A letter to the Right Honorable the Lord Chancellor, on the nature and interpretation of unsoundness of mind, and imbecility of intellect / by John Haslam.

To Sir Anthony Carl
from the Autho

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THE LORD CHANCELLOR.

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ON THE

NATURE AND INTERPRETATION

OF

UNSOUNDNESS OF MIND,

AND

IMBECILITY OF INTELLECT.

BY

JOHN HASLAM, M.D.

LATE OF PEMBROKE HALL, CAMBRIDGE.

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A LETTER.

My Lord,

The present address originates in an anxious wish for the advancement of medical knowledge, where it is connected with those maladies of the human mind, that are referable to the court, wherein your Lordship has so long administered impartial justice. The disorders which affect the body are, in general, the exclusive province of the medical practitioner; but, by a wise provision, that has descended to us from the enlightened nations of antiquity, the law has considered those persons, whose intellectual derangement rendered them inadequate to the governance of themselves in society, or incapable of managing their affairs, entitled to its special protection. If your Lordship should feel surprized at this communication, or deem my conduct presumptuous,

the thirst of information on an important subject is my only apology; and I have sought to allay it in the pure stream that issues from the fountain-head, rather than from subordinate channels or distant distributions. Although personally a stranger to your Lordship, nearly thirty years of my life have been devoted to the investigation and treatment of insanity: of which more than twenty have been professionally passed in the largest receptacle for lunatics;—and the press has diffused, in several publications, my opinions and experience concerning the human mind, both in its sound state and morbid condition.

The medical profession, of which I am an humble member, entertains very different notions concerning the nature of UNSOUNDNESS of mind, and IMBECILITY of intellect;—and this difference of opinion has been displayed on many solemn occasions, where medical testimony has been deposed.

If a physician were to attempt to search into the existing records and procedures on insanity, to collect its legal interpretation, such investigation would probably be a waste of his time, the source

of abundant, and perhaps of incurable error; but to these inconveniences he will not be subjected in attentively considering your Lordship's judgments, of which I have availed myself on the present occasion, and which, having been taken down at the time they were delivered, may be presumed not materially incorrect. The documents to which I refer are the judgments of the 22d April, 1815, and the 17th December, 1822, on the Portsmouth petitions, together with the minutes of conference between your Lordship and certain physicians, on the 7th January, 1823. In the judgment on the petition of 1815, it is stated by your Lordship,*

"I have searched, and caused a most careful search "to be made into all the records and procedures "on lunacy which are extant. I believe, and I "think I may venture to say, that originally com- "missions of this sort were of two kinds; a com- "mission aiming at, and enquiring whether, the "individual had been an idiot ex nativitate, or "whether, on the other hand, he was a lunatic.

* The following citation was introduced, with some comments, in my work on Medical Jurisprudence, as it relates to Insanity, according to the Law of England, 1817, which is now out of print.

" The question whether he was a lunatic, being a
" question, admitting in the solution of it, of a
" decision that imputed to him at one time an
" extremely sound mind, but at other times, an
" occurrence of insanity, with reference to which,
" it was necessary to guard his person and his pro-
" perty by a commission issuing. It seems to have
" been a very long time before those who had
" the administration of justice in this department,
" thought themselves at liberty to issue a com-
" mission, when the person was represented as not
" being ideot ex nativitate, as not being lunatic,
" but as being of UNSOUND MIND, importing by
" those words, the notion, that the party was in
" *some such state*, as was to be contra-distinguished
" from idiotcy, and as he was to be contra-distin-
" guished from lunacy, and yet such as made him
" a proper object of a commission, in the nature
" of a commission to inquire of idiotcy, or a com-
" mission to inquire of lunacy. From the mo-
" ment that that had been established, down to this
" moment, it appears to me to have been at the
" same time established, that *whatever* may be the
" degree of weakness or imbecility of the party to
" manage his own affairs, if the finding of the jury
" is only that he was of an extreme imbecility of

