Report of the Committee appointed to consider what changes, if any, are desirable in the existing law, practice and procedure relating to criminal trials in which the plea of insanity as a defence is raised, and whether any and, if so, what changes should be made in the existing law and practice in respect of cases falling within the provisions of section 2 (4) of the Criminal Lunatics Act, 1884.

COMMITTEE ON INSANITY AND CRIME.

REPORT

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Presented to Parliament by Command of His Majesty.

LONDON:
PRINTED & PUBLISHED BY HIS MAJESTY'S STATIONERY OFFICE
To be purchased through any Bookseller or directly from H.M. STATIONERY OFFICE at the following addresses: Imperial House, Kingsway, London, W.C.2, and 28 Abingdon Street, London, S.W.1; York Street, Manchester; 1 St. Andrew's Crescent, Cardiff; or 120 George Street, Edinburgh.

1923

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I, FREDERICK VISCOUNT BIRKENHEAD, Lord High Chancellor of Great Britain, do hereby appoint the Right Honourable Lord Justice ATKIN (Chairman), The Right Honourable Sir ERNEST POLLOCK, K.B.E., K.C., M.P., Sir LESLIE SCOTT, K.C., M. P., Sir HERBERT STEPHEN, Bart., Sir RICHARD MUIR, Sir ARCHIBALD BODKIN, Sir EDWARD TROUP, K.C.B., K.C.V.O., and Sir ERNLEY BLACKWELL, K.C.B., to be a Committee to consider and report upon what changes, if any, are desirable in the existing law, practice and procedure relating to criminal trials in which the plea of insanity as a defence is raised, and whether any and, if so, what changes should be made in the existing law and practice in respect of cases falling within the provisions of Section 2, subsection 4 of the Criminal Lunatics Act, 1884

Dated the 10th day of July, 1922.

(Signed) *Birkenhead, C.*

I, FREDERICK VISCOUNT BIRKENHEAD, Lord High Chancellor of Great Britain, do hereby appoint Sir EDWARD MARSHALL HALL, K.C., to be a member of the Committee appointed by me on the 10th July last to consider and report upon what changes, if any, are desirable in the existing law, practice and procedure relating to criminal trials in which the plea of insanity as a defence is raised.

Dated the 28th day of July, 1922.

(Signed) *Birkenhead, C.*

COST OF COMMITTEE.

The expenses incurred by the Committee were as follows :—

	£	s.	d.
Incidental Expenses	2	10	0
Cost of Printing and Publication of the Report	27	5	0
Total	29	15	0

COMMITTEE ON INSANITY AND CRIME.

REPORT.

This Committee was constituted in July, 1922, by the Lord Chancellor, The Earl of Birkenhead, "to consider and report upon what changes, if any, are desirable in the existing law, practice and procedure relating to criminal trials in which the plea of insanity as a defence is raised, and whether any and, if so, what changes should be made in the existing law and practice in respect of cases falling within the provisions of Section 2, subsection (4) of the Criminal Lunatics Act, 1884." The terms of the reference are wide; and by subsequent correspondence it was made clear that the Lord Chancellor intended the inquiry to have a wide scope, and to include consideration of the rules in McNaghten's case which, since 1843, have formulated the English law as to the criminal responsibility of persons who are alleged to be of unsound mind. These rules, for convenience, are set out in an Appendix.†

The reference in these terms naturally attracted the attention of the medical profession. Representative committees were established by The Council of the British Medical Association and by the Medico Psychological Association for the purpose of submitting reports to this Committee and supporting the reports by evidence. The report of the Council of the British Medical Association is dated January 5th, 1923, and is appended to this report.* Paragraph viii of the report represents the view of the special Sub-Committee of the Council. The rest of the report has the authority of the whole Council: and though there was no opportunity of submitting this report to the whole Association yet it corresponds substantially with a similar report adopted by the Association in 1915. The report has also the authority of The Central Association for Mental Welfare, members of which body were associated with the Sub-Committee of the British Medical Association who dealt with this matter.

The report of the Medico Psychological Association was adopted by the Association on February 22nd, 1923, and is also appended to this report.*

Both Associations tendered evidence before us, and on March 26th, 27th and 28th, 1923, we heard evidence of eminent professional men in support of the views of the respective Associations, including two members of the Board of Control, Dr. Bond and Mr. Trevor, who supported the report of the Medico Psychological Association. We have thus had unequalled opportunities of becoming acquainted with the considered opinions of the most eminent representatives of the Medical Profession on this much debated subject. We desire

† Appendix A. * Appendix D.

to express our sense of deep obligation to the Associations generally and to their individual members for their valuable assistance in this respect.

Unfortunately for us the difficulties presented by criticism of the existing law from the medical side were not removed; for, as will be seen, the two reports are, on the main question, in direct opposition to one another.

The British Medical Association would retain the existing law with a modification as to lack of control: the Medico Psychological Association would sweep away the present rules and substitute other questions for the jury which they formulate. After careful consideration we come to the conclusion that we cannot accept the recommendation of the Medico Psychological Association. In substance we concur with the report of the British Medical Association. It seems right, however, that we should not pass away from a report presented to us with such great professional authority without stating some of the reasons for our conclusion.

