

A letter to the Right Honorable Lord Ashley relative to the case Nottidge versus Ripley / by T. T. Wingett.

Contributors

Wingett, T.T.
Royal College of Physicians of London

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No 1

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A LETTER

TO

THE RIGHT HONORABLE LORD ASHLEY

RELATIVE TO THE CASE

NOTTIDGE *versus* RIPLEY.

BY

T. T. WINGETT, M.D.,

MEDICAL SUPERINTENDENT OF THE DUNDEE ROYAL LUNATIC ASYLUM.

DUNDEE:

JAMES CHALMERS, 10, CASTLE STREET.

MDCCCXLIX.

I have been the last of England's judicial decisions
 which have been that of England, the judicial decisions
 of the two countries as to what constitutes mental in-
 sanity, and the conditions justifying commitment in a
 lunatic asylum, preserve nevertheless a striking degree
 of agreement. That is to say—in both divisions of the
 kingdom the criteria are vague, fluctuating, and in-
 defining. And, accordingly, this is the case, not only in
 the two possible instances of English and Scotch mental
 aberration in the two countries? There is no nation-
 ally in madness. A judicial decision in England
 is a precedent for a decision in Scotland, and vice versa,
 and so it ought to be. I feel, therefore, that as the
 medical superintendent of a Scotch asylum, I can
 scarcely be said to be going beyond my province when
 I address your Lordship for the purpose of beseeching
 you to read the following paper, which I have recently
 commenced in your library. I refer to the Lord
 Chancellor of England, for bringing order out of the
 chaotic confusion into which the law of lunacy—or
 rather the anomaly of lunacy—has fallen, and more
 especially to ask your Lordship's courteous and careful
 opposition to a case which has been put forward, but
 a painful degree of alarm and anxiety has been
 has troubled its operations, and has already done much mischief
 in Scotland in proof of which I refer you to
 Lordship's recent case; and lastly, I beg to place
 my self and my fellow-labourers in Scotland under the
 protection of your Lordship. You will already perceive that I allude to the late
 Westminster case of *North v. North*.

PRINTED BY J. CHALMERS, CASTLE STREET, DUNDEE.

ROYAL COLLEGE

OF
PHYSICIANS

OF

TO

THE RIGHT HONORABLE LORD ASHLEY,

CHAIRMAN OF THE COMMISSION OF LUNACY OF ENGLAND.

MY LORD,

Although the law of Scotland relative to insanity differs widely from that of England, the judicial decisions of the two countries as to what constitutes mental incapacity, and the conditions justifying confinement in a lunatic asylum, preserve, nevertheless, a striking degree of unanimity. That is to say—in both divisions of the kingdom the criteria are vague, fluctuating, and indefinite. And assuredly this is by no means strange, for what possible differences can distinguish mental aberration in the two countries? There is no nationality in madness. A judicial decision in England is a precedent for a decision in Scotland, and *vice versa*, and so it ought to be. I feel, therefore, that as the medical superintendent of a Scotch asylum, I can scarcely be said to be going beyond my province when I address your Lordship for the purpose of beseeching you to continue those endeavours which you recently commenced in your admirable Letter to the Lord Chancellor of England, for bringing order out of the chaotic confusion into which the law of lunacy—or rather the anarchy of lunacy—exists; and more especially to ask your Lordship's continued and careful opposition to a case which has recently created not only a painful degree of alarm and perplexity in England, but has radiated its obnoxious influence in all directions; has already done much mischief in the judicial proceedings of Scotland (in proof of which I give your Lordship a recent case); and may possibly soon plunge myself and others into similar trouble and painful litigation. You will already perceive that I allude to the late Westminster case of *Nottidge versus Ripley*.

Another object which I have in view in addressing your Lordship is, to show the degree of judicial irregularity to be attached to the Lord Chief Baron, which, in my humble opinion, has been greatly overrated and misplaced by those who have opposed his decision.

