea that it was unnecessary to incur expense in attempting to educate him, or to teach him any thing. But the exhibition made by that gentleman in the witness' box was not calculated to inspire much confidence in his own opinions, or in his reasons for them ;—still less in his speculations as to the opinions or reasons of others. It happened, however, that Yoolow's education was not prosecuted. Deprived almost entirely of the power of locomotion, and of the use of his hands, his bodily infirmities were such as to unfit him for any active or useful occupation, and even to make him an object of care and solicitude. His pa-

rents, themselves illiterate, were not likely to inspire or to encourage in him any disposition or effort for mental improvement. In that state, physically confined almost to the limits of his apartment, seeing nothing of the world without, and having within but little opportunity or means of acquiring any knowledge of it, he seems to have applied the slender and imperfect education he had received, and the faculties he possessed, to the reading and understanding of the only volume within his reach,—that volume of truth and wisdom, to learn and to understand which is the best exercise of the human mind. With what success he applied himself to that study, is in evidence. Every witness on either side, who had opportunity or took the trouble to ascertain the fact, has proved to you, not that he read the Scriptures merely, but that he understood and remembered what he read;—not that he repeated by rote like a parrot, but that he explained and applied what his mind had mastered and his memory had retained. The pursuer's witness, Dr. Malcolm, proved that when, at his desire, Yoolow read a part of the Bible, he seemed to know the meaning of what he read. Another of the pursuer's witnesses, who had been a servant in the family, admitted that in some things Yoolow's mind was not like that of a child; and on being asked what those things were, she said, "I mean, that he explained the Scriptures to us." Dr. Robertson, Dr. Carruthers, and others, also proved that he perfectly understood what they spoke to him about on the subject of the Bible; and that it was not a mere repetition from memory. But, perhaps, the best evidence on this point is that of the Rev. Mr. Flowerdew, who conversed with Yoolow on the subject of the Scriptures, for the very purpose of ascertaining his knowledge of them. He examined him on various points, which he enumerated to you, shaping his questions, as he said, so that he might discover "whether he knew the Scriptures mechanically "merely, or whether he was intelligent upon the subject;" and he found that his knowledge was not mechanical but intelligent: and that, so far from shewing any trace of imbecility or weakness of intellect, he shewed quite the reverse. The powerful evidence of that reverend gentleman must be fresh in your recollection; and it does humbly appear to me to be conclusive of the cause: for it proves that, not only unaided, but struggling against

many disadvantages moral and physical, this poor man had made himself master of the truths of the Gospel, of the principles of the Christian faith, the most sublime system that ever was exhibited to the world. If, instead of applying himself to the study of the Scriptures, he had applied himself to the study of any system of philosophy ancient or modern, and had made himself thoroughly master of it, would not that have been a conclusive proof of capacity? Is it less so, that the subject to which he has applied himself, and which he has mastered, is the system of Christianity? Is it a proof of want of mind that he, while physically precluded from the more worldly pursuits, and without the education, the means, or the incentives which might have guided his mind to other studies, devoted several hours of every day to a subject on which more time and talent has been bestowed than on any other,—a subject which has occupied the entire days, and lives, of many of the ablest and most learned men that Christendom has produced? Is it a proof of want of mind, that without a teacher to guide him, without a commentator to expound to him, without a Christian to aid him, he has seen in its true light, he has thoroughly mastered that vast system; and has not only expounded it for himself, and to his own everlasting good, but has helped to explain and to extend the knowledge of its truths to others, who, though exhibited to you here as witnesses for the pursuer, and therefore, I presume, of sound and rational mind, could not, without his assistance and explanations, comprehend that which he had mastered without any assistance whatever? Can you doubt that the mind which accomplished this, could equally have mastered other subjects, if it had been applied to them? This could not have been achieved,—this knowledge could not have been acquired, without capacity. The most convincing proof that there exists capacity to acquire knowledge is, that the attempt to acquire it has been attended with success; and it is no answer to say, that there is a want of knowledge on other subjects, as to which there has been no attempt to acquire, or to instil knowledge.

My learned friends seemed to argue, as if knowledge of the Scriptures was rather a proof of weakness of mind; for they told you, and were at the pains to prove to you, that there are frequent instances of lunatics who are able to repeat whole

chapters of the Bible, and who are in the habit of quoting it in every sentence. I shall afterwards notice the particular instances. In the meantime, I shall just observe, that the mere repetition of any thing by rote, is, I admit, no proof of sanity, or even of capacity. But to repeat by rote is one thing, to understand and apply is another thing. My learned friends have not proved, or attempted to prove, that, without capacity to acquire knowledge, it is possible to acquire a thorough knowledge and real understanding of the Scriptures. The proposition would involve contradiction and absurdity, and although my learned friends were forced to shape their case and their argument so as to insinuate that conclusion, they could not venture to state the proposition in plain terms. David Yoolow's knowledge of the Scriptures was the result of study and reflection, successfully applied to a great subject. His exclusive devotion to that study, of which also my learned friend endeavoured to make something, is satisfactorily accounted for, by the accidents of his life, to which I have already alluded. Where, or from whom, was he to acquire that taste for literature and the fine arts, which my learned friend desiderated, or a knowledge of history and philosophy, or an acquaintance with the principles of political economy? That which was within his reach he studied, his taste was formed to it, his soul was wrapped in it. The subjects for reflection which it afforded him were endless. The field which it put before him was boundless, and he devoted himself, as many pious men have done, to exploring that field, and storing up and profiting by the fruits which he there gathered.

Such, then, had been the course of his life, and the results which attended it, at the time of his father's death. It has been pressed upon you, that his father by committing him to the care of his sister, recorded his opinion of his imbecility, and that his sister did so still more unequivocally afterwards, by appointing trustees to take charge of the property, which devolved upon him at her death. It must; however, be obvious to you, that his personal decrepitude, and the secluded life he had led, sufficiently account for these arrangements; while it must be equally obvious to you, that the arrangements themselves are quite sufficient to protect his interests, without any other interference. I may however notice, that by the sister's settlement,

a bequest of ten pounds yearly is directed to be paid to, or, in the option of her trustees, to be applied for the benefit of, the present pursuer. So that the pursuer was not intrusted absolutely with the management of even the £10 per annum, that were left to him by David Yoolow's sister ; but, I presume, it is not on that account to be inferred that she considered the pursuer as fatuous.

After the death of his sister, David Yoolow succeeded to the beneficial interest in her estate, which she had vested in trustees chiefly for his behoof, and which consisted of certain leases and of money. That event occurred only in the month of August last. It was a new era in the life of David Yoolow. It was calculated to lead him to extend, in some degree, his intercourse with the world ; and to devote part of his attention to matters which he had not hitherto had any occasion to consider. It is in evidence before you, that this enlarged intercourse with the world and its affairs, has already had the effect of increasing his knowledge, and sharpening his understanding and power of observation ;—another conclusive proof of the existence of a capacity, which requires only to be applied and exercised.

It would appear, however, that the pursuer was advised to stop the progress of that improvement, to disturb the arrangements that had been made, and to wrest the management out of the hands in which it had been placed by those whose anxiety for the welfare of their near relative was at least equal to that of the pursuer. This attempt was to be made by taking out a brieve of idiotry, and endeavouring to cognosce poor Yoolow as fatuous. Let us now see what sort of evidence has been adduced in support of that brieve. Doctors without number from all parts of the country have been sent to visit him, in order if possible to detect traces of imbecility. Every incident in his most private life, every foible of his nature, even the inevitable results of his personal infirmities, have been collected and grouped together, in order, if possible, to present to you a likeness of imbecility,—and what does it all amount to?

I shall begin with the evidence of one of the greatest medical Jurists in Europe, as my friend Dr. Christison was not unaptly termed. He was brought by the pursuer from Edinburgh to visit Yoolow, and to give you an opinion on his state of mind. He never saw him till yesterday, and then he saw him on two

occasions, at an interval of about fifteen minutes,—the first interview having lasted for about ten minutes, and the second, for about half an hour. I have very great respect for Dr. Christison, and for the high reputation which he has so justly acquired, but I cannot help thinking that on this occasion he has totally mistaken the proper course of proceeding, and consequently has missed the true result. It sometimes happens that great minds cannot descend to the consideration of simple matters; and Dr Christison does not appear to have let his mind down to the patient consideration of that of Yoolow. In the first place, let us see how he, and his party, approached the defender, and how they deported themselves on that occasion. Ever since this inquiry commenced, the defender has been subjected to the constant visitation of persons, sent for the very purpose of endeavouring to prove him to be insane; and he chose to submit patiently to that painful infliction. I say chose to submit to it, because he was entitled to have resisted it, if he had thought proper. No law could have compelled him to submit to it. He was not to be presumed insane by anticipation, and he was entitled to prevent any intrusion upon him, in the privacy of his own house. But he was advised to submit to it, and he did so. In the particular case of Dr. Christison, and his party, there was a written consent to their admission, given by the agent for Yoolow, which clearly shews that there was no desire in that quarter to exclude them. But the time when they arrived happened to be the time of the day which Yoolow was in use to devote to reading, and he was averse to be disturbed when so engaged. In that there was nothing unreasonable. But the party, apparently with more zeal for the execution of their own mission than regard for his feelings, insisted on being admitted at that unseasonable time. The servant tried to keep them out, but they made their way in against the servant's will. Dr. Christison tells you that Dr. James Anderson, who was of the party, and who was acquainted with Yoolow, said, he would go and speak to Yoolow, and get Dr. Christison admitted; and that he went, and returned and said they would be admitted. I may remark in passing, that if Dr. Anderson really did appeal to Yoolow, and obtain his authority for their admission, it proves Dr. Anderson's belief that Yoolow had a mind

fit to be appealed to, and capable of exercising authority over his servants, and compelling them to submit to his superior judgment. This you will keep in mind when considering Dr. Anderson's evidence. It cannot however be doubted, that whether Yoolow eventually consented to receive them or not, the interruption was most unseasonable, and that they were not likely to find him in a state of such composure as was favourable to their forming a correct estimate of his power of mind. But what followed? Dr. Christison, by way of composing him, asked him to read a little, which he did correctly; and then, with the view, I presume, of further composing him, Dr. Christison tried to take the book out of his hands, which Yoolow resisted violently. The intrusion was sufficiently irritating, but this was altogether unbearable. It was enough to disturb even the most placid temper. Nor did this strange conduct end there; for Dr. Christison himself told you, that after "another altercation," Yoolow desired his servant to take them out; to which the servant answered, that they would go out if he ordered them. Whereupon Yoolow said, "Then, I order them;" and they left the room. Dr. Christison must have fallen into a mistake when he afterwards stated, that their leaving the room was in consequence of what Scott said, and that he attached no importance to what fell from Yoolow, as the order did not originate with himself, but was put into his mouth by the servant, Yoolow not having expressed any disapprobation of their presence, or wish that they should leave the room. The very reverse of this is proved. According to Dr. Christison's own account of the interview, Yoolow did express the most decided disapprobation of their presence, and did make the first unequivocal suggestion as to their leaving the room, by desiring the servant to "take them out;" and when the servant said they would go if he ordered them, he instantly gave the order by using these very decided words, "Then, I order them." My learned friend, in commenting on this scene, which he could not avoid noticing, remarked, that if Yoolow had been a man of strong mind, he would himself have ordered them out of the room at once, instead of applying to the servant. With all deference to my learned friend, I may be permitted to say, that when a person behaves rudely in your house, and you desire your servant to shew him to the door, it is pretty nearly the same thing

as ordering him out, and not less contemptuous. It is at least as broad a hint to be gone as any gentleman could wish to have. At the same time, you will not fail to observe, that the remark of my learned friend imports an admission, that the conduct to which I have alluded was highly improper and irritating, and deserving of instant expulsion from the room. Yet you find Dr. Christison stating Yoolow's "easy excitability" as one of his reasons for believing him to be of unsound mind.

Such, then, was the preparative of Dr. Christison, and his party, for putting their questions to Yoolow. What next was the course of their interrogation? Was it, or was it not, calculated to prove the existence or non-existence of capacity? When you mean to ascertain the existence or non-existence of capacity to acquire, by trying whether the man has actually acquired knowledge, do you examine him on subjects to which he has turned his attention, or on subjects to which he has not turned his attention,—on subjects with which he professes to be acquainted, or on subjects with which he professes not to be acquainted? This perhaps may appear to you to be rather an absurd question, on my part. You may perhaps think it very plain, that, as the man's knowledge of the subjects to which he had turned his attention would prove that there existed capacity to acquire knowledge, while his ignorance of subjects to which he had not turned his attention would not prove the want of such capacity, the obvious and fair course would be to examine the man on the subjects to which he had turned his attention, and which he professed to understand. That is probably your opinion, and it is also mine. But Dr. Christison and his party seem to have proceeded on the opposite principle. They carefully avoided the subjects which the man professed to understand, and they pursued their interrogations on the subjects which he professed not to understand. They were told that Yoolow understood the Scriptures:—they did not examine him on that. They were told that farming, arithmetic, and politics were subjects with which he was unacquainted:—they did examine him on these.

Such having been the course of examination, it is not singular that there were several questions which Yoolow could not answer. But it is very singular, if he be an idiot void of capacity, that there was not one question which he did not seem perfectly to compre-

hend, though he was not possessed of the knowledge requisite to enable him to answer it. This fact came out, I think, in answer to a question put by one of yourselves to Dr. Christison; and certainly it evinces any thing but a want of capacity that he understood the import and bearing of questions put to him, even upon subjects in regard to which he was so imperfectly informed as not to be able to answer the question. This fact is corroborated by another fact perhaps still more singular, if he really be an idiot and void of capacity, namely, that although there were questions which he did not and could not answer, there was no question to which he gave an absurd and idiotical answer. When his information or knowledge did not enable him to answer the question, he admitted his ignorance and inability to answer it, but on no occasion did he make an unmeaning or nonsensical attempt to answer it. And I pray you to observe, that although I am now commenting on the examination of him by Dr. Christison and his party, this observation is equally applicable to all the other examinations of him. He has now for nearly six months been subjected to incessant visits and examinations on all subjects by learned Doctors and others, for the very purpose of catching him tripping; and on no one occasion has he ever given an absurd or idiotical answer. There are only two apparent exceptions to this remark, one of which appeared in the evidence of Dr. Christison, and the other in the evidence of Dr. Malcolm; but I hope to satisfy you, that in both cases the error lay with the learned Doctors themselves, and not with David Yoolow. This fact I confidently maintain to be wholly incompatible with idiocy. Idiots, and occasionally persons who are not idiots, but especially idiots, have not the wisdom to admit their ignorance, and to abstain from attempting to answer on points on which they are unable to answer correctly. They either think they know when they do not know, or they give absurd random answers without caring or considering whether they do or do not know. But here there was no indication of any such disposition, either in your own presence when you visited him, or according to the evidence of any of the witnesses who have been adduced. The evidence against his capacity, so far as it is to be gathered from the examinations of him by the medical gentlemen, is altogether negative and inconclusive. It re-

solves merely into this, that there were questions which, from want of knowledge, he was unable to answer ; all of these questions being on subjects of which he did not profess to have any knowledge.