" mind, that he has an inability to manage his " own affairs: if they will not proceed to *infer* " from *that*, in their finding, upon oath, that he is " of UNSOUND MIND, they have not established, by " the result of the inquiry, a case upon which the " Chancellor can make a grant, constituting a com- " mittee, either of the person or estate. All the " cases decide that mere imbecility will not do; " that an inability to manage a man's affairs will " not do, unless that inability, and that incapacity " to manage his affairs *amount* to evidence that " he is of unsound mind; and he must be found " to be so. Now there is a great difference between " inability to manage a man's affairs, and imbe- " cility of mind taken as *evidence* of unsoundness " of mind. The case of Charlton Palmer, in " which this was very much discussed, was the " case of a man stricken in years, and whose mind " was the mind of a child;—it was, *therefore, in* " *that sense*, imbecility, and inability to manage " his affairs, which *constituted* unsoundness of " mind."

The introduction of the term *unsoundness*, to denote a particular state of disordered mind, which is supposed to differ from idiotcy and lunacy, has

been the source of considerable perplexity to medical practitioners; and, in my own opinion, opens an avenue for ignorance and injustice. The application of figurative terms, especially when imposed under a loose analogy, and where they might be supplied by words of direct meaning, always tends to error and confusion.

When medical persons depose that the mind of an individual is unsound, (which character of intellect, if accredited by the jury, would induce them to find the commission,) they ought, at the same time, to define precisely what they mean by such term:—and the jury, when they "proceed to infer" this unsoundness, ought to be in possession of sufficient and well-defined premises, to warrant such inference. But where are these materials to be found? There is a strong presumption that this unsoundness remains an unsolved problem to the present hour, and it is exemplified in the difference of sentiment that prevailed on a late occasion,* between the most eminent of the medical profession; where the same opinions and conduct impressed certain physicians, that this nobleman was

* Lord Portsmouth's Commission.

of sound mind, and others that his mind was thoroughly unsound : so that the jury were to *proceed to make their inference* from the opposite testimony, deposed by the medical evidence, or to proceed to hold such evidence in little esteem from its contrariety on a subject which these physicians professed to illustrate. The term unsoundness, applied to designate a certain state of the human mind, hitherto undescribed, has not originated with medical persons ; to them, therefore, we cannot refer for the solution of its import, and there can be no analogy between the definite unsoundness of animal and vegetable substances, and any condition of the intellect. Timber is said to be unsound, and although we may be little acquainted with the cause by which it is produced, yet its actual state of rottenness is evident :—a horse is unsound, in consequence of some morbid affection that can be pointed out by the veterinarian :—a dentist can detect an unsound tooth :—a physician, from certain well marked symptoms, concludes that the lungs or liver of an individual are unsound :—particular doctrines are held to be unsound, because they deflect from such as are orthodox, and it is presumed there may be an unsound exposition of the law. The human mind, how-

ever, is not the subject of similar investigation ; we are able to discover no virus by which it is contaminated—no spreading rottenness—no morbid leaven that ferments, or canker that corrodes it.

Although we may apply the word unsoundness, in a figurative or metaphorical sense, to the human mind, yet we cannot detect in it any of the marks or indications that characterize the unsoundness of substances acknowledged to be in that state : it is, therefore, under this conviction, and with the view of increasing our knowledge of the human intellect, that, on the behalf of the members of the medical profession, I venture to solicit your Lordship, on the first opportunity that may occur, to elucidate the nature of this UNSOUNDNESS OF MIND, so that physicians may be enabled thoroughly to ascertain its existence, and conscientiously depose to that effect, and also that it may be recognized by the jury, when they " proceed to make their inference," in order that, by their return, your Lordship may appoint the proper committees of the person and property.

Respecting the human intellect, two very opposite opinions prevail among physiologists and

metaphysicians. One party strenuously contends that the phenomena of mind result from the peculiar organization of the brain, although they confess themselves to be as "entirely ignorant how "the parts of the brain accomplish these purposes, "as how the liver secretes bile, how the muscles "contract, or how any other living purpose is ef-"fected."—The other maintains that we become intelligent beings through the medium of a purer emanation, which they denominate SPIRIT, diffused over, or united with, this corporeal structure. The former of these suppositions is held by many grave and pious persons to be incompatible with the doctrines of the Christian Religion; and if I am not mistaken, your Lordship, on a late occasion, after having perused a work attempting to establish such principles, did incline, by "rational doubts," to suspect that these opinions were "directed against the truth of Scripture."