Upon the 6th July last, the case of John Russell *versus* William Russell was tried in the Sheriff Court of Dumfries. This was an inquisition proceeding under a Brieve of Furiosity—which is equivalent to a commission *de lunatico inquirendo* in England—directed to the Sheriff of the county, ordering “diligent and faithful inquisition to be made if William Russell, sometime watchmaker in Langholm, thereafter in the United States of America, and now and for sometime past an inmate in the Crichton Institution, Dumfries, be *incompos mentis*,” &c. &c. Seven medical witnesses were examined: five of whom deposed that William Russell was of unsound mind and incapable of managing his own affairs. The two others affirmed the contrary, however, and deposed to his sanity and competency to conduct his own affairs. Amongst the five who affirmed his insanity was Dr Browne, the resident physician of the Crichton Institution, whom the learned Sheriff eulogised as one of the most eminent men in his profession, and known all over Europe as such. His evidence ran as follows that—“William Russell was a patient in the Crichton Institution, having been entered on the 4th February, 1840. He was afterwards liberated upon the 4th March of the same year. He was afterwards brought back upon the 30th December, 1841, and has continued a patient ever since. Has had opportunities of seeing him daily, and frequently more than once a day. The state of his mind when first received was such that witness regarded him as insane, and still regards him in a state of insanity. He was so divested of reason when brought first, that he was seen to uncover his person even in the presence of females. He is essentially the same still, but now under discipline. Could not say that he entertained any hopes of his

recovery or even improvement. He has frequently been heard to threaten violence both to parties connected with the asylum and others. From what witness had seen of him had no doubt that he would commit violence to persons to whom he entertains antipathy in circumstances of excitement. Has no doubt of this whatever. Thinks he is not a person who might with safety to the public be set at large. His delusions are very numerous, and may be specified as referring to property to which he lays claim; and that various individuals are suborned and bribed to confine, calumniate, and do him evil. Sometimes the patient is cunning, plausible, and gentle; but repeating over and over again his ideas with regard to property and his other delusions, without reference to previous statements to the same effect. He has also delusions of seeing persons whom he does not actually see, and of hearing rumours which he does not actually hear. At other times, when contradicted, or when his word is disputed, he becomes irritated, excited, and uses threats. He talks rationally upon some points. He has a share of reason, more or less; but that must be affected by his delusions; and as he would proceed upon false principles, it would not guide him in the common affairs of life."

The counsel for the defence stated that even if it had been shown that the claimant laboured under a sort of monomania as regards his property, he held that he was entitled to a verdict, and quoted the opinion of the Lord Chief Baron in the Nottidge case as a corroboration of his statement. And the Sheriff, in summing up the evidence, said—"other mental delusions there no doubt are, which arise from defective processes of reasoning, but these, strictly speaking, are not insanity; as for instance, when a man by dint of reasoning gets himself into the belief that there is no God. There had been examples of men with great mental powers professing to have reasoned thus, though the strange result to which they had arrived was not owing to a diseased fancy. In the same way delusions of a religious nature arose;

those who were subjects of them might be wrong in their belief, but were not on that account to be considered mad. As an illustration of this, he might adduce the Nottidge case, to which his learned friend, the counsel for the respondent, had already referred. Miss Nottidge believed that one Prince was God Almighty, and as a proof of her sincerity granted him a check for £6000; but the jury for all that had found she was *not mad*. The court was *right in England*, and he (the learned Sheriff) thought a Scottish court would have given the same decision. True enough, reason was given to keep us right, but it did not follow that because we used it improperly and reasoned wrong, that we were therefore mad."

The jury coincided with the judge, and gave a verdict to that effect.

The foregoing statements suffice to show that already the dictum of the Lord Chief Baron has been echoed by the lawyers of Scotland. It is, however, consolatory to know that efforts have been made and are making in high quarters to reverse the Westminster decision, and to save suffering humanity from the exposure and ruin to which it was proposed to abandon it. Your Lordship's convincing and generous Letter to the Lord Chancellor upon this subject sounded the first alarm: which was followed by the expression of similar sentiments in the House of Lords by Lord Monteagle and Lord Brougham. The latter noble Lord doubted the veracity of the report given of the Lord Chief Baron's dictum; and averred that if it were true, a motion for a new trial was unavoidable. He said, moreover, that nothing could be done in the matter until the next Michaelmas Term; and it is therefore to the coming of that Term that we look to see some steps taken for the adoption of a rule that shall secure to mental infirmity and the public a wise and a Christian protection.