Let us now attend a little more particularly to the questions which were put by Dr. Christison. One of the topics selected for examination was Farming. It will be remembered, that until the death of his sister, a short time ago, Yoolow had no interest in farming, and knew nothing of it. Even now he has had almost no experience. It is therefore not surprising that he did not know how many lambs were sold last season by his sister, or what was the price of wheat,—he not having had occasion to sell any : yet these are the only points connected with farming as to which Dr. Christison found him ignorant. There were points as to which he was not ignorant. He knew how many acres each of his farms contained. He knew how many horses were on each, though he did not understand the phrase “yoke,” which, as remarked by one of yourselves at the time, is not a phrase known in this part of the country. He knew that the sheep were to be fed on turnips in winter and during snow. He knew how much wheat was required to sow an acre ; and that exhausts the whole examination on farming, with the exception of one question, to which, according to Dr. Christison, he did give an absurd answer. The question was, what would be a good return for a boll of wheat sown ? Dr C. says that the answer to this was, “Twa bolls,” which would be inaccurate, and in the general case absurd. But when you remember the broad dialect in which the man speaks, and which indeed appears even from Dr. Christison’s understanding of the answer,—when you remember the indistinctness of his articulation, to which you were yourselves witnesses, arising partly from the paralysis with which he is affected, and partly from the loss of some of his teeth, and which makes him difficult to be understood by those who are not accustomed to hear him speak,—when you remember that Dr. Christison was not accustomed to hear him speak, and had never seen him until that day, it is not unreasonable to suppose that Dr. Christison may have misunderstood him ; and that the answer really given was not “twa,” (two) as Dr. Christison supposed, but “twal,” (twelve) which would have been a correct answer. This is the more likely, as he is proved to have been

perfectly aware of the quantity proper to be sown in an acre ; and indeed, does not seem to have been at fault in regard to any other matters bearing on that point.

Another subject on which Dr. Christison tried him was his knowledge of Arithmetic. You will remember that Yoolow has almost no use of his hands, and could not have any aid from them in making calculations. He had not been taught any of the rules of arithmetic, and consequently could not calculate by those systematic processes which, originally acquired by tuition, have by habit become so familiar to us as almost to seem natural to us. All his calculations required to be made and carried in his mind, and by some process of his own contrivance. For him, then, to go through any calculation at all, is a very strong proof of the existence of mental faculties, and of the power of exercising them usefully. Let us see what were the questions he did answer, and what were those he did not answer. He did not know how many pounds were in 100 guineas : probably he was not accustomed to count by guineas. He, however, calculated correctly the price of 20 sheep at 20 shillings each, and stated that it amounted to £20. He was asked if he sent 20 sheep to market, and that 4 only were sold, how many should be brought back ? and he correctly answered, 16. He stated that he had £1200 in bank, and that he had got £20 of interest, though there appears to have been some misunderstanding as to the period to which that interest applied. But then came the question that was to expose his ignorance, and prove him an idiot. He was asked, "how much was that the hundred?" (meaning how much per cent,) and what was his answer ? Did he make a random guess, or state an extravagant or absurd per-centage ? No such thing. I shall give you his answer in Dr. Christison's own words : "He said he could not tell, and added that he was no "good hand at arithmetic." He very sensibly acknowledges his inability to make the calculation, and he assigns a very sensible and satisfactory reason for that inability. Does this indicate idiocy ? Does it even indicate extraordinary weakness or ignorance, in a man who had not the use of his fingers to aid him in calculating, and even if he had the use of his fingers, had not been taught the rules which could have enabled him to use them ? The wonder to me is, that any person should have expected that a

man without the use of his hands, and wholly uninstructed, would have been able to answer such a question. It is a question not so easily answered, even by some of those who by courtesy are termed learned. Accordingly, you will remember that I tried the experiment on one of those learned Interrogators. I thought it reasonable to expect that those gentlemen who put such questions, and who considered the inability to answer them a proof of idiocy, should themselves be able to answer the questions which they so put. I therefore put that very question to Dr. George Anderson, one of the pursuer's witnesses. And what was his answer? He said, that not being conversant with such matters, he could not make the calculation without pen and ink. I presume he was as conversant with such matters as David Yoolow could be expected to be, and he had the advantage over Yoolow of having been instructed in the rules of arithmetic, and of having hands, which he could use, in making the calculation. Well, I offered him pen and ink, but even with that aid he would not undertake to make the very calculation, an inability to make which without pen and ink, without hands, without any knowledge of the rules of arithmetic, is to stamp poor David Yoolow as fatuous and an idiot. What, then, must Dr. Anderson be? Really this is too absurd; and this is the only arithmetical failure committed by Yoolow, under the inquisition of Dr. Christison.

But the Doctor examined him on Politics. I think the political examination should never have gone beyond the first question and answer. "I asked (says the Doctor), are you a great politician?" He answered, "I never meddle with politics." After that announcement, I think his knowledge of politics should not have been made the test of his capacity. However, the subject was pursued, and two things were elicited,—first, that he knew who was King,—and second, that he did not know who was prime minister. When he was asked if he knew who was prime minister, "he thought a little, and answered, No." Even in that mode of exhibiting his ignorance, there is more indication of capacity than of the want of it. Much of a kin to this is a fact sworn to by another witness, that when Yoolow was asked who was member for the County of Forfar, he could not tell. Is it singular that a man who tells you that he never meddles with

politics, should know neither the name of the prime minister, nor who is member for the County of Forfar? Is that a reason for holding any person to be fatuous and an idiot? I humbly venture to think, that his indifference to politics is, for a person in his situation, rather a proof of his sense. I doubt not that if any of you will go into your fields on a harvest day, you will there find many respectable and industrious people, who trouble themselves with politics as little as Yoolow has done, in whose minds the idea of a prime minister of England is not readily associated with the name of Lord Melbourne, and whose ears are strangers to the parliamentary fame of Lord Douglas Gordon Haliburton. Indeed, it came out on cross-examination, that when an appeal on one of these points was made to a servant who was present, that servant exhibited the same ignorance as Yoolow, though I presume not alleged to be fatuous or an idiot.

Dr. Christison, after separately exhausting the three departments of Agriculture, Arithmetic, and Politics, proceeded to put questions to the supposed idiot on the more complex subject of Political Economy. This part I shall read to you in the Doctor's own words: "I said, although you do not meddle with politics, there are some branches of them, which, as a farmer"—David Yoolow, however, never was a farmer, he is only going to become a farmer now, but Dr. Christison erroneously supposes him to have been a farmer—"which, as a farmer you should know about; for instance, what is your opinion of the corn bill?" There is a question for you! There is a question to be put to an idiot! There is a question to be put to an uneducated countryman, who had no experience in corn, or in trade of any kind! Pray, Mr. David Yoolow, what is your opinion of the corn bill? That is a branch of politics which you ought to understand! Really, gentlemen, there is in this something so ludicrous, that unless we had heard of it from Dr. Christison himself, I could scarcely have credited it. I am sure if my learned friend opposite had told me that Dr. Christison had put such a question to a supposed idiot, after having tried him in the several departments of agriculture, arithmetic, and politics, I should have thought that my learned friend was giving vent to his known

humour, and would have given him credit for another excellent joke. The vague terms, too, in which the question was expressed might have puzzled even Mr. Western to answer it. Pray, Sir, what is your opinion of the corn bill?—without deigning to say in what respect. Pray, Sir, what is your opinion of things in general? would be almost as specific and intelligible a question. David Yoolow, when thus assailed on the subject of the corn bill, which I daresay had never before cost him a thought, honestly answered, “I ken naething about that.” But that answer did not deter the Doctor from pressing the subject. “I asked “him (says he,) what is it intended for?” That certainly was somewhat more specific; and what was the answer? “He answered, to sell the corn, I fancy!” A better answer Cobbett himself could not have given, and none of my learned friends or of the learned Doctors examined in this cause, have attempted to impugn it.

Such is the result of Dr. Christison’s inquisition, commenced and followed out under the trying circumstances, and on the fallacious system, to which I have already adverted; and such is the nature and such the measure of the ignorance from which Dr. Christison has deduced the inference of imbecility, and unsoundness of mind;—and upon which my learned friends have ventured to ask a verdict of fatuity and idiocy. In the department of farming, or agriculture, David Yoolow did not know how many lambs his sister had sold last season, he having no interest in the matter; and he did not know the price of wheat, he having had no occasion either to buy or to sell that article. In the department of arithmetic, he without hands, or rules, was unable to go through a particular calculation, which defied Dr. George Anderson with the aid of pen and ink, and a knowledge, I presume, of the ordinary rules of arithmetic. In the department of politics, he did not at once remember that the prime minister was by name Lord Melbourne; and in the department of political economy, though he conceived that the corn bill was intended to protect the British farmer by securing a market for British corn, he declined to give any general opinion on the merits of that measure—*ergo*, he is an idiot, and ought to be cognosced.

Before I dismiss Dr. Christison’s evidence, I must allude to one circumstance which appears in it, and which my learned

friends were at particular pains to bring out prominently from almost all the witnesses they examined, though for what purpose I could not conjecture at the time, and have not since discovered; for my learned friend Mr. Robertson, so far as I recollect, made no use of it in his address to you upon the evidence. I mean the circumstance of the presence of a maid-servant, to whom Yoolow is said to have frequently looked when answering the questions put to him. It is proved that she never prompted him to the answer by speaking; and if it is meant to be insinuated that she communicated the answer by some private signs, or means known only to themselves, and not discoverable by any of those learned and prying Doctors, the inference, I think, should be, not that Yoolow is an idiot, but that he is nothing less than a conjurer, and that she was his confederate. But as my learned friend in his address entirely dropt this part of the case, and the theory, whatever it was, which he may at any time have intended to rear upon it, I need not now detain you with any speculations in regard to it, but may safely dismiss it as a branch of the pursuer's case which is tacitly admitted to have misgiven.

Dr. Christison was also asked whether Yoolow suggested or originated any subject of conversation. He answered in the negative. The same question was put to most of the other doctors, and a similar answer elicited; and my learned friend, in his address, dwelt eloquently upon this fact, as proving a total want of capacity or of mind. To me it appears to lead to the very opposite conclusion. Why should Yoolow, on these occasions, have suggested or originated any subject of conversation? The witnesses were sent to visit him for the purpose of supporting the pursuer's case. He knew their purpose. It was not a pleasant one to him, and not likely to induce a disposition to friendly conversation. But, farther, they went for the purpose of putting questions to him on particular topics, which they chose to select as best suited to attain the object they had in view. In these circumstances it would have been as much out of place for him to have originated subjects of conversation, as it would have been for any of the witnesses in this cause to have done so in the witness' box. Had he done so, it might have been cited as a proof of folly; but in acting as he did,—in allowing them to put their

own questions, and confining himself to the task of simply answering these questions, he acted prudently and properly, and shewed his sense.

I have now done with the evidence of Dr. Christison, which also disposes of the evidence of several others who merely concurred with him in substance on the same grounds; and I think you will agree with me, that more unsatisfactory grounds for the opinion at which he arrived can scarcely be imagined. The sources from which he attempted to draw his materials, were precisely those from which no satisfactory materials could be obtained or expected. The proper sources were left untouched, and the materials which he did obtain prove, upon examination, to be quite inadequate to support the opinion he has rested upon them.

The witness to whose evidence I shall next advert is Dr. Malcolm, physician to the Lunatic Asylum in Perth. Of the respectability and intelligence of that gentleman, and of his great talent as a medical jurist, I had ample proof during many years of official connection with the county in which he practises, so much to his own credit and to the advantage of the community, and with the Asylum to which he is the valued and respected physician. But in regard to this case, I think it is evident, from what came out in cross-examination, that Dr. Malcolm had been entirely misled, and put upon a wrong scent. His visits were made—his interrogatories were shaped and conducted—his opinion was formed, all under the belief that Yoolow had been brought up to farming all his life, and that he had been the actual tenant of the farms and mills ever since his father's death in 1824; and it was not till after the examination in chief was concluded, and I had commenced the cross-examination, that Dr. Malcolm was undeceived as to that most important fact. I call it a most important fact,—I may call it a vital fact, because it is obvious that, if Yoolow had been brought up to farming all his life, and if he had been the actual tenant of the farms for the last twelve years, he might reasonably be expected to possess knowledge of a very different kind and degree from that which could reasonably be expected to be possessed by a man who had never been brought up to farming at all,—who, instead of having been a tenant of a farm for twelve years, had never been a tenant for an hour until he accidentally succeeded to a lease by the death of his sister, only a few weeks

before Dr. Malcolm began to heckle him by an examination upon the theory and practice of agriculture. If any of my learned friends or myself should happen by the death of a relative, or the posthumous beneficence of a friend, to succeed to a lease of a farm, or the property of a sugar plantation, I am not sure that our ignorance in regard to such matters would be less flagrant than that of Yoolow. I say, therefore, that it is of great importance to keep in view that the whole of Dr. Malcolm's observations were made and conducted, and his opinion was formed, under a complete misapprehension as to the previous history of the man, and, by consequence, of the subjects on which he might be expected to be informed, or not to be informed. A man may be expected to know something of the subject to which he has chiefly devoted his attention through life, if he has the capacity to acquire knowledge; but it is no impeachment of his capacity or intellect, that he is ignorant upon points which do not lie within the range of the particular department to which he has given his attention. On this point Dr. Malcolm himself unwittingly furnished conclusive testimony, and a practical illustration. In his examination in chief, he gave as a striking proof of Yoolow's lamentable ignorance of the most simple matters with which he ought to have been familiar, that he was not aware that he was entitled to a vote under the Reform Bill. This was, in Dr. Malcolm's opinion, a proof of imbecility. In forming that opinion, Dr. Malcolm evidently proceeded upon the mistaken idea that Yoolow had been the actual tenant of the farm for the last twelve years. But when Dr. Malcolm was undeceived as to this,—when it was explained to him that Yoolow had never been tenant of the farm, in any sense, until the death of his sister in August last; and that even then he only acquired an interest, vested in trustees for his behoof; and when the Doctor was asked whether, under these circumstances, he considered Yoolow entitled to a vote, he very shrewdly and very properly replied, "I am not a lawyer, and am "not able to answer that question;" which was as much as to say, My attention has been devoted to medicine, and not to law, and I cannot be expected to answer questions which import a knowledge of a subject I have not studied, and do not profess to understand. Gentlemen, is not that precisely the defence I am maintaining for David Yoolow? Is not that precisely the expo-

sure I am attempting to make of the whole course of interrogation which has been pursued in regard to him, and from which the inference of fatuity is sought to be deduced? Nay, more,—is not that precisely the argument used by Yoolow himself, in answer to a question put to him by Dr. Robertson on the subject of farming, when he said, “I know nothing about it, and you may as well “ask me about Latin or Gaelic, which I never learned?”—An observation so replete with solid sense, involving an argument so sound and conclusive, that it exposes and puts to shame, and must defeat the whole phalanx of learning that has been arrayed against him. If it be a satisfactory explanation of Dr. Malcolm’s inability to answer a question, that it relates to a subject which he has not studied, and does not profess to understand, that must also be a satisfactory explanation of Yoolow’s inability to answer questions in Agriculture, Arithmetic, and Politics. Dr. Malcolm’s justification of his own ignorance I admit to be satisfactory and complete, but it necessarily carries along with it the justification of Yoolow’s ignorance. Nay, more, it necessarily carries along with it the total destruction of the whole strength of Dr. Malcolm’s own evidence in chief, as well as of the evidence of the other medical witnesses for the pursuer, who chose their subjects, and shaped their questions, in utter disregard of a plain principle, which, though at once seen and pointed out by him whom they call an imbecile, they could only be made to see and to admit when it was brought home to themselves, and practically illustrated upon them, as was done in the cases of Drs. Anderson and Malcolm.

