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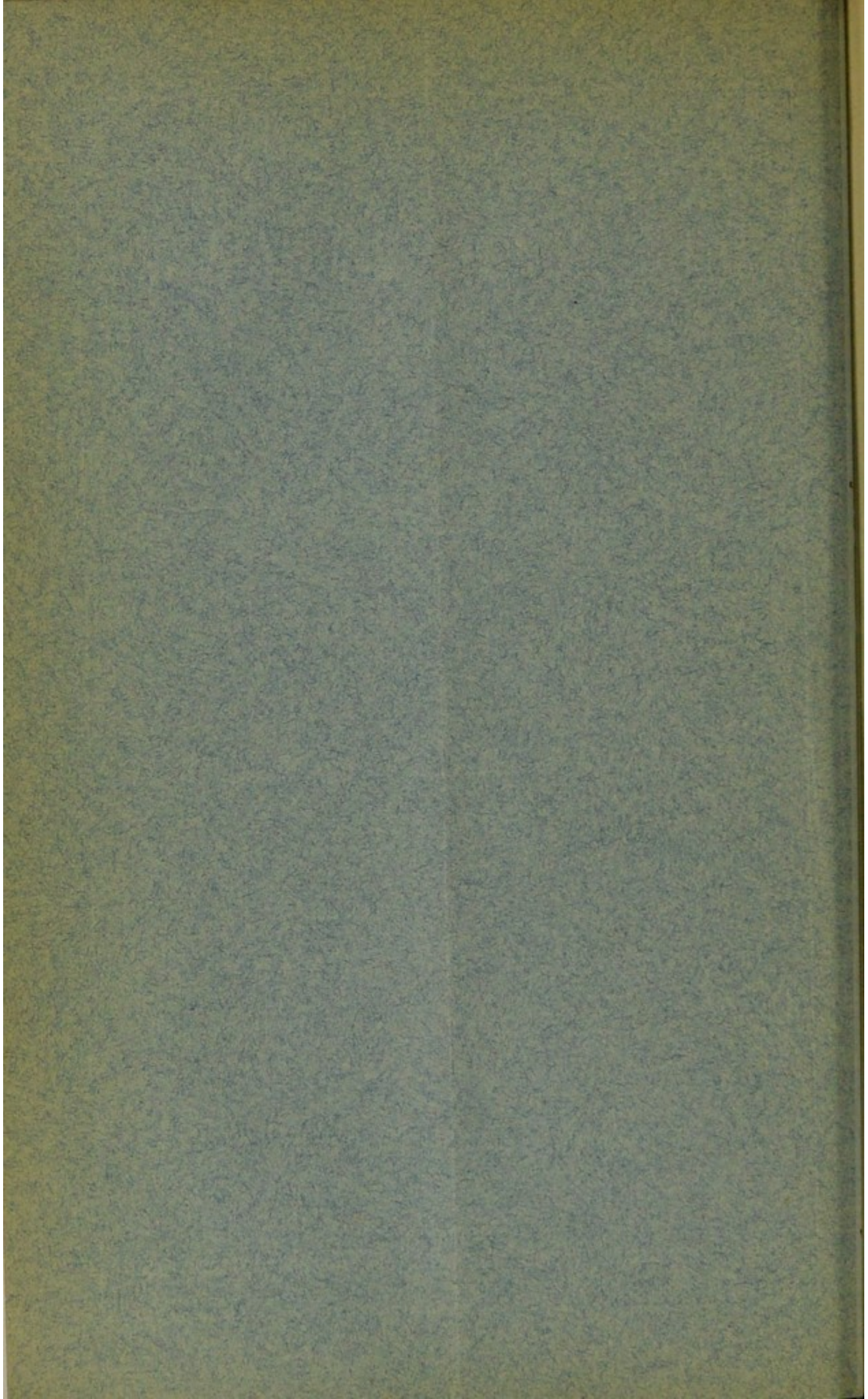


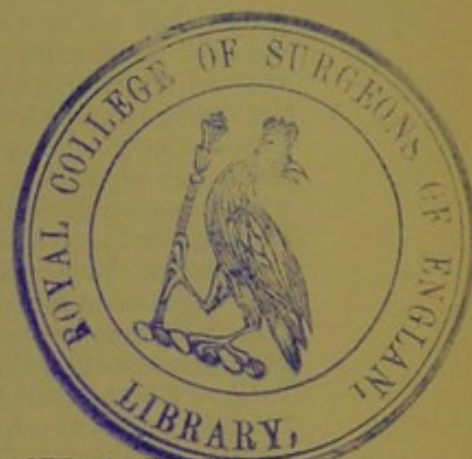
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THE LUNACY LAW: ITS DEFECTS; AND A SCHEME
OF REFORM.