Sir Frederick Pollock has been charged with the propounding of two legal errors. The first—That the fact of an individual being dangerous to himself or others

was the only legal criterion of the propriety of detention in a lunatic asylum. The second—That Miss Nottidge ought to have had the benefit of a Commission of Lunacy. To this latter error I do not address myself; it is of minor consequence when compared with the former, inasmuch as no prejudice to the interests of the diseased and irresponsible can flow out of its adoption; and, moreover, your Lordship has already set that point at rest.

The first error is, however, a proposition in which myself and others are deeply interested. We regard it as a serious heresy. It was, however, propounded by the Lord Chief Baron with much confidence and assurance, and intended as an admonition to the Commissioners of Lunacy, and the question naturally arises, from what source did his Lordship derive it? He did not gather it from the recent Lunacy Acts, for they are either silent upon the subject, or allude to it in a very vague and uncertain manner. There is, however, an old Act of Parliament which treats of this matter in rather a pointed manner: but this old Act was repealed by the new ones, and the Lord Chief Baron had accordingly nothing to do with it, although it may be useful to refer to it now as showing what was once the spirit of our laws in regard to a point which modern legislators have not provided for. In the Act 51. Geo. III., c. 79, it was provided—"That whenever any application shall be made by the Overseers of the Poor of any parish in any county or district of counties, at the expense of which any Lunatic Asylum shall have been erected, to any Justice of the Peace acting in and for such county or counties, to issue his warrant for the conveyance of any Lunatic or Insane Person to such Asylum, it shall and may be lawful for such Justice to refuse to issue the warrant so required, *if he shall so think fit*, such Lunatic or Insane Person *not being actually dangerous*. Provided nevertheless, that any Justice so refusing to issue such warrant as aforesaid, shall, at the time of his so refusing, deliver in writing to the Overseers of the Poor

making such application as aforesaid *the Reasons for such Refusal*. Provided also, and be it enacted, That if any person or persons shall think themselves aggrieved by such refusal of any Justice as aforesaid, *such person or persons may appeal to the Justices of the Peace* at the next general or quarter sessions of the Peace to be holden in and for the county or place where the matter of appeal shall have arisen, the person or persons so appealing having given to the person against whom such appeal shall be made ten days notice of his, her, or their intention to make such appeal; and the said Justices at such sessions are hereby authorized and required to hear and determine the matter of such appeal in a summary way, *and to make such determination as they shall think proper*; and every such determination shall be final and conclusive to all intents and purposes whatsoever."

Shortly before the passing of this bill a very singular case occurred, which illustrates the spirit of the times and the opinion of Mr Pitt in regard to the propriety of allowing individuals possessed with delusions, although apparently harmless to the persons and properties of everybody, to go unprotected and at large. Shortly after the death of Swedenburg, the celebrated Richard Brothers appeared in England, and created a great sensation. He prophesied somewhat after the manner of Swedenburg, declaring himself the Jewish Messiah, the descendant of King David, and signed all his publications as follows: "Richard Brothers, the man that will be revealed to the Hebrews as their Prince, to all nations as their Governor, according to the covenants to King David, immediately under God." Many disciples flocked around him; among whom were several individuals of education and distinction; and Mr Halket, a Member of Parliament, moved in the House of Commons, that an inquiry should be made into his pretensions. Much of his popularity and influence arose from the accidental fulfilment of some of his vaticinations, respecting the death of the French King; the shooting of the King of Sweden; the sacking and burning of Warsaw; the

destruction of the Stadtholdership of Holland, &c. Mr Pitt consigned him to Simmon's Asylum, Islington, on the 4th May, 1795, where he was protected until the death of Mr Pitt in 1806. He was then liberated, through the importunacy of a Mr Finleyson, a Scotch lawyer, who believed in his mission. It is said that the Government promised frequently to provide for him, and that they had appropriated his pension as a half-pay navy officer, which, in 1824, when Brothers died, amounted to £5786, 15s. 6d. It is also said that both Lord Eldon and Sir Robert Peel acknowledged the debt. Not a farthing of it was, however, received by Brothers, who lived on Mr Finleyson's bounty for the last nine years of his life.