It is particularly fortunate that the arguments concerning the nature of unsoundness of mind and imbecility do not involve either of these presumptions:—if the most decided victory over their opponents were to be conceded to the fautors of organization, no advantage could be derived from

their philosophy by lawyer or physician, whose object is to ascertain the existing state of an individual's mind, and not to detect the morbid alterations of the cerebral structure by the scrutiny of dissection: nor is it necessary, for the elucidation of the present subject, to contend for the pre-eminence of the spiritual doctrine, as it would be extremely difficult, and perhaps irreverent, to suppose, that this immaterial property, this divine essence, that confers perception, reverts into memory, and elaborates thought, can be susceptible of unsoundness. These high attributes, proudly distinguished from perishable matter;—this sanctuary, which "neither moth nor rust doth corrupt," cannot undergo such subordinate changes, without an obvious degradation.

To the furtherance of that pure and substantial justice, which it has been the tenor of your Lordship's ministry to award, these metaphysical disquisitions will in no manner contribute; nor will they assist the medical practitioner in the attainment of his object, which is to ascertain the competence of an individual's MIND, to conduct himself in society, and to manage his affairs. By the abstract term MIND, is to be understood the aggregate

of the intellectual phenomena, which are manifested or displayed to the observer by conversation and conduct; and these are the only tests by which we can judge of an individual's mind. The boasted deciphering of the human capacities or moral propensities, by the appearances of the physiognomy, or by craniological surveys—the mysterious pastimes of anatomical prophets, will never be accredited in a court of justice while your Lordship guides the helm.

By conversation, is of course included the conveyance of thought by writing, which, on many occasions, is a more accurate criterion of the state of mind than oral expression.

Your Lordship seems to consider that we have derived some advantages by the issue of a commission to ascertain this *unsoundness* of mind, and without such due consideration, it is presumed you would not have adopted it; but the citation of your own accurate phraseology, as it appears in your judgment of 1815, on the Portsmouth petition, will best illustrate the subject. "It seems "to have been a very long time before those who "had the administration of justice in this depart-

" ment thought themselves at liberty to issue a " commission, when the person was represented as " not being idiot ex nativitate, as not being luna- " tic, but as being of UNSOUND MIND, importing, " by these words, the notion, that the party was " in *some such state*, as was to be contra-distin- " guished from idiotcy, and as was to be con- " tra-distinguished from lunacy, and yet *such* as " made him a proper object of a commission in " the nature of a commission to inquire of idiotcy, " or a commission to inquire of lunacy." These words clearly imply a morbid state of intellect, which is neither idiotcy nor lunacy, termed *unsound mind*, and yet the legal remedy for the protection of the person and property of the possessor of this *unsound mind* does not differ from that which is applied to idiot and lunatic. The process of law is the same. This undescribed state of unsoundness is contra-distinguished from idiotcy and lunacy; but we are left in the dark concerning the peculiar circumstances by which it is contra-distinguished, and under such defect the advantages of introducing a new and undefined term are not apparent. For what purpose " those who " had the administration of justice in this depart- " ment thought themselves at liberty" so to act, is

not explained: but your Lordship having adopted such practice, and highly commended the authority from whence it has been derived, can, doubtless, afford the necessary elucidation.

For those venerable authorities of the law, who have preceded your Lordship in this department of the administration of justice, I feel impressed with the utmost deference and respect; and these grateful sentiments will be rendered more intense whenever their reasons are promulgated. Medical practitioners, who have devoted their lives to the consideration and treatment of insanity, are disposed to doubt concerning the existence of any intrinsic or positive unsoundness of mind, as contra-distinguished from idiotcy and lunacy. Those who have accumulated the largest sum of experience in disorders of the intellect, have viewed the various forms under which they are manifested, as equally conducing to render an individual incapable of conducting himself and managing his affairs, whether the mental affection be termed madness, melancholy, insanity, mental derangement, non compos mentis, idiotcy, or lunacy; and, if it were necessary, a more ample catalogue might be introduced. Physicians may, perhaps, be ad-

vantageously occupied in establishing nice shades of difference in the symptoms of mental disorder; and, if we do not already possess sufficient, may create new terms expressive of these modifications: and such extension of the nosological volume may have its practical utility: but the lawyer can have no interest in such speculations, he only looks to the medical evidence to demonstrate the existence of that *morbid* condition of intellect that renders the individual incompetent to conduct himself in society, and to manage his affairs.