The conclusions arrived at by the Medico Psychological Association are stated in paragraph 5 of their report.*

I. The legal criteria of responsibility expressed in the rules in McNaghten's case should be abrogated and the responsibility of a person should be left as a question of fact to be determined by the jury on the merits of the particular case.

II. In every trial in which the prisoner's mental condition is in issue the judge should direct the jury to answer the following questions:—

(*a*) Did the prisoner commit the act alleged?

(*b*) If he did was he at the time insane?

(*c*) If he was insane, has it nevertheless been proved to the satisfaction of the jury that his crime was unrelated to his mental disorder?

One of the difficulties that presented itself to us in the report of the Medico Psychological Association is that the Association give no clue to what they regard as the test of criminal responsibility.

None of their witnesses had formulated in his mind, or at any rate expressed to us, what it was that ought to make a person of unsound mind immune from punishment for any act he might commit in violation of the criminal law. When pressed one or two of the witnesses would admit that under some circumstances a person of unsound mind might yet be criminally responsible. But the substance of their evidence was that insanity and irresponsibility were co-extensive. All the witnesses were, in substance, agreed that the effect of II (*c*) which threw upon the prosecution the onus of satisfying the jury that the act of the person found to be insane was "unrelated" to his mental disorder would be to cast a burden which could not be discharged;

* Appendix D.

and that the question was otiose. The vagueness of the term "unrelated" was pointed out: and the phrase eventually was altered to "the mental disorder was not calculated to influence the commission of the act"; but the difficulty of proof is not altered by the turn of the phrase.

The far reaching effect of granting immunity to every one who can be said to be of unsound mind is perceived when the medical conception of unsoundness of mind is considered. This will be found expressed, on the highest authority, at paragraph 3 (i) of the report. It is accepted by the witnesses for the British Medical Association, and, of course, by us. "Unsoundness of mind is no longer regarded as in essence a disorder of the intellectual or cognitive faculties. The modern view is that it is something much more profoundly related to the whole organism—a morbid change in the emotional and instinctive activities, with or without intellectual derangement. Long before a patient manifests delusions or other signs of obvious insanity he may suffer from purely subjective symptoms which are now recognised to be no less valid and of no less importance in the clinical picture of what constitutes unsoundness of mind than the more palpable and manifest signs of the fully developed disorder which may take the form of delusions, mania, melancholia or dementia." An illustration of this was presented to us by Dr. Carswell. He states that long before the actual delusion or anything that we would call insanity appears, there may be symptoms which when the case is fully developed show that the patient was for years really suffering from a morbid condition which may have had various effects upon his mental activities. He then illustrates the case of a young officer who served in the East, suffered from what was called general debility; was given three months leave of absence to another part of the East, then returned and was invalided home in the summer of 1919.

"At the present moment I am dealing with the case of a young officer. I daresay it is confidential and at this Committee I daresay I can take the liberty of indicating to you the case of this young man. Long before he became insane he had symptoms which were puzzling and baffling. He never served in any active theatre of war. In 1919 he suffered from what was called 'general debility' and some weakness of the lungs was supposed, but no actual weakness was found. He was given three months leave of absence. He was not well and returned, and he was then invalided home in July or August, 1919. Looking back on the history of the case, from the new medical standpoint, it is obvious that that was a beginning of the insanity which has now fully developed. All the symtoms he presented were symtoms of what was called debility, but they were really nervous, mental and emotional apathy so that he could not do the things that he was expected to do. Subsequently he was sent home, and this condition gradually developed into what was called neurasthenia, that is to say, he developed some more active indications. Ultimately he was demobilised, fully a year after his first

symptoms. He is now in an asylum. In 1922 he was admitted to an asylum as a certified lunatic. He is now restless, excited, talkative and quite irrational in his ideas, and requiring constant control. We do not separate these conditions. This young man has suffered from one disease "—a paranoial form of dementia.

In Doctor Carswell's view this young man was irresponsible for any crime committed at any time during that period.

In such a case as that mentioned there seems no reason to suppose that during the early stages at least the person concerned would not be affected by every motive for committing or abstaining from committing a criminal act that would be likely to affect a person of sound mind and in substantially the same degree. The difficulty of diagnosis of the state of mind and, when some unsoundness of mind was indicated, of establishing the non-relation of the act to the unsound state of mind would introduce so much uncertainty into the administration of the criminal law as to create a public danger.

It appears to us from the memorandum of the Association and from the evidence that much of the criticism directed from the medical side at the McNaghten rules is based upon a misapprehension. It appears to assume that the rules contain a definition of insanity, and the legal definition thus obtained is contrasted with the medical conception of insanity. "It implies a conception of unsoundness of mind that is obsolete." It may be that the judges who framed the rules took into consideration the medical view as to the nature of insanity generally accepted in 1843 if there was one. But it is certain that they were not professing to define "disease of the mind" but only to define what degree of disease of the mind negatived criminality: as much a question of law as the question at what age a child becomes criminally responsible, though only to be decided after considering the nature of unsoundness of mind from the physiological side. The report rightly says that "the law is only concerned to know whether the condition of the accused is a condition that negatives the existence of *mens rea*." One would therefore expect the legal test would be directed to the condition of "the intellectual or cognitive faculties" and yet that it is so directed is the main ground of the attack on the rules. When once it is appreciated that the question is a legal question, and that the present law is that a person of unsound mind may be criminally responsible, the criticism based upon a supposed clash between legal and medical conceptions of insanity disappears. It is not that the law has ignorantly invaded the realm of medicine; but that medicine, with perfectly correct motives, enters the realm of law.