BY WILLIAM R. HUGGARD, M.A., M.D., M.R.C.P. LOND.

THE lunacy law has lately given rise to much discussion; and as fresh legislation on the subject may be expected, the points wherein the present law is defective deserve to be carefully examined.

The points to which attention will here be chiefly directed are, first, the means of ascertaining and determining insanity; and, secondly, the custody and general supervision of the insane, especially in private asylums. The outlines of a scheme of reform for giving the public greater protection from insanity on the one hand, and for giving the alleged lunatic more efficient safeguards on the other hand, will then be put forward.

Let us see what would be accomplished by a perfect law—by a law that should give complete expression to recognised principles; and let us put in contrast what is accomplished by our present law. Under a perfect law, every insane person—that is, every person who, through mental defect, is unable to conform to the requirements of society, and whose inability is not curable by punishment—would be under efficient supervision and control, though not necessarily in an asylum; and the interference with individual liberty would not be greater than absolutely necessary for the protection of society. A good law would also see that its provisions are not evaded either intentionally or unintentionally.

Now, what are the provisions of the present law, and how far do they give effect to the intention of the legislature?

The means for ascertaining insanity—that is, the means for bringing all cases of insanity within the knowledge of the authorities—are not at all complete. This incompleteness is, in one case, intentional. Thus a lunatic, provided he be not kept for profit, can be confined in the house of a relative or friend. Although this may be a defect, any remedy for it would probably be worse than the original evil; and so long as the lunatic is under proper control, probably no great harm is likely to arise. But if the lunatic be not under proper control, there is no adequate provision for dealing with the case; and this incompleteness is probably unintentional. If the case come to the knowledge of any constable, overseer, or relieving officer, such officer is bound immediately to take the lunatic, or cause him to be taken, before a justice of peace, whose duty it is then to take proper steps for placing him under control. The weak point is that it is nobody's duty that the case should come to the knowledge of

any constable, overseer, or relieving officer. Our coroners' courts and our criminal courts testify only too plainly to the number of insane people not under proper control, and to the enormous preventable waste of human life through insanity in consequence—a waste of life that might readily be prevented by proper precautions; for warnings are rarely lacking beforehand which, to a trained mind, would indicate the event about to take place. It is not necessary to speak of the many cases that do not come directly before courts of law, but which cause a great deal of misery and anxiety, and do not fail, indirectly, to furnish their quota of crime.

The next point is the certifying of insanity—the procedure by which a lunatic is put under proper care and control. There may be said to be four methods of procedure, according as the lunatic is—1, a private patient (paid for by himself or by his friends); 2, a pauper patient (maintained wholly or in part out of the parish rates); 3, a Chancery patient (that is, found lunatic by inquisition); 4, a criminal lunatic. In every one of these cases, the procedure is more or less unsatisfactory.

These various methods need not occupy us in detail. The important point in which they all agree is, that not one of all the persons engaged in certifying insanity is required to have any acquaintance, practical or theoretical, with insanity. The medical men, the Master in Lunacy (at any rate, till he have acquired some experience), and the jury, may all, in the respective cases where their services are required, be absolutely incompetent to determine the precise nature of the individual case on the one hand, and may be absolutely ignorant of the nature of insanity generally on the other hand. Not one of them may be able to discriminate between the forms of mental defect that jeopardise the peace and security of society from those forms of mental defect that neither annoy others nor endanger the person himself. On the one hand, melancholia, though fraught with danger, may be regarded as a mild ailment, not requiring vigilant supervision; on the other hand, a harmless though absurd belief may be looked on as a dangerous insanity. This result is not to be wondered at. A person can hardly fail to do badly what he does not know how to do well; and there is no reason for thinking that any of the persons necessarily concerned in any of the plans at present in use for determining insanity are capable of making a systematic and thoroughgoing examination into the various mental functions in relation to society. What Horace said of fools may with almost equal truth be said of the ignorant; when they avoid one extreme, they rush into the opposite. Medical men (and others), who do not happen to have any very clear idea of insanity, are apt either to diagnose it on very insufficient grounds, or to fail to see it in spite of the most palpable evidence. Any asylum-superintendent could furnish examples of both kinds.