But there is a farther moral to be gathered from Dr. Malcolm’s answer. It shews that the inference which he deduced from the fact, that Yoolow did not know he was entitled to a vote, was most cruelly unjust. And when Dr. Malcolm came to know the facts of the case as well as Yoolow knew them, he was forced to admit the injustice of the inference. The inference rested entirely on the assumption, that Yoolow beyond all doubt was entitled to a vote, and yet did not know it. But that assumption was altogether erroneous: and when the facts were explained to Dr. Malcolm, he was forced to admit, that so far from its being clear that Yoolow was entitled to a vote, the point was one upon which he could give no opinion, and upon which none but

a lawyer could be expected to do so. It thus turns out that what the Doctor supposed to be ignorance, indicating imbecility on the part of Yoolow, was in truth the result of knowledge and caution superior to that of the Doctor himself, to whose ignorance of the facts, however excusable, and not to that of Yoolow, this groundless and cruel inference is to be ascribed. How very scrupulous, then, ought we to be in a case where such important interests are involved, in giving effect to inferences and opinions which may, as here, have been formed under erroneous impressions, or on imperfect knowledge of the facts.

Dr. Malcolm also speaks of Yoolow's inability to perform very simple calculations, such as adding 50 and 50. There must certainly be some mistake here on the part of my friend Dr. Malcolm; for if there be any one thing proved in this case, it is proved over and over again beyond the possibility of doubt, that Yoolow was perfectly capable of performing, and, when repeatedly tried, never in one instance failed to perform in detail, calculations infinitely more difficult and complicated, and in some instances involving that very calculation of 50 and 50. It is possible that Dr. Malcolm, who is more accustomed to answer questions as a witness than to put them, may not have expressed his questions very distinctly; for that is not so easy a matter as one who has not tried it, might be apt to suppose. In corroboration of this, a striking fact was elicited from Dr. Malcolm himself in the course of his evidence; and as it relates to the only other question besides one already noticed to which Yoolow can even be suspected of having given an absurd answer, I beg to direct your attention to it. You will remember that at the conclusion of his examination in chief, Dr. Malcolm stated that on one occasion he had asked Yoolow how much the weight of a boll of meal was, and that he answered "16 pounds," and adhered to that answer after the question had been put more than once. The answer certainly indicated great ignorance. It was next thing to absurd. At first it occurred to me, and you will remember Dr. Malcolm told you that it occurred to himself at the time, that Yoolow had by mistake used the word "pounds" instead of "pecks," there being 16 pecks in a boll of meal; and he said that that was the reason why the question was repeated to Yoolow. The mistake would have been perfectly intelligible, and not at all wonderful, and the explanation quite satisfactory, had it

not been that Dr. Malcolm's question, as he represented it, expressly asked the "weight" of a boll of meal, in which case 16 pecks would have been fully as absurd an answer as 16 pounds. It therefore came to be very important, and I was extremely anxious to get from the Doctor the precise terms in which he had put the question, and I got them from him. Now, observe what they were,—“How much “is a boll of meal?” Not a word about “weight,”—not a word to shew whether the question related to weight, or measure, or value. It was equally applicable to any of them, and would have been equally well answered by stating the number of pounds, or the number of pecks, or the number of shillings. The Doctor himself was thinking only of weight, but his question was not framed with sufficient precision to express definitely the idea he wished to express. It was most vaguely and indefinitely expressed; and one man might have applied it to weight, another to measure, and a third to value,—all with equal propriety. In these circumstances, it is very probable that Yoolow supposed the question to have reference to measure, and so answered; and that he did use the word “pounds,” by mistake, for “pecks,” just as I believe I have repeatedly, in the course of this address, used the word pursuer by mistake for defender. That was Dr. Malcolm's own impression at the time, as he swore to you. But, says Dr. Malcolm, he adhered to the answer when the question was repeated. I therefore desired to know in what terms the question had been repeated. As Dr. Malcolm thought that the word “pounds” was a mere lapsus, and that “pecks” was really what Yoolow meant, I think the natural way of ascertaining whether that was really the case would have been to have asked him, in plain terms, whether he meant pounds or pecks. If that had been done, and he had still adhered to his error, it might have been of some consequence. But, no,—instead of doing that, and without in any way calling Yoolow's attention to the particular object of the repetition, or the particular part of his answer in which he was supposed to have made a verbal slip, the question was repeated *verbatim* in all its original vagueness, “How much is a boll of meal?” and Yoolow's attention being fixed, as that of any other person would be, on the numerical point on which alone he could suppose any doubt to exist, and unconscious of the verbal slip he had made, he very naturally committed the same blunder over again, of using the

word "pounds" instead of "pecks," but still adhering to the correct number of sixteen.

But the part of Dr. Malcolm's evidence to which the pursuer appears to attach the most importance, is that which goes to prove that, in the Doctor's experience, he has met with lunatics who had great knowledge of the Scriptures. He gave three instances in Perth asylum. I also attach great importance to these instances, because the present case has not the slightest resemblance to any one of them. It is only necessary to attend to these instances, to be satisfied that David Yoolow does not at all belong to that class of persons. One of them is a monomaniac, and therefore I need not say any thing as to him. Another is about 52 years of age. It does not appear whether he is a monomaniac, but it does appear that he has been insane for about 12 years only; therefore he was about 40 years of age before he became insane; so that for about 40 years of his life he had capacity and intellect, and may then have acquired a knowledge of the Scriptures. But this does not prove that a person without capacity or intellect could in that state acquire a knowledge of the Scriptures, which is the proposition the pursuer is attempting to make out, and must make out, before he can account for David Yoolow's knowledge of the Scriptures, consistently with the theory of his being an idiot who never had any capacity. The third person mentioned by Dr. Malcolm is between 40 and 50 years of age, and has been insane about 14 years; so that he must have been upwards of 25 years of age before he became insane, and consequently the observation I last made would also apply here. But this man, as stated by Dr. Malcolm, is insane on every other point: and, mark the Doctor's words, "If you ask him a question on any subject, he answers by quoting a passage from the Bible, mentioning chapter and verse." In short, if you ask him how he does this morning, or how he slept last night, instead of answering the question, he repeats some passage from the Bible, mentioning chapter and verse. That certainly proves that he has the Scriptures, or part of them, by heart; but I would scarcely call it a knowledge of the Scriptures. It is an unmeaning repetition of passages retained in the memory, and which involuntarily, or mechanically, escape every time he opens his mouth. Now, I ask you to compare, or rather

to contrast, that, with the kind of knowledge possessed, and the conduct exhibited, by David Yoolow. It has been proved to you by the most competent judges, that Yoolow's knowledge of the Scriptures is not mere repetition from memory, but is a thorough understanding of the doctrines of the gospel,—that he does not quote passages merely, but that he reasons on the different points, and supports his belief in a way which proves that he has reflected on the subject. Then, instead of answering every question, on whatever topic, by pouring forth a passage from the Bible, the unerring mark of an unsound mind,—it is a most remarkable fact, that with all the knowledge he possesses of the Scriptures, with all his devotion to the reading and studying of them in private, with all his readiness to converse upon the subject and discuss it rationally when introduced by others, no witness has stated even a single instance of his having spontaneously introduced, still less obtruded, that subject, aptly or inaptly, even to the extent of a quotation, with the exception of one very appropriate allusion rather than quotation, mentioned by Dr. Halket. Had his mind been at all like that of the person described by Dr. Malcolm, we should have been deluged with quotations,—we should have heard of nothing else; but as it is, we have no indication of any such propensity. Though, like Dr. Malcolm, he cannot always answer questions importing a knowledge of subjects to which he has not applied his mind,—though, like Dr. Anderson, he cannot, by a mere mental process, supply the place of Thomson's Interest Tables,—he never attempts to substitute a scriptural quotation for a rational answer; but, like Dr. Malcolm himself, he has the sense to admit his ignorance of the subject, and consequent inability to answer; and, unlike Dr. Anderson, he has the sense to assign a just and satisfactory reason for that inability.

I hold, then, that the evidence of Dr. Malcolm, when carefully examined, is not against the defender. The general opinion which Dr. Malcolm formed from his communication with the defender, proceeded, confessedly, upon a total mistake as to the previous history of the man, and as to the subjects to which he had turned, or might reasonably have been expected to have turned his attention; while the instances cited by Dr. Malcolm, of persons of insane mind exhibiting a knowledge of the contents,

or rather a recollection of the words of the Bible, so far from being parallel to the present, stand in glaring contrast to it, and no more resemble the condition of David Yoolow, than they resemble the condition of any man who hears me.

I have now analyzed the evidence of the two great medical jurists brought forward on the part of the pursuer. In their train followed some minor authorities, who echoed generally the same opinions, without adding any thing of importance to the facts or materials on which those opinions were founded, and therefore do not merit any separate notice, except perhaps in reference to a philosophical, or, I should rather say, an unphilosophical theory, propounded by some of them, who said that Yoolow's mind was that of a child of eight or ten years of age. Gentlemen,—A child's mind, though deficient in power, is properly balanced : his faculties, though weak and immature, are in just and proper proportion. But, according to the pursuer's witnesses, Yoolow has memory in the full strength and measure of perfect manhood, while he is totally devoid of judgment or understanding. Is that the mind of a child,—one faculty at full maturity and perfection, and another not in its infancy merely, but altogether wanting? No such thing : I do not say that that is a just account even of Yoolow's mind ; but it is the pursuer's account of it, and is totally inconsistent with the absurd affectation of describing it as the mind of a child of eight or ten years of age.

We had also the evidence of Dr. George Anderson, to whom I have already alluded, and of whom I am unwilling to say more. Even he admitted that there are some things that Yoolow does understand ; and when desired to state what those things are, he dealt out his admission in the most parsimonious manner : “ He “ understands *some of the things* he reads in the Scriptures.” Aye, *some* only, poor imbecile ! He is incapable of understanding *all* the things he reads in the Scriptures. And pray, Dr. Anderson, I asked—Do *you* understand *all* the things that you read in the Scriptures ? The sapient Doctor was forced to admit that he did not. I wish the Rev. Mr. Flowerdew had had an opportunity of examining Dr. George Anderson, as he did David Yoolow, upon the fall—upon the remedy provided—upon the divinity of our Saviour—upon the resurrection and the second advent—and upon miracles, especially upon the difference between miracles

under the Jewish dispensation and those under the Gospel ; and had furnished us with a comparison between the Doctor's knowledge on these subjects and that of David Yoolow. This witness also found Yoolow deficient in the power of calculation. You remember how his own powers of calculation were exemplified : still he had skill enough to puzzle Yoolow, not however by the depth of the questions, but by their innate absurdity. He said that Yoolow knew perfectly that ten shillings was half a pound, but he did not know how many shillings were in ten shillings, or how many shillings were in five shillings. In short, he knew that ten shillings was half a pound, but he did not know that ten shillings was ten shillings. This was to me incomprehensible ; and I was curious, and pressed to know by what precise questions the Doctor had ascertained the existence of this extraordinary state of mind. The words I used, said the Doctor, were, “ ‘ How many shillings are in ten shillings ? ’ and ‘ How many shillings are in five shillings ? ’ And Yoolow could not answer the question.” I do not wonder at it. The very simplicity of the question, involving its own answer, made the puzzle. It is like asking a man, Who is the father of Zebedee's children ? No wonder, then, that Yoolow was thrown out, as it did not occur to him to suspect Dr. Anderson either of waggery or of imbecility. My learned friend opposite saw the absurdity in which his witness had landed himself, and he endeavoured to help him out of it by a dexterous re-examination, in which the Doctor retracted and reversed his statement as to the ten shillings, and now said that he was mistaken, and must have meant that Yoolow did know how many shillings were in ten shillings, but did not know that ten shillings was half a pound. That explanation, however, would not do as to the five shillings, which were not half a pound ; and so the Doctor was at last compelled to admit, in plain terms, that his ideas were confused, and that he could give no intelligible account, either of his own questions or of Yoolow's answers.

Then we had Dr. James Anderson, physician in Coupar-Angus, who was at pains to make you aware that he was the only M. D., or person really entitled to the appellation of “ Doctor,” in all Coupar-Angus—a fact of so much importance, that he seemed to think a knowledge of it had somehow or other been communicated even to David Yoolow. But although this

gentleman is an M.D., I do not think that he added any new features to the case, or threw any new light upon it. He gave a glowing account of Yoolow's agitated state when he was waiting in anxious expectation, or rather dread, of the first visit from Dr. Malcolm, the great madhouse Doctor of Perthshire. Dr. Anderson, it seems, went an hour before to prepare Yoolow for the visit. What course of preparation he adopted on that occasion, or whether it was equally soothing with that adopted by him and Dr. Christison on another occasion, of which you have heard, I know not; but according to Dr. Anderson's own account, it seems to have had the effect, whether intended or not, of exciting in Yoolow no small degree of alarm. And is it wonderful that he should be agitated and alarmed on hearing, for the first time, that he was to be visited and reported upon by a madhouse Doctor—on finding that a plan was seriously formed, and in progress, for having him cognosced as a madman or an idiot, towards the accomplishment of which this first decided step was already taken? Is it wonderful that he, knowing the injustice of the scheme, but feeling the helplessness of his condition and the danger to which he was exposed, should have been deeply moved, and somewhat unnerved, on such an occasion? I think you will be disposed rather to sympathize with him, than to ascribe his agitation to mere idiocy. The only other thing worthy of note in Dr. Anderson's evidence, is the opinion he hazarded—that Yoolow is capable of answering a simple question, but not an “abstract” one. There is an apparent sprinkling of metaphysics in this opinion, but it requires to be sifted. Indeed, I doubt very much whether Dr. Anderson's notion of an abstract question corresponds with that of other people; and I observed that, in the course of his evidence, he applied several words in a way in which one is not accustomed to hear them applied: for instance, he told us that he was “quite neuter on both sides,” and he told us that a disease was “peculiar to Scotland,” but he did not mean that it existed in Scotland only. It may therefore be doubtful what he meant by an abstract question; but if he meant it in its ordinary and proper acceptation, most assuredly his opinion is egregiously wrong. Be so good as turn to the evidence of Dr. John Argyle Robertson;—and after so much quackery and nonsense, it is really refreshing to turn to the plain unaffected

testimony of a man of sense. Dr. Robertson, after stating that he had satisfied himself of Yoolow's powers of memory and comparison, and of his knowledge of money matters, proceeds thus: "I asked him the meaning of a receipt?" That is an abstract question, if ever there was one. Well, did Yoolow understand it, or did he not? You shall judge by his answer: "He answered, 'it was a discharge for sums paid.'" Not only a correct answer, but an abstract definition. What next: "I asked him, what was the use of a receipt?" Another abstract question, and his answer to that was also quite correct: "He said it was to prevent a second demand being made for payment." Let us read on: "I asked him, what would be the effect if I destroyed a bank-note?" "He said, you would be a loser. I asked him, what effect it would have upon the bank? He said, the bank would be gainers." I have heard of a different opinion having been entertained and acted upon somewhere, but I believe Yoolow's will be admitted to be the correct one. Dr. Robertson then asked him, "what was the meaning of being a cautioner?" He said, it was being "a guarantee for another's debt." And so on, a whole series of abstract questions, every one of which he perfectly understood, and correctly answered. Dr. Anderson, therefore, is decidedly at fault, either in his facts or in his metaphysics.