If the existing legal position were always fully grasped we think that the complaint made in the report and supported by evidence that a medical expert in giving evidence at a criminal trial is hampered in stating his conclusions as to insanity would tend to disappear. There seems no reason why he should not

fully develop his reasons for holding the prisoner to be of unsound mind. It is one of the conditions precedent to support the issue raised under the McNaghten rules. But having given evidence of such unsoundness of mind it is necessary that he should then be directed to the question of fact which determines the legal issue, *viz.* : the question formulated at present by the McNaghten rules. It may be that some judges, anxious not to lose time, bring the witness very early to the decisive questions. We think that a wise discretion would allow all necessary expert evidence as to the general mental condition as a preliminary to evidence directly bearing on the ultimate legal issue raised by the plea.

It will be seen from what we have already said, that, in our opinion, the existing rule of law is sound; that a person may be of unsound mind and yet be criminally responsible. A crime no doubt implies an act of conscious volition; but if a person intends to do a criminal act, has the capacity to know what the act is, and to know the act is one he ought not to do, he commits a crime. Whether he should be punished for it is not necessarily the same question. We do not propose to discuss poenological theories. We assume that two of the objects of punishment are to deter the offender and to deter others from repeating or committing the same offence. If the mental conditions we have pre-supposed exist, we think that punishment may be fairly inflicted. It is probable that the offender and others will be deterred. On the other hand, if the offender tends to escape punishment by reason of nicely balanced doubts upon a diagnosis of uncertain mental conditions, the observance of the law is gravely hindered. We are of opinion, therefore, that the present rules of law for determining criminal responsibility as formulated in the rules in McNaghten's case are, in substance, sound, and we do not suggest any alteration in them, though we suggest an addition to which we will presently refer. It is often forgotten that the rules as to criminal responsibility apply not only to cases of murder but to the vastly greater number of less serious offences. In these cases mental conditions can be, and are in practice, daily taken into account in awarding punishment or in deciding whether any punishment should be awarded. In the case of murder the Judge is not given a discretion as to punishment; but the executive is vested with large powers of mitigating the legal sentence. These powers, as will appear later, we think it is essential to retain. But we should view with alarm any such extensive alteration in the legal principles of criminal responsibility as is suggested by the Medico Psychological Association. The importance of the effect upon the trial of minor offences cannot be overstated. Insanity is admittedly incapable of definition; its diagnosis difficult; its effect upon conduct obscure. The proposed rules throw upon the prosecution the onus of establishing that the insanity said to exist was not calculated to influence the act complained of, and, in default of discharge of such onus, would compel the Court to order the

accused to be detained during His Majesty's pleasure. The effect must be to transfer many inmates of prisons to criminal lunatic asylums and to bring within the portals of the latter many persons who are now, without any public disadvantage, placed in the care of their relatives. The interests of both the administration of justice and of the liberty of the subject require that so far reaching a change should be adopted only on the ground of some imperative public necessity. We are content to say that we have no evidence of such.

The question which we have mentioned as not covered expressly by the McNaghten rules is the difficult question of loss of control caused by unsoundness of mind. The report of the British Medical Association, paragraph II (*c*), recommends that a person should be held to be irresponsible if prevented by mental disease " from controlling his own conduct unless the absence of control is the direct and immediate consequence of his own default."

The witnesses called in support of this recommendation did not propose that a weakening of control by mental disease should be sufficient. They mean control so impaired by disease as in substance to amount to complete loss of control. On the other hand, if such a loss of control exists, caused by mental disease, there seems no good reason for inserting the exception as to the direct consequence of his own default. The only case suggested to us which would come within the exception was intentional taking of drink or drugs as an incentive to the act, which would presumably in any case show that the loss of control was not caused by mental disease.

It was established to our satisfaction that there are cases of mental disorder where the impulse to do a criminal act recurs with increasing force until it is, in fact, uncontrollable. Thus cases of mothers who have been seized with the impulse to cut the throats of or otherwise destroy their children to whom they are normally devoted are not uncommon. In practice, in such cases the accused is found to be guilty but insane. In fact, the accused knows the nature of the act and that it is wrong; and the McNaghten formula is not logically sufficient. It may be that the true view is that under such circumstances the act, owing to mental disease, is not a voluntary act. We think that it would be right that such cases should be brought expressly within the law by decision or statute. We appreciate the difficulty of distinguishing some of such cases from cases where there is no mental disease, such as criminal acts of violence or sexual offences where the impulse at the time is actually not merely uncontrolled, but uncontrollable. The suggested rule, however, postulates mental disease; and we think that it should be made clear that the law does recognise irresponsibility on the ground of insanity where the act was committed under an impulse which the prisoner was, by mental disease, in substance deprived of any power to resist.