As a result partly of the system of certification, and partly of various other causes, we have what may be termed a zig-zag borderland of insanity.

We come now to the custody and supervision of the insane. In regard to pauper lunatics, and private lunatics in public hospitals and asylums, custody and supervision probably require few, if any, improvements. The case of private patients in licensed houses, in single care, and under the care of the Court of Chancery, is somewhat different; and to these we will confine our attention. For one reason or another, the law in these three classes seems to me to be radically bad.

A word, first, as to the amount of supervision over the custody. The patients in licensed houses in the Metropolitan District are visited six times a year by the Commissioners in Lunacy; in the Provincial Districts, twice a year by the Commissioners, and six times by the County Visitors in Lunacy. The acting portion of the Board of Commis-

sioners consists of six members (three medical men, generally with special training, and three barristers). The County Visitors in Lunacy (three or more justices, and one medical man) are elected annually; and, as a rule, probably have no acquaintance with insanity, except what they acquire during their term of office. Single patients must be visited every two weeks by a medical man who need not have any special knowledge of insanity; and the visits may, by sanction of the Commissioners, be made less frequently. The Commissioners also, as a rule, visit single patients twice a year, although they are not required by law to do so. Chancery patients in private asylums are visited twice a year by one or other of the Lord Chancellor's visitors in lunacy (two medical men with special training, and one barrister). The Commissioners in Lunacy, or the County Visitors in Lunacy, visit these cases in common with all others in the asylum, but have very little jurisdiction over them. Chancery patients not in asylums are visited four times a year by the Lord Chancellor's visitors.

I will now point out my objection to the protection the Court of Chancery affords the patient. The forms and procedure for an inquisition, and for superseding an inquisition, are so slow, so cumbrous, and so expensive, that there would naturally be reluctance and hesitation in attempting to undo what might perhaps be required again before it was undone. In other words, a patient, under the protection of the Court of Chancery, would hardly regain his liberty on recovery as soon as any other patient would. It is, however, true, that a Commission in Lunacy is rarely held, except in cases that are not likely to recover.

Single care is hardly sufficiently under supervision to be satisfactory.

Licensed houses have been violently decried from time to time; and, if for no other reason than that the public distrust has a strong tendency to drive the best men from the work, and to leave it in the hands of less suitable persons, I think some reform is needed. There is, however, another reason for reform; and that is, the ground on which the distrust is based.

The proprietor of a private asylum is entrusted with an anomalous combination of adverse functions. He is at once landlord and discretionary custodian, paid host and gaoler-at-will. By discretionary custodian and gaoler-at-will, I mean not a gaoler to whom a prisoner is committed for safe custody during a certain period, but a gaoler who is himself charged with the duty of determining how long the prisoner should stay.

This anomalous combination of duties is, as a rule, I believe, carried out in a way that does the highest credit to proprietors of private asylums. The system is, however, not the less objectionable on that account. That prejudice biases the decisions of the mind is a failing of our common humanity. The wisest and best of men have at times formed their opinions in the coloured light of emotion rather than in the dry light of intellect. Self-interest warps the judgment as powerfully as does any other emotion, and it is never well to unite duties so antagonistic that a more than average mental endowment is required, not for the honest, but for the impartial performance of them.

Though property is a matter of less importance than liberty, provision should certainly be made for the better administration of the property of insane persons. When a person is certified insane, his property is left without legal guardian; and, except when the property is very small, the process of appointing a legal custodian is so costly, as well as so slow, that probably a little friendly plunder and mismanagement would damage the estate less. When a lunatic is interdicted, why should not a responsible person be appointed to act for him in regard to his business or property?

The foregoing seem to be the main points wherein the present law of lunacy fails in carrying out its own principles. We will now see whether a scheme cannot be devised that shall give complete expression to acknowledged doctrines.

First, as to the notification of insanity. I think that, when a lunatic is not under proper control, any person to whose knowledge the circumstance may have come, should be required to notify the fact to the police, or other authority.

Secondly, as to certification. On this point I may quote from a leader in the *BRITISH MEDICAL JOURNAL* (December 6th, 1884). "The object in putting the insane under 'care and treatment' is twofold—the protection of the public, and the protection of the patient. That the protection of the public should depend on the chance inclination of private persons is hardly in accordance with any accepted theory of the duties of Government; and when the patient's own protection is the sole object, it would hardly be too much to expect that so onerous a duty as the interdiction of personal liberty should be undertaken by the State itself. On the one hand, the protection of the public, and, on the other hand, the abrogation of the liberty of the subject, belong properly to the functions of Government, and not to individual private opinion."