All those who have criticised and combated the Chief Baron's dictum regard it as having been a gratuitous and unprecedented assumption on the part of his Lordship. This is, however, by no means the fact. The truth is, Sir Frederick Pollock has been obviously led astray in his decision by modern writers upon the jurisprudence of insanity, whom he had adopted as his teachers, and who now, forsooth, censure him for giving their tuitions a practical application. Every one acquainted with the modern literature of this country upon mental disease must know that the onus of this unfortunate dictum does not rest with the Chief Baron. It is to be found in the standard works of our medical libraries. The heresy has a medical, not a legal origin. Its author was a doctor, not a judge. In common fairness, therefore, it must be conceded to Sir Frederick Pollock that he has been misled by a medical opinion—to be found in books, but happily not carried into practice. His excuse is really to be found in his having acted upon the wise apothegm, "*ne sutor ultra crepidem.*"

Where is the proof of this? I refer your Lordship to the most recent work upon mental disease, one displaying great learning and talent, the author of which affirms of himself that—"for more than forty years I

have been familiar with the manifestations of disordered intellect." This work is the "Duality of the Mind," by Dr Wigan. At page 143, the following passage occurs: "The moral object which Dr Conolly seems to have had in view in his 'Inquiry concerning the Indications of Insanity,' was, to exempt from the tender mercies of the law, persons who, although eccentric in their habits and incapable of exercising all the mental faculties in due order and subordination, were yet possessed of sufficient self-control to *avoid injuring others or themselves*, which *he very justly considers* to be the boundary of the right of interference on the part of society."

Dr Conolly's "Indications of Insanity" is, as your Lordship knows, a standard work, and universally esteemed. I will direct your Lordship's attention to several passages in it.

Page 373.—"The fact of the patient's madness can only be established, by certain tests of the manner in which his intellectual faculties are exercised, and these tests are to be found in his appearance, in his dress, in the known physical accompaniments of madness, and in his words and actions. *That* is the medical question. The *next* is a medico-legal question, and turns wholly on the disposition of the patient to *injure* himself or his property, or to *injure* others and their property; and on the probability of such a disposition, though not manifested, being suddenly developed. On the first question hangs the medical treatment and superintendence: on the second, restraint, confinement, deprivation of authority, and control over property."

Page 383.—[Lord Erskine, in the course of his defence of Hadfield, observed, that he remembered a man who indicted another for imprisoning him; and no act of the counsel (Erskine himself) could draw from him an indication of disordered mind. But when Dr Sims appeared in court, the man addressed him as the Lord and Saviour of mankind. On account of this extravagance, the person indicted by him was acquitted. But the man persevered, brought another indictment,

and well remembering what had caused the former to fail, could not on this second occasion be brought to say a syllable indicative of his mental delusion. Now, cases of this kind are quoted in medical books to show the difficulty of proving insanity : but they show something more. For when the difficulty of eliciting a proof of disordered mind is so great, when the disorder is so limited, and so seldom evinced, what possible right can any one have to interfere with, or to imprison, any man so afflicted ? Assuredly no more right than to imprison a man for being short-sighted, or a little lame of one leg. Unless the man mentioned by Lord Erskine was disposed, in consequence of his belief in the real presence of the Saviour, to inflict injury on any one or on himself, or unless it led him to neglect his affairs and his family, those who confined him were justly indicted for the false imprisonment, and *ought to have been punished.* page 383