Speaking generally, the state of idiotcy is well understood, although cases of an intricate nature may occasionally occur: but there is considerable probability, that the interpretation that has adhered to the term lunacy, more especially in the estimate of the lawyer, has been the source of considerable error, and has also tended to introduce the middle and undefined epithet of unsoundness. The old physicians, for whom modern practitioners entertain less reverence than lawyers feel for their predecessors, concurred, that lunatics were not only persons of disordered mind, but that their intellectual aberrations corresponded with certain changes of the moon: and this lunar hypothesis which had

beguiled the medical profession, will furnish a sufficient apology for its adoption by the lawyer. It is a necessary consequence, if the moon, at certain periods, shed a baneful influence on the human intellect, that the intermediate periods would be exempt from its contamination; or, speaking more technically, at certain phases of that luminary, a person would be visited by an insane paroxysm, and at others, experience a lucid interval. The belief in these alternations of insanity and reason, is perspicuously stated in your Lordship's judgment of 1815, on the Portsmouth petition. "The "question whether he was a lunatic, being a ques- "tion admitting, in the solution of it, of a decision "that imputed to him, at one time, an *extremely* "*sound mind*, but at other times, an occurrence "of insanity, with reference to which it was neces- "sary to guard his person and his property by a "commission issuing."

Notwithstanding it must be admitted that

> "There are more things in heaven and earth
> "Than are dreamt of in our philosophy;"

yet, in the present times, our faith in the influence of the lunar aspects has considerably abated, and we employ the term lunatic as a familiar expres-

sion, to denote a person of insane mind, without any reference to its derivation, or supposed ascendency of the moon, which my own observations have tended to disprove:—but as the phrase lucid interval is, in its legal sense, connected with lunatic, some investigation of its meaning becomes absolutely necessary.

If it were the real character of lunacy, after the visitation of the paroxysm, to leave the patient in the possession of an *extremely sound mind*, this disorder would be rendered much less formidable than we now consider it, and might in its effects be compared to those violent storms of thunder and lightning that purify the atmosphere and dispense salutary refreshment; and it is not improbable, that some, gifted by nature with mediocrity of talent, but of a philosophical turn and aspiring pretensions, might regard the occurrence of such paroxysm as a desideratum, rather than an evil, on account of the *extreme soundness* they would experience afterwards: it is moreover evident, that however degraded the lunatic may be in the estimation of vigorous and enlightened intellects, yet this depreciated object, by the enjoyment of occasional periods of bright understanding, has abundant cause

for taunt and triumph over the victim of unsoundness; whose state is "contra-distinguished from lunacy," and as far as has been hitherto ascertained, does not revel in the luxury of a lucid interval. But these vicissitudes of intellectual obscurity and lustre have no real existence;—they are not the offsprings of observation and experience, but the abortions of hypothesis and precipitate deduction. Lunatics, from the excitation of various causes, become at times more violent or desponding, and these exacerbations are often succeeded by tranquillity and cheerfulness, they are more tractable, and less impelled to urge the subjects of their prevailing delusions: but this apparent quietude or assumed complacency, does not imply a renunciation of their perverted notions, which will be found predominant whenever they are skilfully questioned. Inexperienced persons judge of the insane state from the passions or feelings that usually accompany this disorder, and infer its aggravation from the display of boisterous emotions or afflicting apprehensions: the medical practitioner considers these sallies as the mere concomitants of a perverted intellect. This view of the subject is justified by a fact, of too much importance to be omitted on the present occasion. Many lunatics, whose dangerous pro-

" gree of incapacity of the party to manage his
" own affairs, if the finding of the jury is only
" that he was of an extreme imbecility of mind,
" that he has an inability to manage his own affairs ;
" if they will not proceed to infer from that, in
" their finding upon oath, that he is of *unsound*
" *mind*, they have not established by the result of
" the inquiry, a case upon which the Chancellor
" can make a grant, constituting a committee either
" of the person or estate. All the cases decide that
" mere imbecility will not do : that an inability to
" manage a man's affairs will not do, unless that
" inability and that incapacity to manage his affairs,
" AMOUNT to evidence that he is of *unsound mind :*
" and he must be found to be so."