This recommendation gives effect to a view of the law which is accepted by Mr. Justice Stephen, though with doubt, as being the existing law (Digest of Criminal Law, Article 28) and is in accordance with the Criminal Code of Queensland, 1899, Section 27 (set out in Appendix B hereto), and with the law of South Africa as laid down by the late Lord de Villiers in R. *v.* Hay 16 Cape of Good Hope Rep. (Sup. Ct.) 290. We think, however, that the question to be determined should be, not whether the accused could control his conduct generally, but could control it in reference to the particular act or acts charged. No doubt general lack of control would be relevant to the question whether the lack of control in the particular case was due to mental disorder or to a mere vicious propensity.

We have already stated that, in our opinion, such cases as would be covered by the formula we have suggested, would, in fact, fall within the existing law, as suggested by Mr. Justice Stephen; and no doubt some judges have charged juries to that effect. On the other hand, there seem to be definite decisions of the Court of Criminal Appeal the other way. It seems to us that if this legal doubt should continue, it would be advisable to make the law clear by an express statutory provision. We have no doubt that if this matter were settled most of the criticisms from the medical point of view would disappear.

We have to add some observations on the existing practice and procedure in criminal trials where the defence of insanity is raised.

Unfitness to Plead.

This issue can be raised upon arraignment by the prosecution or by the defence. It is essential to retain the procedure. There are cases in which it is obvious to everyone that the accused is quite incapable, from mental disorder, of taking any part in any form of ordered inquiry, where to go through the form of legal procedure would be a burlesque. On the other hand, if there is any doubt possible it is a strong step to take to order a man to be confined as a criminal lunatic who has not been found to have committed any criminal act. We think that the standing orders of the Prison Commissioners recommending that the prisoner should be left to stand his trial unless there be strong reasons to the contrary represent the present practice and are satisfactory. If the issue of unfitness to plead is raised we think that it is desirable, unless in the very plainest cases, that the accused should not be found unfit to plead except upon the evidence of at least two doctors.

There must always be a discretion in the prosecution to raise the issue. We have evidence of cases of persons of unsound mind who are said to have pleaded guilty either in order to gratify an insane desire for punishment or to avoid an inquiry into their mental condition.

We do not think that a finding of unfitness to plead should be the subject of appeal. In practice we are informed that wherever a person found to be unfit to plead has been considered to have recovered sufficiently to be put on his trial he has, in all cases, been found to be guilty but insane.

Evidence.

In the great majority of cases the most reliable medical evidence comes from the prison doctor who alone has had the opportunities of continued observation that are so valuable in the diagnosis of mental disorder. In many cases of poor persons charged with crime there is no known medical history and the opportunity of judging his state of mind comes when he is placed in prison on arrest or committal. It is of great importance that the medical officers of prisons should have special knowledge of mental disorder and this is recognised by the Prison Commissioners. We may add that it is also of great importance that medical experts who give evidence in criminal cases should have some experience of the ways of criminals; and we have no doubt that the medical officers of some of our principal prisons speak with unrivalled authority on the question with which we are concerned. On the other hand, there are smaller prisons where the medical officers are part-time medical men, engaged in a general practice, who cannot be expected to have the special knowledge of the experienced whole-time officer.

It is when a person charged with crime comes into one of these smaller prisons that difficulties are likely to occur. The medical officer has power to ask the Home Office for permission to call in a consultant—a permission which should, and is in fact, freely given—but in our opinion it is not sufficient to rely upon the prison doctor never making a mistake in the exercise of this discretion. In some cases of doubt an accused person is transferred to a prison where expert observation can be obtained; but this may involve hardship to a prisoner, and, in some cases, indeed deprive him of reasonable opportunities of defence. We recommend that it should be open to either the accused or his legal representative or the prosecution or the committing magistrate to apply or cause application to be made to the Home Office for medical examination of the accused as to his state of mind by an expert medical adviser; and that, upon the request being granted, the examination should take place at the expense of the State unless the accused could reasonably bear it. Regulations should be made by the Home Office for carrying this into effect; and information be given to accused persons and others as to the existence of these facilities.

We do not recommend the formation of a panel of experts as is suggested by both medical associations. The panel would have to range over the whole of England and Wales; and we think that in some parts of the country there would be a difficulty in finding suitable members. In no case would it be

possible to leave medical testimony to members of the panel and thus prevent an accused person calling evidence of his own doctor or doctors not on the panel. The conflict of medical opinion could not by such means be prevented.

We think that the increased facilities which we have suggested for making expert evidence available for poor persons will meet the necessities of the case. We are fortified in the opinion by the opposition to the panel system expressed in evidence by Dr. Dyer, who possessed exceptional experience as Prison Medical Officer and Prison Commissioner.

Verdict.

The present form of verdict in cases where the accused is found to be insane is prescribed by the Trial of Lunatics Act, 1883, and is not altogether satisfactory. Before 1800, if an accused person was found to be insane so as to be irresponsible, he was acquitted, and no further order was made as to him.

By the Criminal Lunatics Act, 1800, Section 1, it was provided that if on the trial of any person charged with treason, murder or felony, evidence of insanity was given and the person was acquitted, the jury were to be required to find specially whether such person was insane at the time of the commission of the offence and whether such person was acquitted by them on the ground of insanity, and if they so found, the person was ordered to be detained during His Majesty's pleasure. It may be noted that there was no express finding whether the accused had committed the act charged except in so far as that finding is implied in the statement that he was acquitted " on the ground of insanity," as no doubt it was meant to be.