When a case of alleged insanity is brought under the notice of authority, in what way should the State determine the question? My proposal is simply this. All certification (except in cases of emergency) should be done by a competent Government official, at a fixed salary, a Medical Examiner in Lunacy. The procedure might be somewhat after this plan. The Medical Examiner, upon the written requisition of a medical man, of a magistrate, or of a relieving officer, stating the grounds of the application, should examine the alleged lunatic. Such an official should be empowered, if he think fit, to take evidence on oath, in so far as his inquiry is concerned.

How many of these officials would be required, and how would they be paid? These questions will now be considered.

There are somewhere between fourteen and fifteen thousand persons certified insane yearly; and of these, upwards of twelve thousand are paupers, and upwards of two thousand are private patients. Probably the money at present paid for certification exceeds £20,000; that is, calculating at the rate of one guinea for each pauper, and four guineas (two guineas for each certificate) in the case of each private patient. Under the suggested scheme, nearly the whole of this money could be readily turned into the State coffers, by causing a stamp duty of one guinea on each pauper certificate and two guineas on each private certificate. This would raise between £17,000 and £18,000, a sum more than sufficient to pay competent men. Sixteen men would probably be enough to do all the certification; and each might have a district formed with due regard to the populousness of the country on the one hand, and to its accessibility on the other.

The process of raising money to pay the Medical Examiners in Lunacy is, therefore, both simple and inexpensive. In the case of a private patient, the outlay to the friends would perhaps be less than at present; as the fee for a medical man's requisition would hardly be as much as the fee now generally charged for a lunacy certificate. In the case of a pauper patient, the relieving officer would make the requisition, so that the fee would simply go in stamp duty instead of direct to the medical man. Moreover, the plan suggested does not impose on any one a new tax or burden; it merely diverts the expenditure from a number of petty dribblets into a single channel. And the result would be, increased efficacy at less cost.

The next suggestion for reform concerns the custody of the insane. It has been shown that, in some respect or other, the law is unsatis-

factory in regard to private patients in licensed houses, in single care, and under the protection of the Court of Chancery. Under the proposed scheme, these classes will all be included.

That the proprietor of a private asylum should have the discretionary custody of the insane is, as we have seen, utterly indefensible in principle. The remedy for this evil, however, is, not to abolish private asylums, but to do away with the anomalous combination of antagonistic functions—to separate the duties of paid host from the duties of discretionary custodian. The proprietor of an asylum should be entrusted simply with providing for the safety and for the well-being of the patients; and the State should undertake, in a much more immediate manner, than at present, the discretion of continued detention. The immediate responsibility for a patient's detention should rest with a government official, or Medical Visitor in Lunacy. Almost all the duties, in fact, that now fall on the proprietor or superintendent of a private asylum, in virtue of his office as discretionary custodian, should be transferred to the Medical Visitor; such, for example, as the duty of reporting (or supervising the reporting) of the mental and bodily health of the patients at weekly, monthly, or quarterly intervals, according to the nature of the case; and it should be in his power, subject to the control of the Commissioners, to authorise a discharge, or a transfer, should he think fit.

Let us now see the number of medical visitors that would be required, and whence the money would come to pay them.

There are, roughly, about eight thousand private lunatics in England and Wales. Of these, more than half are in registered hospitals, or other public asylums, and need not, therefore, occupy us further. Of the remainder, upwards of three thousand are in private asylums, and less than a thousand are either lunatics by inquisition, under the immediate supervision of their committees, or patients in single care. It is with the custody of these four thousand patients (in private asylums, etc.) that we are concerned, and for whom it is suggested that Medical Visitors be appointed. To determine the number of Visitors, let us see the requirements. The proportion of recent cases of insanity (cases under one year's standing), to chronic cases, is about one in four. Out of four thousand cases, about one thousand would be recent cases. This proportion is, more or less, permanent; the admissions being nearly balanced by the discharges and deaths. Visits by the Medical Visitor should, for the first month, be made once a week; for the next three months, once a fortnight; for the remainder of the first year, once a month; and, in chronic cases, once every three months. Calculating as closely as I can, I think one Visitor would be able to supervise, in this manner, about two hundred patients. This number would, on the average, include about fifty recent cases. On this basis of calculation, twenty Medical Visitors of Private Asylums would be required in all. In forming districts, however, other considerations, besides the mere number of patients, would have to be borne in mind.