A conclusion is here drawn that the establishment of *unsoundness* necessarily involves, that the extreme degree of imbecility and incapacity of mind does not constitute this unsoundness : that is,—they may exist in the extreme degree, (or citing the words employed,) in any degree WHATEVER, which implies the ne plus ultra, without any resulting UNSOUNDNESS. This is a dictum, which proceeding from your Lordship, the highest authority, is intitled to the utmost deference ;—but it is not an

inference from any acknowledged premises, nor established by the intervention of any corroborating argument. The very existence of this intrinsic unsoundness, is "down to the present moment" unproved, and all that can be inferred in this state of the question, is the accredited maxim that

"Nil agit exemplum litem quod lite resolvit."

By the common consent of philosophers and physicians, mental imbecility in the extreme degree is termed idiotcy; and this state may exist "ex nativitate," or supervene at various periods of human life. When a child proceeds from infancy to adolescence, and from that state advances to maturity, with a capacity of acquiring progressively the knowledge which will enable him to conduct himself in society and to manage his affairs,—so that he is viewed as a responsible agent and considered "inter homines homo," such a being is regarded of *sound* capacity or intellect:—but if in his career from infancy to manhood it is clearly ascertained that education is hopeless,—that the seeds of instruction take "no root, and wither away,"—that he is deficient in the capacity to attain the information requisite to pilot himself

through the world and manage his concerns, such a person would be deemed an idiot, and it might be safely concluded that his intellect was *unsound*, by wanting those capacities that constitute the sound mind. According to your Lordship's exposition he could not be pronounced *unsound*, because this word implies "*some such state*, as is to be *contra-distinguished* from idiotcy." In order that a definite signification may be affixed to the expression "*some such state*," it will not, I trust, be deemed indecorous to ask, what particular condition of morbid intellect is to be understood by this "some such state?" The solution of this difficulty would be most acceptable to the practitioners of medicine, and in my own humble opinion of great relief to the jury, who are called upon to "proceed to infer" this state of unsoundness without any other premises than the words "some such state." Although we are distinctly told by your Lordship, that the extreme degree of imbecility or incapacity will not constitute this "*some such state*" that may be denominated unsoundness; yet I feel highly satisfied with the force and precision by which it is expressed in the words "*whatever degree*," which if a scale were constructed on which imbecility might be estimated, would imply the ultimate gradation; and

whenever any subject can be regulated by definite quantity, expressed in numbers, it conveys the most certain information. Your Lordship may however judge of the surprize and disappointment I felt when I arrived at the following sentence in the same judgment, " All the cases decide that mere " imbecility will not do; that an inability to manage " a man's affairs will not do, unless that inability " and that incapacity to manage his affairs AMOUNT " to evidence that he is of unsound mind, and he " must be found to be so."

This, my Lord, is an ample confession that there is a degree of mental weakness that *does* amount to unsoundness, and in this opinion all philosophers and medical practitioners will unhesitatingly concur: but at the same time this admission wholly upsets the former doctrine, that no degree of imbecility " WHATEVER" can constitute this required unsoundness. In your Lordship's judgment on the Portsmouth petition, delivered the 11th December, 1822, it is stated, " It may be very difficult to draw " the line between such weakness, which is the " proper object of relief in this court, and such as " AMOUNTS to insanity," and in the next sentence, " This is the doctrine of Lord Hardwicke, and I

" follow him in saying it is very difficult to draw " the line between such weakness which is the pro- " per object of relief in this court, and such as " AMOUNTS to insanity." This is a second corroboration of an opinion that destroys the former doctrine. Finally in the " minutes of conference between your Lordship and certain physicians, held on the 7th January, 1823, in the Portsmouth case," there is an endeavour to explain the nature of *unsoundness*, and of imbecility or weakness ;—but it is insufficient to direct the physician to any clue whereby his doubts can be solved, and unfortunately relapses into the original contradictory statement. " The commission which is usually termed a com- " mission of lunacy, and which because it has that " name, I observe many persons are extremely " misled with respect to the nature of it, and which " produced on a former occasion, with respect to " this nobleman, a great mass of affidavits, in which " they stated he was not an object of a commission " of Lunacy.—I say that these words are not much " understood.—The law acknowledges the state of " idiotcy, and the state of lunacy, which properly " understood, is a very different thing from that " sort of unsoundness of mind which renders a " man incapable of managing his affairs or his