This state of the law continued until 1883, when after the trial of one Maclean for firing a pistol at Her Majesty Queen Victoria, and a verdict of not guilty on the ground of insanity, the law was altered by the existing statute, the Trial of Lunatics Act, 1883. Section 2 provides that " where in any indictment or information any act or omission is charged against a person as an offence and it is given in evidence on the trial of such person that he was insane so as not to be responsible according to law for his actions at the time when the act was done or omission made, then, if it appears to the jury that he did the act or made the omission charged, but was insane as aforesaid at the time, the jury shall return a special verdict that the accused was guilty of the act or omission charged, but was insane as aforesaid at the time when he did the act or made the omission."

The consequence is, as has been pointed out to us by Sir Herbert Stephen, that juries are frequently, for brevity, instructed to return, if the facts warrant it, a verdict of " guilty of the act but insane at the time," or even " guilty but insane." This seems to us illogical. The verdict is one of acquittal. An accused cannot be " guilty " of a physical act which is not in

itself an offence. The word "guilty" in criminal trials should connote only criminality, the commission of a crime—the very thing which on the finding as to the accused's state of mind is negatived. We think that though the matter may not be so important as to demand a special repealing Act yet, if opportunity afforded, the Section should be altered so as to restore the logical principle that where insanity is such as to produce irresponsibility, the accused is entitled to a verdict of acquittal of crime. This might be secured by providing that the special verdict should be "That the accused did the act (or made the omission) charged, but is not guilty on the ground that he was insane so as not to be responsible according to law at the time." In any case, we think that as the present law stands it is important that the verdict should be taken in accordance with the terms of the statute. It will be noticed that the words are "guilty of the act or omission charged, but insane as aforesaid at the time, etc."; and "insane as aforesaid" means "insane so as not to be responsible according to law for his actions at the time, etc." In this form it is made clear that it is not insanity that is at issue but that degree of insanity to which the law attaches irresponsibility. The shorter forms guilty of the act (or guilty) "but insane" give some colour to the mistaken notion to which we have adverted that all insane persons are irresponsible though the law has its own definition of insanity. We take the opportunity of repeating our sense of the importance of repelling this fallacy.

Appeal.

The suggestion is made in the reports of both Medical Associations that there should be a right of appeal in cases where an accused person after trial has been found by the jury to be guilty of the act but insane so as not to be responsible according to law for his actions. We do not agree with this suggestion. So far as the issue of insanity is concerned, this is an exculpatory plea raised by the accused or on his behalf and, on the hypothesis, has succeeded. We see no reason why the accused person should have the right to appeal from a decision in his favour which he must be taken to have invited. The only case in which there could be any reasonable ground of complaint would be where the issue was raised against the will of the prisoner who was, in fact, sane, but unable to prevent the issue from being raised. In practice such cases do not occur. If they did, the prisoner, having been found guilty of the act, would, on succeeding on appeal, have to be sentenced or a new trial ordered in respect of the commission of the act; as to which there almost certainly could have been no dispute. The issue of insanity is, in our experience, never raised where there is any real question as to whether the accused committed the act. We think that there is no practical grievance in there being no appeal in such cases; and that the administration of justice would not be assisted by giving a right of appeal to persons found in a criminal trial to be insane.

II.

We now proceed to consider the second part of the reference to us " whether any and if so what changes should be made in the existing law and practice in respect of cases falling within the provisions of Section 2 (4) of the Criminal Lunatics Act, 1884."

Section 2 is as follows :—

" (1) Where a prisoner is certified, in manner provided in this Section, to be insane, a Secretary of State may, if he thinks fit, by warrant direct such prisoner to be removed to the asylum named in the warrant, and thereupon such prisoner shall be removed to and received in such asylum, and, subject to the provisions of this Act relating to conditional discharge and otherwise, shall be detained therein, or in any other asylum to which he may be transferred in pursuance of this Act, as a criminal lunatic until he ceases to be a criminal lunatic.

" (2) A person shall cease to be a criminal lunatic if he is remitted to prison or absolutely discharged in manner provided by this Act, or if any term of penal servitude or imprisonment to which he may be subject determines.

" (3) Where it appears to any two members of the visiting committee of a prison that a prisoner in such prison, not being under sentence of death, is insane, they shall call to their assistance two legally qualified medical practitioners, and such members and practitioners shall examine such prisoner and inquire as to his insanity, and after such examination and inquiry may certify in writing that he is insane.

" (4) In the case of a prisoner under sentence of death, if it appears to a Secretary of State, either by means of a certificate signed by two members of the visiting committee of the prison in which such prisoner is confined, or by any other means, that there is reason to believe such prisoner to be insane, the Secretary of State shall appoint two or more legally qualified medical practitioners, and the said medical practitioners shall forthwith examine such prisoner and inquire as to his insanity, and after such examination such practitioners shall make a report in writing to the Secretary of State as to the sanity of the prisoner, and they, or the majority of them, may certify in writing that he is insane."