I have now gone over all the medical testimony adduced by the pursuer in support of his brieve, and I have only one additional observation to make upon it. It is this:—that although some of these gentlemen say that Yoolow is weak or imbecile, others that he is of unsound mind, and others that he is incapable of managing his affairs,—not one of them has spoken up to the words of the brieve, which you are asked to affirm in your verdict:—these are, that he is fatuous and an idiot. Not one of them has said that he is an idiot; and Dr. James Anderson, the only witness who says that Yoolow is fatuous, says expressly that he is not an idiot, and that he is not insane. Dr. Malcolm also says expressly that he is not an idiot; and Mr. Symmons, the superintendent of the Perth asylum, says the same. Unsoundness, I have already had occasion to remark, is a very indefinite and flexible term: so is weakness or imbecility. These may exist, though not of a kind or degree that would bring the party within the scope of a brieve of idiotry; and as to a man's

inability to manage his own affairs, that opinion may honestly be entertained of thousands of men, who could not be cognosced as idiots without a gross violation of law and justice.

The pursuer has endeavoured to supply the defects and weakness of the testimony of his medical witnesses, by examining several witnesses of a different class,—particularly servants who had been about the establishment at Mill of Peattie, and who were brought here to detail to you all the idle remarks and silly jokes, which had ever been heard to escape from David Yoolow, even in the relaxation and security of a domestic circle; and to describe to you all the foibles of his temper, all the peculiarities of his habits, and even the painful consequences of his personal deficiencies. Gentlemen, I am almost ashamed to stoop to notice the points to which that evidence was directed. I shall merely touch on what appear to be the most important of them. In the first place, then, it is said that he was peevish and fretful, to a degree that was childish, and sometimes, when crossed in trifling matters, took the pet and went to bed. It is not wonderful that an invalid and recluse should be peevish and fretful. It has been remarked, and I believe with truth, that persons constitutionally feeble and decrepit, are generally subject to irritability of temper; and that even the possession of the most splendid talents, the most exalted genius, and the soundest notions of philosophy, may not secure them against that infirmity;—a memorable instance of which is said to have occurred in the case of one of the greatest poets and truest painters of the human character, that Britain ever produced. Then it is said that Yoolow had foolish prejudices,—that he would not eat fruit, because the eating of fruit caused the fall of man. This may appear to you or to me a foolish prejudice, but both you and I know, that prejudices and aversions of that kind are not confined to idiots,—that they extend even to whole tribes and nations. Jews are said to have a prejudice or aversion to the flesh of swine. The numerous disciples of Mahomed have also prejudices and aversions, in eating and drinking. There are many millions of inhabitants of Hindostan, who, from prejudices or scruples, will not partake of the flesh of animals that are daily eaten by Europeans; and, even in our own country, I have known pious Christians who had conscientious scruples against

eating the blood of animals that had been shot or strangled. Another of Yoolow's prejudices brought forward as indicating idiocy, is said to have been his aversion to profane swearing, and his horror of certain persons who indulged in that most sinful and unmeaning practice. To those who are not used to take the name of the Lord in vain, or to hear others do so, without an unpleasant feeling, though they may not be so extremely sensitive, or exhibit their feelings so very strongly as Yoolow, this does appear a most extraordinary fact to be adduced as a proof of idiocy, before a Jury of this country. Yoolow may perhaps carry his notions into extremes, and exhibit his religious feelings and scruples in a way that is neither usual nor necessary. But is that a proof of idiocy? When a distinguished character of the last age, on revisiting one of the scenes of his early life, was struck with the recollection of an act of disobedience to parental authority which he had there committed, and evinced his contrition for the juvenile and comparatively trivial transgression, by exposing his uncovered head to the inclemency of the elements,—was he bereft of reason? Did the frame of mind which prompted that extreme exhibition of filial reverence and piety, unfit him for the management of his own affairs, and make him worthy of being cognosced as fatuous and an idiot? He, whose intellectual superiority was acknowledged even in the jealous republic of letters,—who, in mental conflict with the great authors and learned men of his time, was admitted to wield a giant's power,—maintaining and advancing the literary reputation of his native land,—chastening the philosophy, and elevating the morals of the Christian world. Tell me not, then, that Yoolow's horror of profane swearing, and his aversion to the society of those who indulge in that vice, is a proof of idiocy. Next, it is said that he had strange likings as well as dislikings, the proof of which is that he preferred white to any other colour in cattle. In this I am unable to see any thing singular, far less idiotical. Every man who is a fancier of animals has a preference for particular colours. But it is said that he had singular propensities, or qualifications, I know not which to call them; for the instance given is, that he sometimes imitated the barking of a dog. Gentlemen, if we can trust the newspapers of the day, the imitating the cries of animals, or the sounds of

instruments, is a propensity or qualification not unknown among the representatives of our wisdom in the Lower House of Parliament. I have more than once heard an ingenious and accomplished friend of mine, whose name is among the most distinguished of living artists, entertain a whole company by imitating to admiration the sound of a bee ; and I have heard of a gentleman delighting his audience by a musical performance, in which the tones of the violoncello were apparently extracted from a poker and tongs. Finally, it is said that David Yoolow's amusements, which are admitted to have been harmless, were exceedingly foolish and unintellectual,—particularly the freak of Grosing, which was so humorously commented upon by my learned friend. Gentlemen, how many of the amusements of all of us are unintellectual, and how many of them, when gravely examined at a distance from the feelings and excitement and levity that prompted to the indulgence in them, appear foolish and ridiculous ! Have we not heard of ministers of state and even crowned heads, playing at blind-mans-buff ? Do we not daily see men and women, of all ranks, leaping and bouncing on the floor till they are about to fall down with fatigue, and call it dancing ? We see the first people in the country galloping across fields, and leaping over ditches and hedges, to the fracture of their limbs and the imminent hazard of their necks, all in order that they may, with the assistance of two or three score of dogs, kill a poor frightened wretch of a fox, or get hold of his unsavoury tail, which, after it is got, is worth nothing. We see grave gentlemen patiently standing for hours up to the middle in water, trying to catch a fish, while they might for sixpence buy more fish than they can catch in a season, and avoid forming part of that exhibition which a great lexicographer is said to have described as a rod and line, with a worm at one end, and a fool at the other. What strange performances and exhibitions have we not seen resulting from the innocent pastime of playing at forfeits ! What were the feasts of the Queens of May, and of the Abbots of Unreason ? What were, and are, the carnivals and masquerades of past and present times ? In short, there are seasons when the mind escapes, and ought to escape, from the trammels of thought and reason, and recruit itself by unreserved indulgence in innocent

folly,—the more absolutely foolish and unintellectual, the more perfect the relaxation. But, if all the strange freaks of our most capricious humours and unrestrained indulgence were to be chronicled for years, and suddenly arrayed against us with the graphic powers of my learned friend, I doubt whether there are many of us who would, on the day of trial, appear to be farther removed from idiocy than David Yoolow,—or whether the counterfeit dialogue which, in the exuberance of his fancy, my learned friend supposed as taking place between himself and me, would be one whit more absurd than some of the originals.

Gentlemen,—I have now done with the evidence adduced on the part of the pursuer, in order to substantiate the affirmative of this Brieve; and I am greatly mistaken indeed, if any of you entertain a doubt of its utter failure. If any doubt did at any time exist, that doubt must have been removed by the overwhelming body of evidence submitted to you on the part of the defender. Having already detained you so long, I am unwilling, and I really feel that it is unnecessary to occupy your time by going over the evidence for the defender, in detail.—Testimony so clear and important, must, by its own intrinsic weight and worth, have made a due impression on the minds of gentlemen who gave such willing attention, as you have given, to every part of this case. I shall, therefore, only shortly recapitulate some of the leading circumstances developed in that evidence.

The important testimony of the Rev. Mr. Flowerdew, who, being himself conversant with the particular subject to which Yoolow had given his chief attention, was the fittest person to ascertain his knowledge, I have already spoken to as conclusive. Then there is the clear and unsophisticated evidence of Dr. Robertson, part of which I have also noticed. In endeavouring to satisfy himself whether Yoolow's mind was sound or unsound, Dr. Robertson went to work like a man of sense. “I convers-
“ed with him (he told you) on various subjects, bearing on his
“memory,—his judgment,—his powers of apprehension,—and
“his habits of life.” He told you that the result was favourable, though, from Yoolow's seclusion and want of experience, his attainments were limited, and consequently his means of drawing comparisons were not equal to those of the gene-

rality of men; but that he has "a good capacity for receiving
 "information, and memory to retain it." He then gave you
 a detail of the examination pursued, according to the sugges-
 tions of his own mind at the time; and when asked whether
 the conclusion he came to was that the man was fatuous
 or an idiot, his answer was "No,—but quite the reverse:
 "what I mean is, that he has all the capability of acquiring
 "knowledge, but has not had the opportunity." On cross-
 examination, he mentioned some additional facts and conver-
 sations of great interest and importance, which you cannot
 have forgotten, particularly as to Yoolow's views in regard to
 the means of extending Christianity over the heathen world,
 and as to his reason for abstaining from reading the Apocry-
 pha, though he had it in his power; and his just rebuke in re-
 gard to asking him questions on a subject he had never learned.
 Dr. Robertson also gave it as his decided opinion, that an in-
 creased intercourse with the world would increase his powers of
 mind; and he assigned a satisfactory reason for that opinion,
 namely, that the subjects he has attended to he has mastered.
 The soundness of that opinion has been verified by Dr. Lowe,
 who knew Yoolow during his sister's life, and has been in the
 habit of seeing him since, and gives it as his opinion that he now
 shews more capacity of acquirement, which Dr. Lowe ascribes
 to his having more frequent intercourse with individuals. It is
 also verified by Dr. Carruthers, who said, "He is capable of
 "improvement, of acquiring further information, and applying it.
 "I found my opinion upon this, that his faculties are sharpened
 "and his mind improved since I first saw him, upon the 8th of
 "this month." Dr. Halket, who has visited him five times, also
 speaks to the same effect. This fact itself appears to me to be
 altogether insuperable. It is the practical proof of the man's
 capacity. The change of habits induced by change of circum-
 stances, and an increased intercourse with the world, is daily en-
 larging his knowledge and increasing his capacity. My learned
 friend tried to get rid of this by ascribing Yoolow's newly ac-
 quired information to tutoring, or, in other words, to instruction
 from others. Be it so. Is not nine-tenths of our information so
 obtained? Knowledge is not innate, whatever the faculties may
 be: we owe our knowledge to tuition, not to intuition. What,
 then, is the inference to be deduced from the successful result of

tutoring? When the result of the tutoring is that the pupil has received and comprehended the information,—that he has retained it in his memory,—and that he applies it properly, what more can be required to prove the existence of capacity, and to negative the idea of idiocy?

There are other parts of the evidence of Dr. Carruthers well worthy of note, or I should rather say, that the whole of his evidence is so. That gentleman has had great experience. His attention has been particularly directed to subjects of this kind. He has been at pains to visit the most celebrated institutions, both at home and abroad. He has paid great attention to this particular case. The precision with which he stated the facts on which his opinions were rested, and the sound and philosophical manner in which he deduced his reasons, prevented his opinions from losing any of the force which they might otherwise have lost from the great modesty with which they were delivered. One fact he stated, which I must remind you of. He told you, that in all his experience, in all his visits to the various hospitals he enumerated, he never found a person with such a mind as Yoolow under restraint as an idiot or insane person; and, precisely corroborating Dr. Robertson, he stated that, in his opinion, Yoolow “has a sound and reflecting mind, a capacity to receive “information, and the capability of applying the information he “receives.” Gentlemen, what more do you require to make mind,—or to establish the defender’s case?

Dr. Bell, Dr. Nimmo, Dr. Halket, and Dr. Lowe all confirm that testimony, and negative the idea of idiocy or fatuity in the most positive manner, at the same time assigning satisfactory facts and reasons in support of their opinions. So also do several unprofessional witnesses, such as Mr. Duncan of Wellton, who has known Yoolow for 34 years, and who told you that he never could consider him an idiot, but quite the reverse,—that he has a perfect sense of propriety, honesty, and fair dealing,—and that he never heard him talk irrationally on any one subject. Some of these gentlemen also, and in particular Dr. Lowe, prove that even upon the subject of arithmetic Yoolow’s powers of calculation were much beyond what could have been expected from an uneducated person, although he could not answer the question which I challenged my learned friends to answer in a

given time, as to the difference between two-thirds and three-fifths.

Gentlemen, I should now have concluded, had it not been for the new vein opened by the pursuer in the cross-examination of the last witness, Dr. Halket, and the obvious purpose which it was intended to serve. I might probably have put a stop to that examination, if I had been so inclined; but I did not think it worth while to do so. The pursuer seems to rely on that examination, as shewing, in the first place, that Miss Yoolow's trustees had unwarrantably surrendered into the hands of one of themselves, who happened to be the landlord, a lease worth £2000, and had thus cheated David Yoolow of that sum, and that the transaction was so illegal that eminent counsel had given an opinion it might be reduced. From this, I suppose, it is wished to impress you with the feeling that the sooner the management of those trustees is put a stop to the better. In the second place, the examination seems to be relied on, as shewing that Yoolow's ignorance of his own affairs, and indifference to important statements respecting them, was such as could only be accounted for by supposing him an idiot. Gentlemen,—Of all, or any part of this alleged matter, we have no evidence whatever, absolutely none that is receiveable, or can for a moment be appealed to. It appears that Dr. Halket was one of a party who, upon the 25th or 26th of this month, went to visit Yoolow in order to ascertain the state of his mind. Dr. James Anderson seems to have been of the party, and, as usual, to have prepared the way by practising his soothing system, which in this instance was done by insinuating that there were improper practices between Yoolow and one of his maid-servants. The insinuation was perceived both by Dr. Halket and by Dr. Malcolm. Yoolow also was acute enough to perceive the insinuation, and he had the virtue and the manliness instantly to repel it with earnest indignation. After that, a scene seems to have been got up on the part of the agent for the pursuer, who was also present, and who began to squabble with the agent for the defender; and in the course of that squabble, to put forth the various statements referred to in Dr. Halket's evidence. The account which Dr. Halket was able to give of what passed in the course of that squabble was necessarily imperfect, and not to

be relied on for accuracy. He said as much ; for he told you, that owing to the way in which it began, the bantering that went on, and the rapidity with which it proceeded, he paid no attention to it ; and I do not wonder that he paid no attention to it. Yet it is upon the imperfect account of that squabble, obtained from Dr. Halket in cross-examination, that the pursuer has rested the insinuations to which I have alluded. Gentlemen,—even if Dr. Halket had paid the greatest attention to what was said by the pursuer's agent on that occasion, and had recollected every word of it, that would have been no evidence at all of the accuracy of these statements. If the pursuer meant to found any thing on the facts then stated by his agent, he should have adduced the proper evidence of those facts. He should have produced the pretended opinion of counsel, and the other documents referred to. Not having done so, it was quite irregular to attempt to introduce the matter in this way. But as a serious insinuation has been made against Miss Yoolow's trustees, though without a particle of evidence to support it, I must, in justice to those respectable and honourable individuals, be permitted to expose the utter groundlessness of the insinuation. I am fortunately enabled to do so, by instant reference to documents which are produced. The lease which is said to have been so unwarrantably renounced, had been obtained by Miss Yoolow very shortly before her death : indeed, she can scarcely be said to have entered upon it. It was a new speculation ; and whether it would prove profitable in her hands, or in the hands of her brother, who could not so efficiently attend to it, was uncertain. In the interval Miss Yoolow made her trust-disposition and settlement ; and, I pray you to observe, that by that deed of settlement her trustees were specially directed and enjoined to offer to the landlord a renunciation of that very lease, without seeking profit or gain of any kind. (Here Mr. M'Neill read a clause to that effect in Miss Yoolow's trust-deed.) The trustees, therefore, had no alternative, even had it been clear, which it was not, that the lease would have been a profitable one. So far, then, from acting unwarrantably in renouncing the lease, the trustees would have been acting unwarrantably and in violation of the trust if they had not renounced it. And so far from having deprived David Yoolow of £2000, they did not deprive him of a single

farthing. This, I venture to think, is a triumphant refutation of the charge against the trustees.