" person.—And it has now been long settled,
" not that a commission of lunacy is to be issued ;
" but that a commission is to issue in the nature of
" a writ de lunatico inquirendo, and then the ob-
" ject of the commission is perfectly satisfied, if
" the jury shall find upon satisfactory evidence,
" that the party is of unsound mind, and incapa-
" ble of managing his own affairs.—The finding of
" him incapable of managing his own affairs, is not
" sufficient to authorize further proceedings, but
" there must be a finding that he is of *unsound*
" mind, and unable to manage his affairs :—inca-
" pacity to manage his affairs being considered as
" evidence of unsound mind : —yet there may be,
" (and that every man's mind will suggest) instan-
" ces of incapacity to manage a man's affairs, and yet
" *no* unsoundness of mind." That many persons are extremely misled with respect to a commission of lunacy, and too frequently concerning all other subjects, is fully admitted : and it is equally clear that the great mass of affidavits produced in 1814, in favor of Lord Portsmouth's soundness of intellect (for I have attentively perused the whole catalogue) did not go into the investigation of the supposed difference between this hypothetical unsoundness and lunacy ; but attested, as far as his

Lordship's conversation and conduct had been the subject of their observation and judgment, that he was not a man labouring under any infirmity, or morbid state of mind, that ought, by any legal restraint, to disqualify him from the management of himself and his affairs. With such opinions I have no concern ; they can only be regarded as negative evidence, and cannot operate against manifold overt acts of insanity.

In the progress of this respectful address, after numerous but unsuccessful endeavours to grapple with this *sort* of unsoundness, suspicions have arisen that I have been pursuing a phantom ;—at times I have fondly imagined it within my immediate grasp, but it has always evaded my seizure with unaccountable dexterity :—it even now appears that I could " clutch" it, as your Lordship distinctly asserts that, " lunacy *properly understood* " is a *very different thing* from that *sort* of *un-* " *soundness* which renders a man incapable of " managing his affairs or his person." This is at once coming manfully to the point; for the disclosure (whenever it may take place) of the circumstances that constitute lunacy properly understood, which means as it *ought* to be understood,

a very different thing from this sort of unsoundness, will be the solution of this desideratum,—and this development will impose a considerable weight of obligation on the medical profession.

It now only remains to consider the last material sentence, delivered by your Lordship at this conference, and which to my limited comprehension, appears, in the same breath, to affirm and deny the same position. "The finding of him "incapable of managing his own affairs, is not "sufficient to authorize further proceedings, but "there must be a finding that he is of *unsound* "mind, and unable to manage his affairs:—inca- "pacity to manage his affairs, being considered AS "EVIDENCE of unsound mind."

With the citation of this memorable sentence, —unadulterated by any comment, I shall conclude this address to your Lordship, submitting at the same time my own impressions on the subject:— that, to search for its correct exposition is reverential to the law: to crave its elucidation from its exalted minister is an act of respectful deference: —this solicitude is increased from the consideration that the written opinion of the medical practitioner

is deposed on oath, and that he is examined by the commissioners and jury under the same awful responsibility:—therefore, when the solemnity of that obligation is contemplated, the anxiety for accurate information will scarcely require an apology.

I am, my Lord,
with the utmost respect,
your Lordship's
very obedient servant,
JOHN HASLAM.

No. 2, Hart Street, Bloomsbury,
May, 1823.

Works by the same Author.

OBSERVATIONS on MADNESS and MELANCHOLY.
ILLUSTRATIONS of MADNESS, with a plate.
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SOUND MIND, or the Physiology of Intelligent Beings.

A new edition of the OBSERVATIONS on MADNESS and MELANCHOLY, with considerable additions, will shortly appear.

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