The payment of these officials stands on a somewhat different footing from the payment of the Medical Examiners in Lunacy. To pay the Medical Examiners, no fresh outlay is incurred, no new burden is imposed; the expenditure is merely turned into a different channel. The Medical Visitors, however, would be an altogether new creation. They have no counterpart under the present system; and the question is, on whom should the burden of payment be thrown, and how should the money be raised? Now I do not think it would be unfair to say that those who can afford to pay for the greater luxury, privacy, and comfort of a private asylum or of private care, should be required to pay also for increased security against unjust detention. It happens, too, as is shown by putting together the facts scattered throughout the Commissioners' Report for 1882, that private patients in private

asylums are on the whole a wealthier, or at any rate a much better paying class, than are the private patients in public asylums. For example, I find by calculation from data afforded by the report in question, that the sum paid to proprietors of licensed houses alone for private patients under their care, is about £450,000; while the sum laid out on about the same number of private cases in public asylums does not probably exceed £200,000. The amount paid for single patients and for Chancery patients, with their Committees, is not included in these figures. If added, it would probably bring the sum spent on lunatics not in public asylums to over £500,000.

My proposal for raising the money is this. A charge should be made, not on the sum paid for the patients, but in proportion to it. A charge of 4 per cent. would raise £20,000. A larger sum than this would readily be raised in the following manner. The person who has charge of the patient's affairs, or who is responsible for his maintenance, should be required to make a quarterly declaration on stamped paper, stating the rate of payment for the patient, or anything else that might be thought proper; the stamp being at the rate of 10s. 6d. for each £50, that is, £4 4s. per cent. *per annum*.

In touching questions of this kind, one enters on delicate ground; for the pocket is the seat of the tenderest susceptibilities of our nature. The tax proposed, however, is not of a very burdensome nature. To some small extent, in the case of poor private patients, the charge would unquestionably be borne by the asylum-proprietor. With this exception, however, the tax would very properly fall on the patient or on his friends; who, if they can afford to pay for the advantages a private asylum has over a public asylum would not grumble at having to make a trifling additional payment to secure such supervision as would put it beyond question that the patient will be detained only on public grounds, and not for private reasons.

With regard to the administration and supervision of the lunacy law, I think the present Board of Commissioners and the Lord Chancellor's Visitors in Lunacy, with the Masters in Lunacy, should be amalgamated, and should have their power increased. The number of Commissioners should, I think, certainly not be less than twelve. Under the present system, the object of a commission in lunacy is to protect the patient's property. Under the suggested scheme, ordinary certification would extend this protection to all lunatics with property, but in a less cumbrous and expensive manner; so that a commission for this purpose would be unnecessary. A commission, however, on any certified patient, if requested on the affidavit of a medical man, or of a magistrate, should, I think, be held by two or more Commissioners (one, at least, medical, and one legal). The primary object of such a commission would be to determine fitness for liberty.

One or two points more I would venture to suggest: namely, that the medical officers of asylums should form a branch of the Civil Service; and that some test of competency should be exacted from all who should enter the service. A brief recapitulation of some of the more important points may be allowed.

First, the means for ascertaining and certifying insanity are clumsy and imperfect. It cannot be said to be anybody's business to see that insane persons are under proper care and control. Then, when someone, apprehensive of danger, does move in the matter, what tribunal determines the question whether the person is to be deprived of his liberty or not? If the alleged lunatic be a man of property, the tribunal charged with determining this question, and vested with the power to give effect to its decision, is a private one, that is, it is not appointed or remunerated by public authority, but is selected and paid by the person who brings forward the allegation; and, as a rule, it has no special qualification for performing the office it undertakes.

Secondly, the private asylum proprietor is entrusted with an anomalous union of antagonistic functions; he is, at the same time, paid host and discretionary custodian.

Thirdly, a simple, inexpensive, and comprehensive scheme of reform is put forward.

In conclusion, I have only to say that the subject is an extremely thorny one. That the present system admits of many improvements, is generally acknowledged; and yet scarcely a single improvement could be suggested that would not excite opposition from some quarter or other. To one thing we may resign ourselves. No matter how perfect our lunacy law may be, it will never give satisfaction so long as there are lunatics who think themselves sane; and this race does not appear to be in immediate danger of extinction.