Page 407.—“ A gentleman, of considerable possessions became unaccountably and invincibly possessed with the idea that the Queen of England (Queen Charlotte) was in love with him, and had given him to understand the favorable nature of her sentiments towards him. Although conducting himself very well in most of the affairs of life, the frequent recurrence and assertion of this preposterous notion were considered such convincing proofs of his being a madman, that his family applied for a Commission of Lunacy, in order that his affairs might be placed in safer hands. The Lord Chancellor of that time dined with the gentleman in question, with a party of friends ; and both during and after the dinner, the lunatic gentleman was so polite, agreeable, and amusing, as to contribute in a very remarkable degree to the enjoyment of the day. At last, when the conversation had been continued long enough to afford a fair trial of the state of the gentleman's mind, the Lord Chancellor was so agreeably affected by what had passed, that he could not help expressing to the host the great gratification he had derived from his introduction to him ; and added, how

utterly absurd it now appeared to him to have given credit to a report that he was crazy enough to believe the Queen was in love with him. 'Well, my lord,' replied the gentleman with much gravity, 'and is there anything so very extraordinary in the circumstance?—is it impossible for a woman of her high rank to fall in love with a man of an inferior one?—and am I to be considered crazy for giving credit to her most ample and repeated avowal of that being the case?' This was, of course, sufficient to satisfy the Chancellor; and the Commission was granted. The sequel was no less remarkable, for a lunatic gentleman gave so much assistance to those entrusted with the management of his affairs, that he was the means of their getting over difficulties which without his aid would have been insurmountable; and in the end, I believe, he was actually, if not formally, constituted the steward of his own estate. **T**No great mischief seems to have been done in this instance; but the principle acted upon is perfectly *frightful*, and opposed in every respect to that which I have endeavoured to impress upon the practitioner's mind: for *if we begin to punish the groundless notions of visionary men, where are we to stop?* and if this can be done wherever there is property to be seized, the injustice arising out of it must be monstrous."

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Compare these remarks of Dr Conolly with those dicta of Sir Frederick Pollock, which are regarded as the head and front of his offending, and a striking unanimity of sentiment will be detected. In examining Mr Mylne, one of the commissioners of lunacy, Sir Frederick said—"It is my opinion that you ought to liberate every person who is not dangerous to himself or to others. If the notion has got abroad that any person may be confined in a lunatic asylum or a mad-house, who has any absurd or even mad opinion upon any religious subject, and is safe and harmless upon every other topic, I altogether and entirely differ with such an opinion; and I desire to impress that opinion with as much force as I can in the hearing of one of the commissioners."

The same "frightful principle" is deprecated by the two authorities: both adopt the same rule as the criterion for judging of the propriety of resorting to a lunatic asylum: but unfortunately for Sir Frederick's comfort, "time works wonders;" the opinions which not long ago ran parallel, now diverge, and Dr Conolly of the "Indications" is not the Dr Conolly of the "Remonstrance with the Lord Chief Baron."

Compare the spirit of the foregoing passages with the following, from the 11th page of the "Remonstrance with the Lord Chief Baron:"—"There are gentler spirits, whose gloomy religious views, if fostered by the continued society of those among whom they originated, lead, by certain consequence, to self-destruction. If no one heeded their *incipient malady before they actually became dangerous*, it would often be too late to avert the danger. In this very case of Nottidge *versus* Ripley, the circumstances were strikingly illustrative of the peculiar *danger of leaving imbecile, visionary, and fanatical women at large*, particularly if possessed of property."

I select one other passage from Dr Conolly's "Indications." Page 410.—"Dr Haslam has related a singular case, at great length, without appearing, during the whole of the narration, once to have thought of the only question with which a medical adviser had anything to do. The case is that of a Mr Matthews, who, it seems, considered himself to be the special object of annoyance from a mysterious gang, residing in some unknown apartment near London Wall, who, by their skill in pneumatic chemistry, were enabled to inflict upon him various kinds of torture; of which kinds of torture, and of the persons inflicting it, he would give a very minute account. Sometimes they constricted the fibres of his tongue; sometimes they spread a veil beneath his brain, and intercepted communication between the mind and the heart; they would afflict him with stone in the bladder; introduce ideas at will to float and undulate in his brain; compress him almost to death by magnetic atmosphere; excoriate his