Then as to David Yoolow's apparent indifference to what are called important statements regarding his affairs, it is not difficult to see how that may be accounted for, without ascribing it to actual indifference to his affairs themselves. The importance to be attached to the statements would probably depend, in some degree, on the reliance he was disposed to place on those who made the statements. Yoolow is proved to have a high regard for truth and honour, and great confidence in his trustees, for reasons, some of which, you will remember, he himself detailed to Dr. Carruthers. The statement regarding the £2000, which I have just now investigated, was altogether destitute of truth; and it is clear that Yoolow did not believe it. He said it must be a joke, which was perhaps the mildest way of expressing his disbelief. The statement, and indeed the whole scene, looks very much as if it had been intended to stir up Yoolow's mind against the trustees, and to bring about a change of management, in regard to the property and funds. This prosecution has much the same aspect. You have been told that the pursuer does not demand to be served to the office of tutor,—that all he asks, at present, is a finding of fatuity and idiocy. He, forsooth, is too disinterested to seek the office of tutor for himself: all he seeks is to have the interests of his relative protected. Gentlemen,—That is a piece of finesse, but you will not be misled by it: I warn you against it. I tell you that the pursuer does not abandon his scheme of being appointed tutor: he merely delays it, in the hope of misleading you by doing so. He knows, and is advised, that if he succeeds in getting Yoolow cognosced, his own appointment to the office of tutor must follow as a matter of course, just as surely as if he was claiming it now. Nothing could preclude him then, except reasons such as would preclude him now. I therefore warn you against being taken in by this device. And allow me to add, that even if Yoolow had been a person of weak mind, as the pursuer has represented him, there never was a case in which the interference of the law was so little required,—so utterly unnecessary, if no object had been in view except the legitimate one of really protecting the property and interests of the party. To what danger is he exposed? There

is no insinuation, far less proof, of prodigality. His sister has appointed three respectable and honourable gentlemen in this neighbourhood, some of them of great practical skill, and all of them persons in whom he has confidence, to watch over his interests. They are willing to discharge that duty ; and they are better qualified to do so than the pursuer can be, or any other person likely to be appointed through the intervention of the law. Yoolow's very decrepitude is a protection against his divesting himself of his means, or granting foolish deeds of any kind ; for he cannot execute any deeds without the intervention of more than one man of business and presumed fidelity. No, Gentlemen : the real object is not to protect Yoolow, but to obtain the possession and management of his property now, and to secure the succession to it hereafter, by putting it out of his power to defeat the expectations of those who feel that they have no claims upon his gratitude, and are not entitled to any place in his affections. If he should be circumvented in making a final settlement of his estate, the law will interpose and give redress, by setting it aside ; but, in the meantime, I beseech you, let not his life be embittered by such a proceeding as is here attempted.

Gentlemen,—An anxiety proportionate, in some degree, to the magnitude of the interests my client has at stake, and which, I hope, you will excuse, has led me to trespass longer on your time than I had intended—I now leave the case in your hands, with as much confidence as any pleader can have in the justice of any cause.

Mr. SHERIFF L'AMY then charged the Jury, as follows :—

Gentlemen of the Jury,—After the very fatiguing duty you have had to perform, I should be happy, without further remark, to allow you to retire in order to deliberate on the evidence you have heard, were it not my duty to offer such observations on the case, as appear to me likely to assist you in your verdict. Do not, however, suppose that I have any intention (though I am quite prepared to do so) to go minutely into the evidence that has been adduced on both sides. You heard that evidence given,—you attended to it carefully at the time,—and you took notes of it, and you have since heard it minutely examined and commented on in the two able addresses which have

now been made to you by the learned counsel for the parties ; and as you will be put in possession of the depositions of the witnesses, you will be enabled, should any doubt arise in your minds, to satisfy yourselves on every point that has been brought forward. My observations will be more of a general nature, and comprised within a short compass.

The case you have to try is one calling for your best consideration. It is a most important one to *Yoolow*, in as far as it involves the question whether he shall be held as sane, or an idiot, and in as far as your verdict may touch his powers over any estate that may belong to him. You are aware that, on the one hand, no sane person is to be deprived of the management of his property, and, on the other, that the law does not allow the management to remain with a person who is fatuous and an idiot. Such a person is unfit to take charge of property, and therefore must be protected by the law from becoming the prey of designing and interested persons. For I must observe to you, that, in cognoscing him as a fatuous person and an idiot, should that be the conclusion you shall arrive at, the law is not dealing harshly with him, but, on the contrary, is affording him and his heirs a protection against designing persons who might take advantage of his weakness of mind.

But, while our law takes charge of persons of weak minds, and provides remedies for the protection of their property, yet you must always keep in mind that the remedies of the law are different, according to the extent of the weakness of mind or incapacity of the persons whose cases demand protection.

By bringing under your view, in a general way, the different remedies provided for different degrees of weakness of mind, I shall, perhaps, be able the better to assist you in making up your verdict.

Persons of weak mind may be in one of two situations. There may be either a *total*, or only a *partial* incapacity. A *total* incapacity arises from the individual being in a state either of furiosity or of idiocy. Such defects of mind, (that is a *total* incapacity, arising from furiosity or idiocy,) must be proved by the verdict of a jury under a *brieve* issuing from the Chancery.

Where, on the other hand, the party is neither furious nor an idiot, but labours under a partial incapacity only, yet to such an

extent as to call for the protection of the law for the preservation of his property, *other* remedies are provided. One of these remedies consists in an application to the Court of Session, praying for the appointment of a factor, or *curator*, to take the management of the affairs of a party who is unfit to act for himself. Another remedy is that of *judicial interdiction*, which is a sentence of the Court of Session, disabling persons of profuse or facile dispositions from granting deeds to their own prejudice, without the consent of the interdictors. This is a remedy competent to the next of kin or presumptive heir. There is also the remedy of *voluntary interdiction*, by which a party, conscious of his own weakness, binds himself to grant no deed without the consent of certain friends; and which, if followed by the requisite solemnities, will protect his heritable property, by preventing him from alienating it without the consent of his interdictors.

In the present case, a brieve of fatuity and idiocy has been taken out against David Yoolow, which necessarily implies a *total* incapacity of mind—the question put to you in the brieve being, whether Yoolow be “*incompos mentis*, fatuous, and by “nature an idiot, and not to be trusted regarding the alienation “of his property?” You have therefore to consider whether the evidence which has been adduced by the pursuer of the brieve, proves a *total* incapacity on the part of Yoolow, warranting you to cognosce him as fatuous and an idiot, or only a partial incapacity, which calls for a different remedy than that of cognition. To authorize you to return a verdict of total incapacity under the brieve now before you, the evidence must be clear, unambiguous, and conclusive.

The law on this subject, as I have now stated it, is clearly laid down by Mr. Erskine in his *Institutes*, B. I. Tit. vii. § 48. That author distinguishes “a total defect of judgment” from a disordered brain, and says, “Of the first class are fatuous persons, called also idiots in our law, who are deprived entirely of “the faculty of reason;” and to that case alone the brieve of idiocy applies. If the incapacity proved be only partial, the brieve of idiocy is inapplicable to his case; and therefore another and a different remedy must be sought, as I have already explained to you.

Let us now turn to the evidence which has been given in this case.

It appears that David Yoolow had, at a very early period of life, suffered from a paralytic attack, which had had a powerful effect on his bodily organs, and had reduced him to the distressing situation, in that respect, which we witnessed on Saturday. He was then at school, a boy of about ten years of age, and was learning to read. To what extent his mental powers were affected, it is for you, on a due consideration of the evidence which has been adduced, in addition to the impressions made on your own minds from his appearance and conversation, to decide. An attempt was made by the pursuer to prove that he was a boy of weak intellect, even before he suffered from the paralytic attack. Two witnesses swore, that at school he was sometimes called "Daft Davie Yoolow;" but other witnesses, equally respectable, and who had equally good opportunities of judging, having been his school-fellows, have sworn that he taught the younger boys their lessons, and that he was not inferior in mind to other boys; and this last seems to be the true state of the case.

That the paralytic stroke had an important effect, in different ways, on his mind, is undoubted. It obliged his parents to take him from school and to put a stop to his education, by which he was prevented from acquiring those branches of knowledge which other boys in the same line of life learned. He had acquired nothing but a little reading, and no arithmetic whatever, though he has shewn to us that he is by no means deficient in simple calculations,—in other words, that notwithstanding the paralytic attack, he was capable, as some of the medical witnesses say, of acquiring information, and making use of what he acquired. The violence of the attack must no doubt, to a certain extent, have weakened his powers of mind; and his exclusion from the world, and almost total confinement to his house for above forty years, were circumstances, undoubtedly, very unfavourable for him. But whether all these taken together have produced total incapacity, so as to authorize you to return a verdict of fatuity and idiocy against him, is the question to which you have now to direct your anxious attention.

The evidence adduced for proving his total incapacity, I may perhaps be allowed to classify under three heads:—*Firstly*, The evidence of the medical gentlemen who had, more or less frequently, seen him:—*Secondly*, The evidence of common or ordi-

nary witnesses, who occasionally saw and conversed with him :—and, *Thirdly*, The evidence arising out of the interview which you yourselves had with him on Saturday last, and the questions which were then put to and answered by him.

If I may judge of your minds from my own, I would say that I am persuaded you will be inclined, especially where there has been so much contradictory evidence, to place considerable reliance, either favourably or unfavourably for him, on what you yourselves witnessed during our interview with David Yoolow. It will be difficult to shake the opinion of such of you as may have come to the conclusion, that during that interview he evinced any thing but a *total* incapacity of mind, calling for the protection now sought by the bribe of idiocy. Such of you as may have formed an opposite opinion, will also consider that interview as a test of mind of much importance.

I will here take the liberty of reminding you shortly of what passed on Saturday morning between Yoolow and myself, in your presence, and that of the counsel for the parties ; but, before doing so, let me call your attention to a question of no slight importance,—namely, whether this be a case in which you are competent by law to judge of the true state of mind of the individual, or whether it be a case on which *medical men* are alone competent to give evidence. In this last view, it were idle in me to detain you, by recapitulating what took place when we visited Yoolow at Mill of Peattie. But as many of you may be of opinion, as I humbly am, that Yoolow's powers of mind, and the question whether he was in a state of fatuity and idiocy or the reverse, may be judged of by you from what passed in your own presence, in reference to the readiness and sanity of the answers which he gave to the questions put, and that you are not confined to the evidence of the medical gentlemen, or of any of the other witnesses examined, I will shortly recapitulate what passed. That it is competent for you to found your opinion on what you yourselves witnessed, is laid down as clear law by Mr. Erskine, who says, (B. I. Tit. vii. § 51,) “ The verdict of the inquest concerning the person's *present* condition, is grounded on the conviction arising in their breasts *from what themselves have seen* ; “ but that part of it which looks backward to his *past* state, must “ of necessity rest solely on the testimony of witnesses.”

You will recollect, then, that it was agreed that I and the two leading counsel should first see Yoolow, and that you should afterwards come into the room. This arrangement was carried into effect. I went into his room accompanied by the counsel, who will recollect that I stated to Yoolow that I was the Sheriff of the county,—that one of the gentlemen present, whom I pointed out, was Mr. Duncan M'Neill, his counsel,—and that the other, Mr. Patrick Robertson, was counsel for Mr. Duncan; and I asked him if he was aware that there was a brieve for trying, at Coupar-Angus, the state of his mind, and whether he was an idiot or not. He replied, “Yes, and I hope you will soon bring it to “an end.”

On your coming into the room, a number of questions were put to him, of which, and the answers, I afterwards took the following note:—

1. He told you he had been at school at Kettins till he was about nine years of age, and had learned to read, but had got no arithmetic.

2. He mentioned the name of the schoolmaster, and also the name of the present minister of the parish, Mr. Symmers.

3. Likewise the period of the deaths of his father and sister.

4. He told us that his father had left him £600, which was in the bank,—that he formerly got £20 of interest, but last year only £12. I said that was two per cent. interest. He said, “Yes.”

5. I put down seven shillings, which he counted one by one, —then a half-crown, and also a sixpence. He added the half-crown to the seven shillings quite readily, and then the sixpence, and said that the whole was ten shillings.

6. If you were not to pay the laird the rent of your farm, what would happen? “I would be turned out.”

7. If you were the laird, what would you do with the farm? “I would let it, I suppose.”

8. Do you ever read the newspapers? “Yes, the Weekly Journal.” What do you read in it? “The price of grain.” What is the price of wheat? “Thirty-eighty shillings a *quarter*, “I think it is called.” How much is in a quarter of wheat? “Eight bushels.”

9. Do you read your Bible? “Yes.” Do you understand

what you read? "I think I do." Does the soul perish with the body? "No." What becomes of it? "If you are good, it goes into happiness—if not, into misery."

10. How many ploughs labouring have you? "Two." How many horses? This he also answered.

11. Who are your father's trustees? He named them all.

12. If you were dying, would you leave any part of your money to your friends? "A part of it—I cannot take my money with me."

13. If a deed were offered you to sign, giving away your property, would you sign it? "I should like to know what was in it."

14. How is your money disposed of? "In providing raiment for me and the like."

15. Do you know the distance to Dundee? "No." Is there any town beyond it? "Yes, Edinburgh; but I never was there;—and Glasgow, and Greenock, and Paisley."

In putting these questions, some of which were suggested by yourselves, I fear we shall fall under the censure of my learned brother Mr. Robertson, which he applied to the questions put by some of the witnesses, namely, that they were too simple, and not sufficiently calculated to ascertain the extent of Yoolow's knowledge and information on general subjects. But as the point at issue, so far as regarded Yoolow, was whether he was fatuous and an idiot, or not, we humbly thought that the questions we put were amply sufficient to test the state of his mind, and enable us to determine whether a verdict of fatuity and idiocy ought or ought not to be returned against him. I confess the answers, as well as the ready and unembarrassed mode of giving them, satisfied me at the time, that the character of idiocy did not apply to him; and if I could judge of your minds, I thought you were also of that opinion. But since then, we have had a great mass of evidence laid before us, of a very contradictory nature, which you must carefully weigh, and which must either confirm or weaken the impressions you then entertained. Many of the questions, too, put to him by some of the witnesses, were much more complicated than those we put, but answered with equal readiness and accuracy.

I begin with the testimony of the medical gentlemen, who have

been adduced as witnesses for the parties, to whose evidence you are bound to pay every degree of attention, because in bringing gentlemen of their high professional knowledge from such a distance, it is no doubt supposed, that more light is to be obtained from them than from ordinary witnesses, or even from the examination you yourselves made into the state of Yoolow's mind. Whether this was a case peculiarly calculated for medical men, when you yourselves had personal access to Yoolow, and the fullest opportunity you could desire for examining into the state of his mind, is a different question.

I do not mean to go over the various questions which were put to him by the medical gentlemen, in order to test his state of mind, but rather to recal to your recollection the general conclusions which they drew from the examinations they had subjected him to. The questions you cannot have forgotten: they are most important to be kept in your recollection, and if you have forgotten any of them, you will find them in the depositions of the witnesses. Without meaning to draw distinctions which can give offence in any quarter, I may however be allowed to recommend to your particular attention, the questions put by Dr. Caruthers and Mr. Lowe, and the answers made, because they afford a powerful test of Yoolow's state of mind, and because at the time those gentlemen were examined, the questions put by them, and the answers made, seemed to strike us all very forcibly.