It will be seen that sub-section (4) of Section 2 deals only with the procedure for inquiring into the sanity of persons under sentence of death. It does not confer any power upon the Secretary of State. This is done by sub-section (1) which confers the same power upon the Secretary of State when a certificate of insanity is given in accordance with the Act whether the prisoner be under sentence of death or of imprisonment. In the latter case the procedure for obtaining a certificate is different and is provided in sub-section (3). The Act is expressed to be an Act to consolidate and amend the law relating to criminal

lunatics and Section 2 contains the only statutory power conferred upon the executive for dealing with prisoners certified during imprisonment to be insane. It is impossible to form a just view of the provisions dealing with prisoners under sentence of death without considering the corresponding provisions dealing with other prisoners; and it is impossible to deal satisfactorily with either set of provisions without bearing in mind the history and development of the statutory powers in question.

The first statutory provision was made by the Insane Prisoners Act of 1840 (3 & 4 Vict., c. 54). Section 1 provides that when any prisoner, whether under sentence of death or otherwise, has been certified by two justices and two medical men called in by them to be insane *it shall be lawful* for the Home Secretary to direct his removal to an asylum; and when it has been certified to the Home Secretary that such prisoner has become of sound mind, the Home Secretary *is authorised* to remove such prisoner back to prison, or, if the period of his imprisonment shall have expired, to direct that he be discharged.

No distinction is made here between prisoners under sentence of imprisonment, etc., and prisoners under sentence of death, but there is no provision that a prisoner certified while under sentence of death may, if he becomes of sound mind, be removed to prison to undergo his death sentence.

In 1863 one, George Townley, was sentenced to death for murder. Baron Martin reported to the Secretary of State that there was a doubt as to the prisoner's sanity, and the Commissioners in Lunacy were asked to inquire into this point. They reported that Townley, though not of sound mind, was not irresponsible according to the rule laid down in McNaghten's case, and the Secretary of State did not feel justified in advising a commutation upon their report. But within 48 hours of the time fixed for execution he received a certificate of insanity signed by two justices and two medical men under the Act of 1840. The sentence was therefore respited and the prisoner was removed to Bethlem Hospital. It then appeared that this certificate had been obtained solely through the efforts of the prisoner's friends. Sir George Grey thereupon ordered further inquiry by four experienced medical men, who reported Townley to be of sound mind. He was accordingly removed to Pentonville, less than a month after his respite, his sentence being commuted to penal servitude for life. Sir G. Grey thought that " the public feeling had been best consulted by the commutation of the punishment." A year later Townley committed suicide in Pentonville.

Sir George Grey explained the facts of this case in great detail to the House of Commons in introducing his amending Bill of 1864. He pointed out that it was clearly wrong that the procedure for obtaining a certificate of this kind in regard to a prisoner under sentence of death should be initiated and carried out at the instance of any private person.

The Insane Prisoners (Amendment) Act of 1864 (27 & 28 Vict. c. 29), Section 2, practically re-enacts Section 1 of the Act of 1840 as regards prisoners not under sentence of death. The Secretary of State *may*, on receipt of certificate, *if he thinks fit*, *remove*, etc. As regards prisoners under sentence of death, however, it provides that if it shall be made to appear to the Home Secretary that there is good reason to believe that a prisoner under sentence of death is then insane, either by certificate of two justices " or by any other means whatever," the Home Secretary *shall* appoint two or more medical men to inquire as to the insanity of such prisoner, and if these medical men certify in writing that they find the prisoner to be then insane, the Home Secretary *shall* direct that such prisoner be removed to an asylum.

Two points may be noted. The inquiry is into the present condition of the prisoner not as to his condition at the time when the crime was committed. The scheduled form of certificate by the visiting justices is " we believe the prisoner to be now insane," and the certificate by the medical men appointed by the Home Secretary is that they find the prisoner to be then insane. Secondly, the Home Secretary, on receipt of such last certificate, has no discretion—he " shall direct " removal to an asylum.

Then as regards both classes of prisoners it is provided that they shall remain in confinement in an asylum until it shall be duly certified to the Home Secretary by two medical men that such person is sane, and thereupon the Home Secretary *is authorised* to direct, if the period of imprisonment shall have expired, that the person be discharged or, if such person still remain subject to be continued in custody, that he be removed to any prison to undergo his sentence of death or other sentence as if no warrant for his removal to a lunatic asylum had been issued.

The Act of 1864, which had repealed Section 1 of the Act of 1840, was in turn repealed by the Criminal Lunatics Act, 1884, the provisions of Section 2 of which have been set out above.

Thus it will be seen that the Act of 1840 drew no distinction between prisoners under sentence of death and others, either as to the inquiry as to their sanity or as to the powers of the Home Secretary; in both cases he had a discretion whether he should remit to an asylum or not.

The Act of 1864 made a distinction between such prisoners in both respects. As to prisoners under sentence of death the allegation of insanity had to be confirmed by two or more medical men appointed by the Home Secretary; but if so confirmed, the Home Secretary had no discretion as to remitting to an asylum.