stomach; force fluids into his head; lengthen the brain; and produce distortion of all images and thoughts; and now and then they distended his nerves with gas. All these, and other sufferings, sufficiently indicative of disordered sensations, having assumed the force of realities, and so having disordered this poor man's understanding, were really little to the purpose for which Dr Haslam appears to have related them. What, in fact, was there in all this to warrant confinement in a lunatic asylum? No *danger* to others, or to the patient himself; no *danger* to his property or that of others; no suspicion of meditated violence. It seems indeed highly probable, that the patient indulged in these descriptions before those who sought to have them fully detailed; and that he enjoyed that perverse pleasure of exaggerating, which has been mentioned, among the infirmities of the mind. This opinion is strengthened by the circumstance that the patient was seen by two highly-respectable physicians, and that they seem to have heard nothing of the pneumatic chemists. But the important point is, that, admitting the patient to have had *implicit faith in his delusions*, and to have stated them without exaggeration, there was nothing to show the DANGER of allowing the individual to be at large. Superintendence and watching might have been advisable; medicine might have been necessary; but *confinement in a mad-house was unjustifiable.*"

It is matter of regret with me that the influential name of Dr Conolly stands associated with the foregoing sentiments. That they have misled the Lord Chief Baron and others I feel assured. Happily, however, the "Remonstrance" is a pointed recantation of these older opinions, and it is to be hoped that it will be widely circulated.

We must regard all delusions as dangerous, and treat them accordingly. No man can predicate of a delusion that it is harmless in the sphere of its working. It is like the Will-o'-the-Wisp, that may or may not conduct the benighted traveller to his ruin. It would be profitable

that the men who cry out against giving latitude to the power of seclusion should rather reflect upon the calamities that have flowed out of its neglect, than to indulge in anticipations of the mischiefs that will accrue from its abuse. The public imagination invents to itself the ideas of *lettres de cachets*, and uncalled-for incarceration, when thinking of this subject, forgetting the long train of disasters that have been engendered by neglecting to minister to the mind diseased. Protection of the public, and the care, cure, and protection of the insane are the desiderata. But in providing for these objects, let it not be forgotten that under the influence of a delusion the holiest impulses may be smothered, and the most sacred obligations violated. A delusion possessed the mind, and Norris shot Lord Onslow; Bellingham shot the Right Honorable Mr Percival; Hadfield attempted regicide; Macnaughton shot Mr Drummond; and Benjamin Smith, one of Joanna Southcott's prophets, persuaded that he was immortal, and told by the Spirit to throw himself into the Thames, over Blackfriar's Bridge, as a sign of his mission, actually did so in the presence of his followers. His brains were dashed out against the buttresses before he reached the water. If we can prevent the repetition of such harrowing calamities, even at the risk of occasional unnecessary confinement, for God's sake let us do so.

The momentous question is—What are the circumstances justifying the detention of an individual in a lunatic asylum? At the present moment no answer can be given. This is a serious state of things at a time when our lunatic asylums are crowded with the afflicted. The coming Michaelmas Term and Session of Parliament are, however, looked forward to with much anxiety for a rule of guidance in this matter; and I rejoice to know that your Lordship has taken the lead in the endeavour to determine it. I have every confidence that your Lordship's ample acquaintance with the demands of the sufferers from this affliction will secure to the subject its thorough and mature consideration.

It is to be hoped that moral insanity will now also be formally recognised by our laws. Pascal said long ago that the "*heart* has its arguments as well as the *head*;" and it is to be desired that this fine truth may be amplified to its legitimate bounds by associating it with another, that—the heart has its *delusions* also as well as the head—and calling equally for care, treatment, and protection.

But, my Lord, the point paramount in importance to all others is to sanction by written law, what is already established by prescription, that an individual may be received into a lunatic asylum although the mental aberration with which he is afflicted does not involve life, or property, or social relations in danger; and for this simple and overwhelming reason, that we must begin the curative process before danger shall have time to develope itself. A lunatic asylum is a hospital for the cure of disease, and not merely a place for the detention of the refractory. *We do and must anticipate the danger.*

I have the honor to subscribe myself

Your Lordship's

Very obedient, humble servant,

T. T. WINGETT.

DUNDEE ROYAL ASYLUM,

September, 1849.