There are two points in regard to the medical evidence, deserving attention; first, whether the opinions of those gentlemen who spoke least favourably of David Yoolow's soundness of mind prove that he was in a state of *total* incapacity, or only of *partial* weakness of mind, which may justify an application to the Court of Session for a *curator bonis*, but does not call for a verdict of a jury cognoscing him as fatuous and an idiot; and secondly, whether the force of their evidence was weakened or taken off altogether by the testimony of the other medical men, examined for David Yoolow.

All of the medical gentlemen who were examined, are of the highest respectability in point of professional talent; they appear to have taken the greatest pains to test Yoolow's powers of mind; and they delivered their opinions with the most perfect candour;

yet unfortunately it happens, that they differ very widely amongst themselves, as to the general conclusions at which they arrived. This is somewhat difficult to account for, and is very apt to lead us to believe, that so great a difference of opinion cannot arise out of their evidence as *medical* men; on the contrary, that it is a case in which non-medical men and all persons of common sense, may be equally capable of judging as medical men.

Even where the same or very similar questions were put by some of those gentlemen, we have different results given. Certain of them say that Yoolow could not answer ordinary questions or answered them wrong, while others say the reverse, and hence, if we ourselves had not had communication with him and heard his answers, this case, with so much contradictory evidence amongst the medical witnesses, must have assumed a much more puzzling aspect than it will probably appear to you to possess. We can only account for part of the contradictory proof, by recollecting the peculiarly slow and distinct manner in which it was necessary to put the questions in order to be understood by him, and Yoolow's very indistinct utterance when a question was put, which might easily lead the person questioning him into a mistake as to the answer returned; and hence, it has been justly remarked by Yoolow's counsel, that one of the witnesses who asked him, how much was a boll of meal, said that he answered, sixteen *pounds*, probably meaning *pecks*; and another understood him to say, that *twa* bolls was a good return from land, though he probably meant "*twal*," (twelve).

Dr. CHRISTISON was the first of the medical men examined for the claimant. He was of opinion, that Yoolow has "a great degree of *imbecility*, and is unable to manage his affairs, and "of unsound mind."

Dr. MALCOLM defined an *idiot* to be a person totally void of understanding, "but that (he said) did not apply to Yoolow's case." He farther said, "Yoolow is a man of unsound mind, "and incapable of managing his affairs, and has no chance of "improvement."

Mr. SYMMONS, the Superintendent of the Perth Asylum, said, "He has the mind of a child, imbecile, and totally incapable of "managing his affairs, and is of unsound mind."

Mr. JAMES MILLER: "I came to the conclusion, that he

“ was a person of weak intellect, by which I mean of unsound mind.”

Mr. GEORGE ANDERSON : “ A weak intellect, and imbecile mind, and not capable of buying and selling.”

Mr. WILLIAM PURVES : “ His mind imbecile, not capable of buying or selling, or of transacting business or managing his affairs.”

Dr. JAMES ANDERSON : “ He is decidedly imbecile, but capable of answering a simple question, but not an abstract one. “ In the *literal* sense of the word, he is not of sound mind, but “ in the medical sense of the word as meaning insanity, it has no “ application to Yoolow except when in a state of excitement; “ fatuity is applicable to him.

Even supposing that this was the whole of the medical evidence, you will ask yourselves whether it amounts to a proof of fatuity and idiocy against Yoolow, or only to a partial derangement of the intellect, to which the brievé of fatuity and idiocy does not apply. You will also keep in your recollection the grounds from which those conclusions have been drawn, and judge whether some of the questions put, as observed by Yoolow’s counsel, were or were not applicable to his limited state of knowledge and acquirements, considering the secluded manner in which he had lived since he was a child of ten years of age, and to the deficiency in his education, considering that the Bible seems to have been the only book almost which he read, or was possessed of.

But the medical evidence does not rest there. Professional men, of equally high character, drew very opposite inferences.

Dr. JOHN ARGYLE ROBERTSON, who was first examined for Yoolow, said, “ From Yoolow’s want of experience, his attainments are limited.” Did the conclusion you came to, lead you to think that he was fatuous or an idiot? “ Quite the reverse. “ By fatuity and idiocy, I understand the want of power to acquire knowledge.” And the Doctor said that Yoolow possessed the power of acquiring knowledge.

Dr. NIMMO was decidedly of opinion that David Yoolow is neither an idiot, fatuous, nor *non compos mentis*.

Mr. ALEXANDER BELL concurred with Dr. Nimmo.

Dr. CARRUTHERS says, “ I did not find him in a state “ of fatuity or idiocy, but quite the reverse. He has a mind ca-

“ pable of understanding subjects to which he has directed his attention. He has a very high sense of religion, and an astonishing acquaintance with the Bible. He understood perfectly what we talked about. He assigned rational and proper reasons for his belief.” Could an idiot exhibit that degree of knowledge? “ Decidedly not. He understands what he reads, but an idiot cannot stand an examination on what he reads or repeats. He has a sense of moral conduct and honesty. I think he has a sound reflecting mind, a capacity to receive information, and the capability of applying the information he receives. The range of his information is greater than I should have expected. He is capable of further improvement. He said nothing that indicated insanity or idiocy. I never found a person of his mind under restraint as insane.”

MR. LOWE: “ The result of my experience of him is, that he has a sufficient degree of soundness of mind, to give directions to others to act for him. He is neither fatuous nor an idiot.”

MR. HALKET: “ I paid him five visits, and I found his mind improved by increased intercourse with others, and capable of receiving information and using it. I consider him sane, not an idiot nor fatuous. An idiot is one void of understanding from his birth.”

It thus appears that none of the medical gentlemen say he is an idiot. Some of them think him of unsound mind and incapable of managing his affairs, while others have a very opposite opinion, and think him neither fatuous nor an idiot.

The non-medical witnesses examined also differ very widely in their opinions of the true state of his mind. Some of those least favourable to his possessing a sound mind, seem to rest a good deal on certain peculiarities or oddities of manner, and weaknesses of mind, which he occasionally exhibited. But, while it would be very erroneous in us to view him as a man of powerful mind, conducting himself on every occasion like one whose education had been completed, who was daily mixing with the world, and constantly making progress in knowledge and acquirements of every description, yet when the inquiry is whether he be *non compos mentis*, fatuous and an idiot, you will not perhaps rest much on those peculiarities as to which so much has been said, nor allow them to set aside the evidence of a sound mind, as indicated from the

examinations which he underwent in your own presence, and in that of a great number of individuals almost all strangers to him, who were sent from time to time to interrogate him, including medical men of the highest respectability. You must, however, weigh the evidence on both sides, and try to discover which preponderates, and whether the evidence least favourable to his state of mind amounts to that degree of fatuity and idiocy which will authorise you to return a cognition against him, or whether the impressions which you received while visiting him (if such impressions were favourable to him) have been confirmed or done away by the evidence since adduced. We cannot avoid taking into account the severe trials he has of late been put to, in being subjected day after day, and several times in one day, to the examinations of strangers, upon every point that could be suggested within the compass of his knowledge.

Before I conclude, I have to call your particular attention to the evidence of one gentleman examined, who can neither be viewed as a medical man, nor perhaps ranked as a common or ordinary witness. I mean the testimony of the Reverend Mr. Flowerdew. He was sent to examine Yoolow upon his biblical knowledge, in order that he might be able to report to you whether his knowledge of the Scripture was mere rote, or whether he understood what he read and repeated. On this point Mr. Flowerdew has given the most decided evidence in favour of Yoolow. He has told you, and given you a variety of instances, that Yoolow did not repeat by rote, by uttering words and texts merely, without meaning; on the contrary, that what he said was the result of reading and reasoning, and that his knowledge on that subject was equal to an average of the knowledge of other men. You cannot fail to remember how very highly satisfied Mr. Flowerdew repeatedly declared himself to have been with the answers which he received, which he said could only flow from a reasoning mind. That Mr. Flowerdew was a perfectly competent judge of the progress which Yoolow had made in the knowledge of the doctrines of the Scripture, is a point not to be called in question; and if such knowledge and acquirements in the study of the Scripture be inconsistent with fatuity and idiocy, you have conclusive proof that Yoolow is neither fatuous nor an idiot. For, though it has been proved,

and unquestionably is true, that a knowledge of words and texts merely is not necessarily inconsistent with an unsound mind, yet Yoolow does not stand in that situation, as he understood and reasoned correctly on the passages and doctrines of Scripture on which Mr. Flowerdew examined him, which is very widely different from a mere memory of words. So far, therefore, as Mr. Flowerdew's evidence goes, you can have little difficulty in being of opinion that Yoolow could not, with an unsound mind, have reasoned in the manner he did on the leading doctrines of Christianity. That he had studied the Bible only, and no other book, is of no consequence whatever, if he really understood it. Had he studied any other branch of knowledge, such as mathematics, and made himself master of it, fatuity and idiocy could not have been imputed to him. Why, then, shall we hold him fatuous and an idiot, because he confined his reading to the Scripture, seeing he was master of the doctrines contained in it?

If, however, you should come to be of opinion, on the whole of the evidence, that you can conscientiously return a verdict of fatuity and idiocy against Yoolow, you will then have to determine from what period Yoolow has been in that state of mind. On that subject you can have no difficulty, as it is proved very clearly that he has been in the same state of mind he is in at present, since he was ten or eleven years of age.

The JURY were then asked whether they wished to retire, in order to deliberate on their verdict; but, as they stated that they were ready to return their verdict, the SHERIFF proceeded to put to the Chancellor, and to the rest of the Jury, one after another, the question "*Cognosce, or Not,*" when they unanimously answered "*Not.*" A verdict to this effect was written out by the Clerk, and subscribed by the Sheriff and the Chancellor of the Jury.

Mr. D. M'NEILL, for the respondent, then moved the Court to find the respondent entitled to expenses; but the SHERIFF, "in respect he had no power to entertain the question of expenses," refused the motion.

The Trial then terminated, having occupied the greater part of two days.

APPENDIX.

I.

BRIEVE of FATUITY for trying the state of DAVID YOLOW.

GULIELMUS Quartus Dei Gratia Britanniarum Rex Fidei Defensor Vicecomiti et Balivis suis de Forfar, Salutem, Mandamus vobis et præcipimus quatenus per probos et fideles patriæ homines per quos rei veritas melius sciri poterit magno sacramento interveniente diligentem et fidelem inquisitionem fieri faciatis si David Yoolow residens apud molendinum de Peattie prope Coupar-Angus sit incompos mentis fatuus et naturaliter idiota sic quod timetur de alienatione tam terrarum suarum quam aliarum rerum mobilium et immobilium et quamdiu sustinuit illam fatuitatem. Et si sic quis sit tunc propinquior consanguineus ex parte patris dicto Davidi Yoolow. Et si ille propinquior sit suæ rei providus et potens cavere idonee de administratione rei alienæ. Et si sit legitimæ ætatis. Et quod per dictam inquisitionem diligenter et fideliter factam esse inveneritis sub sigillo vestro et sigillis eorum qui dictæ inquisitioni intererunt faciend ad capellam nostram mittatis et hoc breve: Teste meipso apud Edinburgum decimo nono die mensis Octobris Regnique nostri anno septimo (1836).

Vicecomiti et Balivis suis de Forfar,

Curat. pro Davide Yoolow.

II.

PRECEPT of the SHERIFF, authorizing the Service of the BRIEVE.

JAMES L'AMY of Dunkenny, Esquire, Advocate, Sheriff of Forfarshire,
—To Messengers at Arms, my officers, &c.—Whereas a Brieve has been issued forth of his Majesty's Chancery, directed to me, for cognoscing, by an inquest of honest and faithful men, whether David Yoolow, residing at Mill of Peattie near Coupar-Angus, is incompos mentis, of insane mind, fatuous and naturally an idiot, so that he is to be feared or not to be trusted anent the disposal of his lands, as well as of his other effects moveable and immoveable, and for

how long he has been in that state of fatuity; and if the same is found, who is his nearest kinsman on the side of his father, and whether that nearest kinsman is provident of his own affairs, and capable to take care of the proper administration of the estate of another, and if he is of lawful age. Herefore, &c.

Dated the 12th day of November, 1836.

III.

EXECUTION of SERVICE of the BRIEVE at the Market-Cross of Forfar.

Upon the twelfth day of November, Eighteen hundred and thirty-six, I, John Stewart, Sheriff-officer, by virtue of the within-written Brieve, and at command of a precept of the Sheriff of Forfarshire proceeding thereon, of this date, passed to the Market-cross of the burgh of Forfar, head burgh of the sheriffdom of Forfar, and there, and in market time of day, after crying three several oyesses, making open proclamation and public reading of the said Brieve, in his Majesty's name and authority, and in name and authority of the said Sheriff, lawfully proclaimed the same to be served, before the said Sheriff or his substitute, in a court to be held by them, or either of them, within the ordinary Sheriff Court-Room, at Forfar, upon the first day of December, Eighteen hundred and thirty-six, in the hour of cause (eleven o'clock forenoon), with continuation of days; and lawfully summoned, warned, and charged all persons having, or pretending to have, interest in the said matter, to compare time and place aforesaid, to hear and see the service of the said Brieve, and the same, with an extract of the service, returned to his Majesty's Chancery, in competent form, or else to allege a reasonable cause to the contrary, with certification, &c. This I did, conform to said Brieve and precept in all points. A just copy of which Brieve, with a short copy of citation to the above effect thereto subjoined, I affixed and left upon the said Market-cross, which copy of citation was duly subscribed by me, did bear this date, and the date of said precept, with the names and designations of James Stewart and Alexander Peacock, both indwellers in Forfar, witnesses to the haill premises, and hereto with me subscribing.

(Signed) JOHN STEWART.

JAMES STEWART, Witness.

ALEX. PEACOCK, Witness.

IV.

EXECUTION of SERVICE of the BRIEVE on David Yoolow.

Upon the Sixteenth day of November, Eighteen hundred and thirty-six years, I, James Bruce, Messenger at Arms, passed by virtue of a Brieve from Chancery directed to the Sheriff of Forfarshire, dated the nineteenth day of October last, and at command of a precept of the Sheriff of Forfarshire, dated the twelfth day of November current; and lawfully summoned, warned, and charged David Yoolow, residing at Mill of Peattie, near Coupar-Angus, to compear before the said Sheriff or his substitute, in a court to be held by either of them, within the ordinary Sheriff Court-Room of Forfar, upon the first day of December next, at eleven o'clock forenoon, in the hour of cause, with continuation of days, to hear and see the said Brieve duly and lawfully served, and, with an extract of the service, retoured to his Majesty's Chancery in competent form as effeirs, or else to allege a reasonable cause on the contrary, with certification as effeirs. This I did in terms of the said brieve and precept in all points, a full double of which brieve, and a full double to the will of said precept, with a just copy of citation to the above effect thereto subjoined, I delivered to the said David Yoolow personally apprehended; which copy of citation was subscribed by me, did bear the date hereof, with the dates of the said brieve and precept; and contained the names and designations of George Cross and James Bruce, Junior, both residing in Coupar-Angus, witnesses present at the premises, and hereto subscribing with me upon this and the preceding page.

(Signed) JAMES BRUCE.

GEORGE CROSS, Witness.

JAMES BRUCE, Junior, Witness.

V.

CLAIM for PETER DUNCAN.