The Act of 1884 retains the distinction as to inquiry into insanity in this respect. As regards prisoners under sentence of death it substantially repeats the provisions of the Act of 1864, but as regards both classes of prisoners it confers again on the Home Secretary a discretion as to remitting to an asylum. As the power conferred on the Home Secretary is given in the one sub-section dealing with prisoners of both classes, it seems inevitable that it should be given in the form of a discretion.

But in substance there is, in practice, little difference between the two statutes so far as the power of the Home Secretary is concerned in cases of prisoners under sentence of death.

There is authority of some weight from the time of Lord Coke for considering that apart from statutory provisions it was contrary to common law to execute an insane criminal.

I. Sir Edward Coke, in his "Institutes," in discussing an Act passed in the reign of Henry VIII. (Cap. 1, p. 6), says :—

> "it was further provided by the said Act of 33 H. 8 that if a man attainted of treason became mad, that notwithstanding he should be executed; which cruell and inhuman law lived not long, but was repealed, for in that point also it was against the common law, because by intendment of law the execution of the offender is, for example, *ut poena ad paucos, metus ad omnes perveniat*, as before is said; but so it is not when a mad man is executed, but should be a miserable spectacle, both against law, and of extreme inhumanity and cruelty, and can be no example to others."

II. Sir Matthew Hale in his "Pleas of the Crown," says :—

> "If a man in his sound memory commits a capital offence . . . and after judgment becomes of non-sane memory, his execution shall be spared, for were he of sound memory he might allege somewhat in stay of judgment or execution."

III. Serjeant Hawkins in his "Pleas of the Crown" (Cap. 1, Section 3, page 2), says :—

> "And it seems agreed at this day that if one who has committed a capital offence becomes *non-compos* before conviction, he shall not be arraigned, and if after conviction that he shall not be executed."

IV. Blackstone, in his "Commentaries" (Vol. 4, p. 465), says :—

> "Another case of regular reprieve is if the offender becomes *non-compos* between the judgment and award of execution for regularly, as was formerly observed, though a man be *compos* when he commits a capital crime, yet if he becomes *non-compos* after judgment he shall not be ordered for execution."

V. Sir John Hawles, the Solicitor-General, in the reign of William III., in one of the State Trials, said :—

> "Nothing is more certain than that a person who falls mad after a crime committed shall not be tried for it, and if he falls mad after judgment he shall not be executed."

He adds :—

> "That it would be inconsistent with humanity and inconsistent with religion to make examples of such persons as being against Christian charity to send a great offender 'quick,' as it is styled, into another world when he is not of a capacity to fit himself for it."

VI. Stephen, in his Commentaries, quotes and adopts the above dicta of Coke, Hale, and Blackstone as expressing the common law that a person who becomes or is found to be insane after the judgment of death shall not be executed.

Probably these authorities have influenced the practice of successive Home Secretaries, but since the Act of 1840 we have indisputable authority for saying that no prisoner under sentence of death has ever been executed as to whom a certificate of insanity has been given under the statute for the time being in force.

The first question that arises is, Should the power of the Home Secretary to remit to asylums prisoners reasonably certified to be insane exist? We have no doubt at all that it should. In the case of prisoners not under sentence of death the necessity of such a power has never been controverted. In the vast majority of cases the sanity of the prisoner has never been in issue. After conviction insanity may develop in its most extreme form; and we cannot imagine a civilised community in which it could be considered necessary or desirable to keep such a person confined among ordinary prisoners subject to the common discipline prescribed for prisoners of normal mind, and deprived of any treatment for the alleviation of his mental disorder. There can be no real distinction in cases of prisoners under sentence of death. We have already pointed out the difficulty of obtaining satisfactory evidence in many of such cases. In some, indeed, the issue of insanity is never raised at the trial. Of the 13 cases since 1900 in which prisoners under sentence of death have been removed to Broadmoor under the power in question, in four the question of insanity was not before the jury. In one of these the accused pleaded guilty; in another he only set up an *alibi*; in two others no evidence of any kind was called for the defence. But the power should exist even where the issue is raised before the jury.

The question for the Home Secretary is not simply the legal question "Was the prisoner responsible for his act?" though it may be his duty to review that finding; under the statute the question is a medical question, "What is the prisoner's present state of mind?" In investigating that question the medical men must necessarily consider the circumstances of the crime for which the prisoner has been convicted.

It is proper that the official instructions given to the medical men appointed under Section 2 (4) should direct them, as it does, to investigate his mental condition both now and as far as possible at the time of the murder. In practice therefore the report after a statutory inquiry, wherever it is possible, deals with both periods of time. But we wish to emphasize that the statutory inquiry is intended to investigate the prisoner's sanity or insanity, *i.e.*, his condition from a medical point of view; and it is our opinion that this inquiry should still be held under the subsection and we have no change in the procedure to recommend. No doubt in some cases the investigation and the

exercise of the discretion involve a review and a reversal of the express finding of the jury. So far from this being objectionable we think it essential that it should form part of the duty of the Home Secretary; just as it is in exercising the prerogative of mercy, to which this power is closely akin.