Honourable Persons and Good Men of Inquest :—

I, Peter Duncan, residing in Coupar-Angus, only surviving son procreate of the marriage betwixt James Duncan, gardener in Coupar-Angus, and Ann Yoolow, or Duncan, his spouse, only surviving sister-german of David Yoolow, residing at Mill of Peattie, say unto your Wisdoms, that the said David Yoolow, my maternal uncle, is *incompos mentis, fatuus, et naturaliter idiota*; that he is not to be trusted regarding the aliena-

tion or disposal of his lands, or other estate or effects heritable and moveable, and therefore is incapable to manage his own affairs. And that he has been in that state of fatuity and imbecility since his boyhood, and still continues so; and that being the case, it is necessary that measures should be adopted for the purpose of getting a fit and proper person appointed for managing his estate and effects: wherefore I applied for, and purchased a Brieve furth of his Majesty's Chancery, of date the nineteenth day of October last, directed to the Sheriff of Forfarshire, commanding him to cause true and diligent inquiry to be made, by good and faithful men of the county, whether the said David Yoolow be *incompos mentis, fatuus et naturaliter idiota*, and that he cannot be trusted in the alienation and disposal of his lands, and other estate and effects heritable and moveable, and is incapable of managing his affairs, and how long he has continued in that state of fatuity and imbecility, which Brieve has been duly proclaimed and executed.

Herefore, I beseech your Wisdoms to serve and cognosce, find and declare the said David Yoolow to be *incompos mentis, fatuus*, and incapable of, and not to be intrusted in the management of his own affairs, in terms of the above claim, and to give authority to the clerk of Court to retour the said Brieve to his Majesty's Chancery, under the most part of your hands and seals, as use is.—According to Justice and your Wisdoms' answer.

(Signed) PETER DUNCAN.

WILL. HUTCHISON, Proc. for Claimant.

VI.

PETITION of PETER DUNCAN to the Sheriff of Forfarshire.

6th December, 1836.

Unto the Honourable the Sheriff of Forfarshire,—The PETITION of
PETER DUNCAN, residing in Coupar-Angus,

Humbly Sheweth,

That the Petitioner, who is the only surviving son of Mrs. Ann Yoolow or Duncan, spouse of James Duncan, gardener in Coupar-Angus, and the nephew and nearest male agnate of David Yoolow, residing at Mill of Peattie, the Petitioner's said mother's only brother-german, lately, with advice and consent of his mother, purchased from Chancery a Brieve, directed to your Lordship, for cognoscing the said David Yoolow as *fatuus*, of a weak mind, and incapable of managing his own affairs; which Brieve

was duly served on the said David Yoolow, and published to be called on the first day of December current.

That the petitioner, having applied to medical gentlemen of skill to visit the said David Yoolow, and been advised by them that he could not with safety, owing to his mental and bodily weakness, be taken to your Lordship's ordinary Court-place at Forfar, to be there seen and examined by the Jury, conform to certificate herewith produced, the case was not brought on upon the day of first calling thereof, but was continued, in in order that your Lordship might fix another place for proceeding with the trial, where the said David Yoolow can attend with safety.

That the petitioner has now ascertained that the said David Yoolow can with safety attend at Coupar-Angus, which is within two miles of his present residence, and he makes the present application to your Lordship to move you to fix a day there, for summoning the jury and witnesses, and bringing up the said David Yoolow for examination, and proceeding with the inquest. The house of John Howieson, Innkeeper in Coupar-Angus, is within your Lordship's jurisdiction, and can be accommodated for holding the Court *pro tempore*.

May it therefore please your Lordship, on considering the premises, to fix a day for trying the said Brieve at Coupar-Angus, and within the house above-mentioned; to grant diligence for summoning a jury and witnesses to attend there, and for bringing up the said David Yoolow to be seen and examined by the jury, should this be necessary, or to do otherwise in the premises as to your Lordship shall seem meet.—According to Justice,

(Signed)

WILL. HUTCHISON.

Drawn by Mr. FLEMING.

VII.

CERTIFICATE referred to in the foregoing Petition, and produced therewith.

Coupar-Angus, 14th Nov. 1836.

We certify, on soul and conscience, that we have visited Mr. David Yoolow, at Mill of Peattie, at three different times. From the weak state of his mind, and the debilitated and paralytic state of his body, we consider that he could not be taken to Forfar without endangering his life.

(Signed)

WM. MALCOLM, M. D.

JAMES ANDERSON, M. D.

VIII.

PETITION of DAVID YOOLOW.

24th December, 1836.

Unto the Honourable the Sheriff of Forfarshire, and his Substitute,—
The PETITION of Mr. DAVID YOOLOW, residing at Mill of Peattie ;

Humbly Sheweth,

That a Brieve of Fatuity has been raised, and is pursued against the petitioner before your Lordship, under which an inquest is intended soon to be held.

That the petitioner is ignorant of the grounds on which this attempt has been resolved on, or is to be supported ; and his agents have sought in vain to discover any delusions, or other evidences of insanity, and are unable to discover what circumstances the pursuer is to attempt to prove before the Jury.

That the petitioner and his agents have been informed, nevertheless, that the parties who have originated, and are seeking to support this attempt to deprive the petitioner of his liberty and of the management of his own affairs, allege privately, that they are to prove certain special facts which they say indicate insanity,—some of modern date and some during the petitioner's boyhood ; but the petitioner and his agents are ignorant of what these facts are, and are in consequence not able to prepare to meet the evidence.

That it is of the utmost importance for the ends of justice, that the petitioner should not be kept ignorant of what is to be attempted to be proved against him ;—on the contrary he ought to be informed of the special facts which are to be offered in evidence, in order that he and his agents may be prepared with evidence bearing on the facts, and on the explanations to be given for meeting these ; nor is it any injury to the raiser of the Brieve to require him to condescend, for he is not seeking (at least he pretends not to be seeking, and ought not to be seeking) any private end for his own benefit, but only for the benefit of the petitioner ; and it is manifestly most unjust, and contrary to the intent of such an inquest, to expose the petitioner to danger, through being taken by surprise, and being unprovided with evidence to rebut the concealed schemes of his adversary.

That the petitioner respectfully desires, that a condescendence be lodged by the pursuer of the inquest, of all the facts and circumstances which he intends to offer in evidence of the petitioner's alleged fatuity, and also

that there be a condescendence of the intended means of proof, just as your Lordship is accustomed to do in the inquests for compensation for property and damages under acts of Parliament.

May it therefore please your Lordship to ordain the party or parties pursuing the Brieve against the petitioner, as above mentioned, to lodge in process, within some certain short space, a condescendence of the facts and circumstances which they intend to offer in evidence of the petitioner's alleged fatuity, the condescendence also specifying the intended means of proof; or may it please your Lordship to do otherwise in the premises as to your Lordship shall appear right, for the protection of the petitioner and the ends of justice.—According to Justice &c.

	(Signed)	JOHN KERR.
Drawn by me.	(Signed)	CHARLES YOUNG.

Forfar, 24th Dec. 1836.

The Sheriff-substitute having considered the foregoing petition, ordains a full double of the same, and of the present warrant, to be served by an officer of Court on Peter Duncan, residing in Coupar-Angus, who has appeared by petition in Court, as the nearest male agnate of the petitioner and as the purchaser of the Brieve, and him to lodge answers thereto, if he any have, in the hands of the Clerk of Court here, within four days after service, with certification.

(Signed) A. ROBERTSON.

I, John M'Liesh, Messenger at Arms, by virtue of a deliverance of the Sheriff of Forfarshire, dated the twenty-fourth day of December, Eighteen hundred and thirty-six years, proceeding upon the petition and complaint given in and presented to said Sheriff, for, and in name of Mr. David Yoolow, residing at Mill of Peattie, and letters in supplement thereon, dated and signeted the twenty-sixth day of December current,—In his Majesty's name and authority, and said Sheriff's, hereby serve you, the before designed Peter Duncan, residing in Coupar-Angus, Perthshire, with a full double of said petition and complaint, and deliverance thereon, and lawfully summon, warn, and charge you, to lodge answers to the said petition, if you any have, in the hands of the Clerk of the Sheriff Court of Forfar, within four days after service, with certification. This I do upon the twenty-eighth day of December, Eighteen hundred and thirty-six years, before these witnesses,—William Finlay, George Cross, David Ross, and Donald Tolmie, residents in Coupar-Angus.

JOHN M'LIESH.

IX.

ANSWERS for PETER DUNCAN, residing in Coupar-Angus, to the PETITION *presented in name of* Mr. DAVID YOLOW, residing at Mill of Peattie.

29th December, 1836.

The respondent says, “presented in name of Mr. David Yoolow,” because he knows that Mr. David Yoolow did not, and could not give instructions to present this petition; for the best of all possible reasons—it is altogether beyond his comprehension. But the writers of the petition are ingenuous enough to admit that it is *the agents* that are the petitioners, though the name of Mr. David Yoolow is used. They say, as the ground-work of their application, that “his agents have sought in vain to discover any delusions, or other evidences of insanity, and are unable to discover what circumstances the pursuer is to attempt to prove before the Jury.” Such is the ground of this application; and none know better than the agents alluded to, that, upon its own merits, it is the most ridiculous and absurd application that ever was presented to a Judge. They know it will and must be refused: they know that your Lordship *cannot* but refuse it. What, then, do they present it for, or what object do they expect to gain from it? The answer is simple—*Delay*. It is delay they want; and of this your Lordship is no doubt convinced, from the motion which was this day made in Court. The respondent will, in a few words, satisfy your Lordship, “that it is of the utmost importance for the ends of justice,” that the request made in this petition shall be refused. *Legally*, he will never pretend to question or doubt that it *must* be refused.

Mr. David Yoolow is a person of weak intellect: his mind is what it was when he was nine years of age. He never had any brothers, but he had two sisters, one of whom died in August last. This sister was unmarried; and she contrived to get her father, who was wealthy, to leave all his wealth to her, cutting off the other sister, who was married, with a mere pittance. Miss Yoolow went on accumulating money,—she retained the custody and keeping of David Yoolow,—and when she died, having conceived a most unnatural dislike to her sister and her family, she executed, on deathbed, a deed, leaving the custody of her weak brother to a pampered menial, and the management of the farms, and custody of the wealth, to strangers. This menial, and these strangers, are the parties at present in the charge of the farms and of the person of David Yoolow. Indeed, the menial has every thing at his disposal,

while the sister and her family are treated as aliens and enemies to David Yoolow. Nay, the poor, weak man, has been made to believe that his own sister, the only relative he has in the world, (with the exception of her family,) is his devoted enemy.

These are the true state of the facts. The respondent is the son of David Yoolow's sister, and his nearest male agnate. David Yoolow is weak and fatuous, and the respondent has purchased and published a Brieve to have him declared so by a respectable Jury, so as he may have the custody of his weak uncle out of the hands of strangers. In such circumstances, do the ends of justice demand delay?

The facts and circumstances to be proved by the respondent are for the Jury to consider. It is unnecessary here to allude to them; and as for giving in a condescence of these facts, apart from the absurdity of the demand, the thing might not be possible. David Yoolow will himself be before the Jury—will be questioned and fully examined by the Jury. Can the respondent condescend upon the facts and circumstances that may appear under this examination? But what is the case before your Lordship? It is a Brieve from Chancery, wherein your Lordship's duty is simply ministerial. You are directed to try by an inquest what is set forth in the Brieve, and you can do nothing else. Were you to order a condescence, an answer would be necessary,—then revisals—probably re-revisals—a record—in short, a regular process as in your civil jurisdiction, all under a writ from his Majesty's Chancery. Need the respondent say a word more of the absurdity of the demand?

Observe how meekly the demand is made, “just as your Lordship is accustomed to do in the inquests for compensation for property and damages under acts of Parliament.” There is a precedent for your Lordship, to order a condescence under a Chancery writ!! What a bold conception! But do the petitioner's agents really suppose, that either your Lordship or the respondents will be gulled by a manœuvre so monstrously absurd?

It is with difficulty that the respondent has been able to keep his temper in writing this answer; and lest he should transgress the order of pleading, he will not detain your Lordship longer. He may only state that it is about six weeks since the Brieve was published,—that it was at first intended to hold the inquest on the 1st of December current,—that Mr. Kerr applied to the respondent's agents urging them to postpone the trial till the end of this month, in the following terms: “I wish to know whether you will consent to the inquest being held some day about the end of December or beginning of January, instead of on the day mentioned in your letter. I have no doubt the Sheriff will continue the cause on Mr. Yoolow's motion, whether you consent or not, but it will

“ save discussion, and some trouble and expense, if you will agree ; and
 “ we can then arrange with the Sheriff as to all particulars, with a view
 “ to the convenience of every one.” The respondent agreed to this request. Counsel have been engaged on both sides—the day of trial fixed for the 6th January, when the Court of Session is not sitting. In short, all arrangements have been made, when all at once, and without a single word or hint of being taken by surprise or any such thing, this petition makes its appearance at the eleventh hour, craving your Lordship to order a condescendence of the facts and circumstances, which the respondent means to adduce before the Jury, and his means of proof. It would be ridiculous to enlarge. The petition must be dismissed and the inquest must proceed.

PLEA IN LAW.

A Brieve of Fatuity contains directions to the judge-ordinary, to cause true and diligent inquiry be made, *by good and faithful men of the county*, whether the facts set forth *in the Brieve* be true or not, and it is incompetent to proceed to the trial thereof in any other shape than that ordered by the Brieve. In particular, it is incompetent for the judge-ordinary to order a condescendence, or any other written pleading, under such a Brieve.—In respect whereof, &c.

WILL. HUTCHISON.

Drawn by Mr. FLEMING.

X.

MINUTE FOR PETER DUNCAN.

19th January, 1837.

By interlocutor of this date, your Lordship reserved consideration of the objection to the verification of the execution of the Brieve, until the meeting of the Court at Coupar-Angus, for the service, on Saturday the 28th current.

The pursuer, Mr. Duncan, humbly moves your Lordship to decide the defender's appeal, on that point, without farther delay, so as the pursuer may ascertain whether it will be necessary for him to cite and adduce the officer and witnesses to the execution at Coupar-Angus on the day of trial, which would be incurring an unnecessary expense, in the event of your adhering to the Sheriff-substitute's interlocutor appealed from. It is therefore expedient, and for the interest of both parties, to have the appeal advised, and the point decided by your Lordship without farther delay,

and for that purpose the pursuer moves your Lordship, the Sheriff-substitute, to remit the cause with the appeal to your Lordship.

The pursuer has farther to state, that, in consequence of the prevalence of an epidemic distress at present in the county, it is more than probable that the one-half of the number of jurymen in the list made up by your Lordship, may be prevented by distress or other unavoidable causes from attending the Court, and some of those who do attend may be liable to objections from either party, which might render it necessary for your Lordship again to adjourn the trial. It therefore occurs to the pursuer as necessary, that your Lordship should add to the list ten more jurors, or such other additional number as you shall deem proper. He therefore moves your Lordship to take this into your immediate consideration, as it would be attended with very considerable additional expense to parties to bring counsel from Edinburgh on two occasions, were the trial to be adjourned from the cause now alluded to. The pursuer may farther add, that it consists with his personal knowledge, that several of the jurors named in the list are at present under distress, unable to attend, and will produce medical certificates to that effect. He therefore moves your Lordship, to grant the request before stated, and to direct the clerk to summon an additional number of jurors along with those named in the former list.—In respect whereof, &c.

(Signed) WILL. HUTCHISON.

XI.

ANSWERS for DAVID YOOLOW to the MINUTE for PETER DUNCAN.

23d January, 1837.

The moment the respondent's procurator received notice of the pursuer's intention to make the present motion, which was only the day before the lodging of the minute, he requested the pursuer's procurator to delay incurring any expense, until he could have an opportunity of hearing from Mr. Kerr, Dundee, the respondent's confidential adviser, when he stated it was likely that authority would be given not only for naming the additional number of jurymen now moved for, but also for passing from the objection to the verification of the execution of the brieve. This reasonable request, however, was not acceded to, for the minute was lodged on the following day, before the respondent's procurator could have had an opportunity of communicating with his employer. Nay more, it appears that your Lordship the Sheriff had been waited upon by the pursuer's agent in Edinburgh, to nominate more jurymen,

and dispose of the respondent's objection, even before the subject of the motion had been communicated to the respondent's procurator. This reckless and wanton incurring of expense on the part of the pursuer, the respondent must object to being allowed out of his estate, whatever may be the issue of the trial.

Your Lordship having deemed it necessary to authorize other ten jurymen to be summoned, the respondent does not mean to oppose that order, farther than to enter his caveat against this extra expense. For he has no doubt, from the disappearance in this quarter of the epidemic referred to in the minute, that a sufficient number of jurymen, out of those formerly summoned, will attend on the day of trial.

Although the respondent considers his objection to the verification of the execution of the brieve, outwith the presence of the jury and presiding Judge at the trial, to be good, yet as it may be obviated by the pursuer's taking forward the witnesses to Coupar-Angus on the day of trial, and as the respondent has no wish to put even his opponent to any unnecessary expense which can be saved, he now hereby passes from that objection, and his appeal against the Sheriff-substitute's decision repelling it. He therefore consents that the evidence led at Forfar of the verification of the execution, shall be held as equivalent to having been adduced before your Lordship and the jury on the day of trial.

In respect whereof, &c.

XII.

ANSWERS for DAVID YOOLOW to the PETITION of PETER DUNCAN.

23d January, 1837.

[Lodged, 2 o'clock, P. M.]

An intimation was made to the respondent's procurator, at eight o'clock on the evening of Saturday last the 21st instant, by the procurator for the petitioner, that the latter was to move your Lordship the Sheriff-substitute at ten o'clock of the forenoon of this day, to dispose of that part of the prayer of the petition which craves a warrant for bringing the respondent before the jury on the day of trial, on the ground that this point had been overlooked by your Lordship the Sheriff when you pronounced your interlocutor of the 30th ult., fixing the day and place of trial, and granting diligence for summoning the witnesses, jury, and havers. Accordingly the agents met your Lordship the Sheriff-substitute, when you declined interfering; but allowed the respondent to put in an answer, and the petitioner to reply, by four o'clock this evening, so as the proceedings might be immediately dispatched to your Lordship the

Sheriff for your disposal. In consequence of this permission, the following answers are humbly submitted :—

1st, The respondent maintains that the whole prayer of the petition is already disposed of by the interlocutor of 30th ult. All that is craved is a *diligence* “for summoning the jury and witnesses, and for bringing “up the said David Yoolow to be seen and examined by the jury, should “this be necessary.” Now, such diligence has been granted, as well as against havers, and all that the petitioner requires to do is to cite the respondent to appear before the inquest; and if he shall fail to do so, it will then be time enough for your Lordship to issue such order or warrant as circumstances may require. From the petitioner’s own certificate, produced with his petition, it appears that the respondent’s bodily health is such, that he could not have been taken to the seat of the Court at Forfar, without endangering his life; and instead of his appearing before the inquest on the day of trial, it may even then be found necessary and expedient for your Lordship and the jury to visit him at his own residence, which is within two miles of the place where the Court is to be held.

The respondent assures your Lordship, that he is most desirous to meet this investigation fairly and openly, and will not shrink from every reasonable and proper inquiry which your Lordship and the jury may consider necessary. He will, if the state of his health permits, appear in Court of his own accord; and if not, he shall be found at his own residence, where he can be conversed with by your Lordship and the jury. But,

2d, He protests against his opponent being armed with the power of apprehending, or in any shape having the control of his person, so as to take him before the inquest. Indeed, he apprehends it is *ultra vires* of your Lordship to grant any such warrant, *hoc statu*. From the petitioner’s own showing, it is the duty of the Court to guard against needlessly irritating or exciting the feelings of a person circumstanced as the petitioner alleges the respondent to be. Your Lordship can therefore easily figure the effect which any warrant, of the description now asked, would have upon the nervous system of a person not only labouring under severe bodily distress, but also, in the words of the petitioner’s own medical certificate, “of weak state of mind.”

Although the respondent does not admit either the truth of the petitioner’s allegations as to the state of his mind, or the correctness of the medical certificate to the extent certified, still he is entitled to found upon these in opposing the present demand.

In conclusion, he confidently trusts that your Lordship will not consi-

der it necessary to give any farther or other order upon this petition, than what has been already pronounced.

In respect whereof, &c.

XIII.

MINUTES of the PROCEDURE, under the Brieve, in the Sheriff Court of Forfarshire, preliminary to the Trial.

At Forfar, the 1st day of December, 1836.

In presence of ANDREW ROBERTSON, Esq. Sheriff-Substitute of Forfarshire,

Appeared Mr. William Hutchison, writer in Forfar, and produced Brieve of Idiocy purchased forth of his Majesty's Chancery, for cognosc-ing David Yoolow, residing at Mill of Peattie near Coupar-Angus, with precept of the Sheriff of Forfarshire thereon, and executions of service on the said David Yoolow, and against all concerned, at the market-cross of Forfar, to this diet.

Appeared also Mr. Charles Young, writer in Forfar, as procurator for the said David Yoolow.

Mr. Hutchison craved the Court to adjourn the diet to Thursday next, the eighth curt. at eleven o'clock, A. M.

(Signed) WILL. HUTCHISON.

The Sheriff-substitute, as craved, adjourns the diet to Thursday the eighth day of December current, at eleven o'clock forenoon.

(Signed) A. ROBERTSON.

At Forfar, the 8th day of December, 1836.

In presence of ANDREW ROBERTSON, Esq. Sheriff-Substitute of Forfarshire.

Present—Parties' procurators, as at last diet.

At the request of the procurator for the purchasers of the Brieve, the Sheriff-substitute adjourns the diet to the fifteenth day of December current.

(Signed) A. ROBERTSON.

Forfar, 15th Dec. 1836.

Present—Parties' procurators.

At request of parties' procurators, adjourns the diet to twenty-second current.

(Signed) A. ROBERTSON.

Forfar, 22d Dec. 1836.

Present—Parties' procurators.

At request of parties' procurators, adjourns the diet to twenty-ninth current.

(Signed) A. ROBERTSON.

At Forfar, the 29th day of December, 1836.

In presence of ANDREW ROBERTSON, Esq. Sheriff-Substitute of Forfarshire,

Appeared Mr. William Hutchison, writer in Forfar, and Mr. Charles Young, writer there, procurators, as in the first sederunt.

Mr. Hutchison produced a claim, subscribed by him and Peter Duncan, residing in Coupar-Angus, only surviving son procreate of the marriage betwixt James Duncan, gardener in Coupar-Angus, and Ann Yoolow or Duncan, his spouse, only surviving sister-german of David Yoolow, residing at Mill of Peattie, and craved that the Sheriff would now proceed in the service, to the extent of proving the execution of the Brieve at the market-cross of Forfar.

(Signed) WILL. HUTCHISON.

To which it was objected by Mr. Young, 1st, That the service of the Brieve cannot competently be instructed, except in presence of the jury; 2d, That it ought to be established at one and same sederunt, when the jury are empannelled, and before the Judge presiding at the trial.

(Signed) C. YOUNG.

Answered :—The proving of the execution of the Brieve is an act of proceeding before the Court alone, and must take place before the Brieve and claim be remitted to the jury. The objection is therefore quite groundless; and there is no law or practice to instruct that the proof of the execution must be taken in presence of the jury.

(Signed) WILL. HUTCHISON.

The Sheriff-substitute makes avizandum to himself with the objection, and continues the diet till to-morrow, at eleven o'clock forenoon.

(Signed) A. ROBERTSON.

At Forfar, the 30th day of December, 1836.

Present—The procurators for the parties, as at the former sederunt.

The Sheriff-substitute having resumed consideration of the foregoing

objection and answer, and heard parties' procurators—repels the objection, in respect that the verification of the execution of service of the Brieve is not a matter which goes to the cognizance of the jury.

(Signed) A. ROBERTSON.

The respondent, Mr. Yoolow, appeals to the Sheriff against the above decision.

(Signed) C. YOUNG.

Appeared, John Stewart, Sheriff's-officer in Forfar, who being solemnly sworn, purged of malice and partial counsel, and examined, depones, That on the twelfth day of November last, being a market-day in Forfar, the deponent, as a Sheriff's-officer, duly proclaimed in terms of law the Brieve on which the present proceedings are founded, in presence of James Stewart and Alexander Peacock, both indwellers in Forfar, all which he depones to be truth as he shall answer to God.

(Signed) JOHN STEWART.
A. ROBERTSON.

Appeared James Stewart, indweller in Forfar, who being solemnly sworn, *ut antea*, and interrogated, depones, That he attended along with Alexander Peacock, on the twelfth day of November last, as witnesses to the proclamation of the Brieve in question ;—That the deponent saw John Stewart, Sheriff's-officer in Forfar, make due proclamation of said Brieve that day, which was a market-day in Forfar, all which he depones to be truth as he shall answer to God.

(Signed) JAMES STEWART.
A. ROBERTSON.

Appeared Alexander Peacock, indweller in Forfar, who being solemnly sworn, &c. *ut antea*, and interrogated, depones and concurs *in omnibus* with the preceding deponent, James Stewart ;—and all this he depones to be truth as he shall answer to God.

(Signed) ALEX. PEACOCK.
A. ROBERTSON.

The Sheriff-substitute, by instructions of the Sheriff, hereby adjourns the further discussion of the present case, until Friday the sixth day of January ensuing, at half-past ten o'clock forenoon ; appoints the Court then to be held within the Inn in Coupar-Angus, kept by John Howieson, Vintner ; grants diligence at the instance of all parties, for citing witnesses and havers, then to attend and give evidence and produce writs

before the jury ; also grants warrant for citing the following persons to pass as jurors upon the inquest then to be held, viz.—

- George Nicoll, manufacturer, Dundee,
 Andrew Moncur, residing at Magdalene Yard, Dundee,
 David Binny, Merchant, Forfar,
 John M'Nicoll, Esq. residing at Craig,
 5 Robert Easson, manufacturer, Dundee,
 Thomas Holmes, manufacturer, do.
 John Kinninmont, Innkeeper, do.
 William Christie, Esq. banker, do.
 Patrick Whitton, jun. merchant, do.
 10 William Halley, merchant, do.
 John Steele, merchant, Forfar,
 John Hodgson Anderson, corn-merchant, Dundee,
 John Jobson, merchant, do.
 John Yeaman, banker, Forfar,
 15 Andrew Crichton, farmer, Hatton, Newtyle,
 John Sanderson, merchant, Dundee,
 William Wyllie, farmer, Balbridie,
 John Taylor, residing at Half-penny-burn,
 John Cairncross, accountant, Dundee,
 20 Thomas Adamson, ship-builder, do.
 all under the pains of law.

(Signed) A. ROBERTSON.

Forfar, 3d January, 1837.

The Sheriff-substitute, by instructions from the Sheriff, who heard Mr. Duncan M'Neill, counsel for David Yoolow, and Messrs. Patrick Robertson and Alexander M'Neill, counsel for Peter Duncan, and having considered the application for David Yoolow for a farther delay, adjourns the day of trial of the Brieve till Saturday the twenty-eighth January current, at Coupar-Angus, at half-past ten o'clock, A. M. ; and ordains the jury named in the Sheriff-substitute's deliverance of thirtieth December, to be summoned for that day, and reserves consideration of the objection to the verification of the execution of the Brieve till the day of trial, and also reserves consideration of all claims for expenses *hinc inde* ; and refuses the Reclaiming Petition for David Yoolow, in so far as it prays for an order on Peter Duncan for a condescence of the facts he avers and offers to prove in support of his action.

(Signed) A. ROBERTSON.

Forfar, 21st January, 1837.

The Sheriff-substitute, by instructions from the Sheriff, grants warrant for citing the following persons as additional jurors to pass upon the inquest in this case, to be held at the time and place mentioned in the foregoing interlocutor of third January current, viz.—

William David Proctor, Esq. residing at Glammis,
 Andrew Dalgairns, Esq. at Ingliston,
 David Hood, farmer, Hatton,
 David Halket, farmer, Dunkenny,
 5 George Ballingall, farmer, Cookston,
 Peter Simpson, farmer, Kinalty,
 John Boath, jun. manufacturer, Forfar,
 William Colville, farmer, Carlinwell,
 John Smith, at Hayston, and
 10 Patrick Webster, Esq. of Westfield,
 each under the pains of law.

(Signed) A. ROBERTSON.

XIV.

INTERLOCUTOR of the SHERIFF (at the Trial), ordaining the Inquest to adjourn to Mill of Peattie.

In respect of the crave by the counsel for the respondent David Yoolow, and of the consent by the counsel for the pursuer Peter Duncan, the Sheriff ordains the haill persons of inquest to proceed with himself, and the counsel and agents for the parties, to Mill of Peattie, for the purpose of visiting said David Yoolow.

(Signed) JAMES L'AMY.

XV.

INTERLOCUTOR of the SHERIFF adjourning the Trial.

It being now late, the Sheriff adjourns further proceedings till ten o'clock on Monday morning; and, with the consent of parties, allows the jurors to return to their homes.

(Signed) JAMES L'AMY.

(*N. B.*—The Sheriff at the same time cautioned the jury not to converse with any person on the subject of the trial.)

XVI.

VERDICT of the JURY.

The before-named persons of inquest having considered the before-mentioned Brieve and claim, with the writs produced, depositions of the witnesses adduced for proving the heads of the said Brieve and claim, as also the depositions of the witnesses adduced for setting aside the said Brieve and claim; and the whole persons of the inquest having visited and conversed with the said David Yoolow, in presence of the Sheriff and of the counsel for the claimant and the said David Yoolow, and they being therewith well and rightly advised, the whole persons of inquest unanimously find the heads of the Brieve and claim, with regard to the said David Yoolow's being *incompos mentis, fatuus, et naturaliter idiota* NOT PROVEN; and therefore dismiss the claim.

(Signed) W. D. PROCTOR, *Chancellor.*
JAMES L'AMY.

XVII.

INTERLOCUTOR of the SHERIFF refusing Expenses.

The Sheriff,—in respect that he conceives he has no power to entertain the question of expenses,—refuses the motion now made, reserving to the respondent any other remedy competent, and to the claimant his defences, as accords.

(Signed) JAMES L'AMY.

The first part of the paper is devoted to a general discussion of the problem of the origin of life. It is shown that the problem is one of the most important and interesting in the history of science. The author discusses the various theories of the origin of life, and shows that the most probable one is that of spontaneous generation. He then discusses the evidence in favor of this theory, and shows that it is supported by the facts of the case.

The second part of the paper is devoted to a discussion of the problem of the origin of the human race. It is shown that the problem is one of the most important and interesting in the history of science. The author discusses the various theories of the origin of the human race, and shows that the most probable one is that of spontaneous generation. He then discusses the evidence in favor of this theory, and shows that it is supported by the facts of the case.

The third part of the paper is devoted to a discussion of the problem of the origin of the human mind. It is shown that the problem is one of the most important and interesting in the history of science. The author discusses the various theories of the origin of the human mind, and shows that the most probable one is that of spontaneous generation. He then discusses the evidence in favor of this theory, and shows that it is supported by the facts of the case.