We may quote from the report of the Criminal Code Bill Commissioners of 1878-9 :—

"It must be borne in mind that although insanity is a defence "which is applicable to any criminal charge, it is most "frequently put forward in trials for murder, and for this "offence the law—and we think wisely—awards upon con- "viction a fixed punishment, which the judge has no power to "mitigate. In the case of any other offence, if it should appear "that the offender was afflicted with some unsoundness of mind, "but not to such a degree as to render him irresponsible—in "other words, where the criminal element predominates, though "mixed in a greater or lesser degree with the insane element— "the judge can apportion the punishment to the degree of "criminality, making allowance for the weakened or disordered "intellect. But in a case of murder, this can only be done by "an appeal to the executive; and we are of opinion that this "difficulty cannot be successfully avoided by any definition of "insanity which would be both safe and practicable, and that "many cases must occur which cannot be satisfactorily dealt "with otherwise than by such an appeal."

It seems to us that the power in question is a necessary completion to the legal principle of responsibility; and that while the latter should be strictly maintained the executive should have the reasonable means afforded by the statute of alleviating any hardship that may be caused by the single punishment for murder. Both Medical Associations approve of the continuance of the power under the subsection. They are relied on by those who administer the law; and we are informed that of the 58 inquiries held since 1900, 36 have been held at the suggestion of the trial judge or the Court of Criminal Appeal that further inquiry was desirable. Of the whole 58, in 13 cases the prisoner was certified insane and removed to Broadmoor; 17 cases the prisoners' sentence was commuted; 28 cases the prisoner was executed.

The total number of convictions for murder during that period was 585. There was a statutory inquiry in 10 per cent. of the convictions, and a certificate of insanity in 2·2 per cent. of the convictions.

The corresponding figures for the whole period since the passing of the Act of 1884 show a percentage of 11 and 3·1. The power therefore under the section does not result in any substantial variation of the trial results.

We have only to add that in our opinion it is right that the power of acting upon the certificate of insanity conferred upon

the Home Secretary should be in terms discretionary. Facts may become known after the inquiry or the inquiry itself may for various reasons be found to be unsatisfactory so as to entitle the Home Secretary to allow the law to take its course notwithstanding the certificate.

But if no such circumstances exist we think that the present practice of exercising the discretion in only one way, *i.e.*, remitting the prisoner to an asylum, is right and should be continued. We should be not less humane than our forefathers. It may be that the degree of insanity contemplated by the exponents of the common law whom we have quoted was greater than that which would be covered in these days by a certificate of insanity under the subsection. But many of the reasons given for the merciful view of the common law continue to have force even under modern conditions. Every one would revolt from dragging a gibbering maniac to the gallows. We are not prepared to draw a line short of the certificate of insanity given after inquiry by reasonable and experienced medical men.

On this matter and on this matter only the majority of us have the misfortune to differ from our colleague, Sir Herbert Stephen, who thinks that the certificate of insanity should not necessarily determine the exercise of the discretion, but that the Home Secretary might properly in some cases leave for execution a prisoner rightly certified to be insane.

We conclude by some general observations.

We append to this report three tables,* one showing the number of persons for trial in each of the years 1901-1922 distinguishing between charges of (*a*) Murder, (*b*) Attempts and Threats to Murder, Manslaughter, Wounding and Attempted Suicide, (*c*) Other offences, and showing separately the numbers of males and females found insane on arraignment and guilty but insane. It will be seen that the percentage of insane to the total charged in murder charges is over 33 per cent., while in charges of attempted murder, manslaughter, wounding, and attempted suicide the percentage falls to 2 per cent. and in other crimes to less than ·2 per cent.; also that the percentage of women found insane to women charged is in murder cases and in attempted murder, &c., relatively higher than in the case of men.

Though the percentage in the two classes other than murder is small, the numbers are considerable: thus during the whole period 351 persons were found guilty but insane on murder charges as compared with 382 on other charges. Similarly 134 were found insane on arraignment upon murder charges and 477 upon other charges These figures emphasise the point, which is sometimes forgotten, that the rule of law must not be judged by its application to charges of murder only.

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* Appendix C.

The second table expands the figures as to murder charges in the former table, giving the figures of convictions and acquittals and also of persons certified insane before trial who are not included in the column of persons for trial.

Many of the charges against females in these tables are charges of infanticide; and that fact must be borne in mind in considering the percentage of females acquitted.

The third table shows, as to prisoners upon all charges, the numbers certified insane before trial and received into asylums. The percentage is ·1 of the whole of the persons for trial during the period.

The fourth table is a table of the statutory inquiries held under Section 2, sub-section (4), of the Criminal Lunatics Act, 1884, since the passing of the Act.

Finally, we are glad to be able to report that the present system has been proved to work satisfactorily, vindicating the law with firmness and humanity.

In 1896 a Committee of the Medico Psychological Association appointed to consider the matter before us, stated in their Report that the questions they had considered were " (First) Whether to insane offenders justice is done? (Second) If it be not, whether this failure of justice is due to the state of the law? "

In the course of their Report, the Committee say: " So far from finding, as has been alleged, that difficulties are placed in the way of proving the insanity of an offender; that judges are prejudiced against the plea of insanity, and conduct trials in such a manner as to nullify that plea; that the law is such as to bear hardly upon the insane offender, even when the judge is willing to bring him within its exonerating provisions; that medical experts are silenced by the rules of evidence and prevented from stating their real opinions of the prisoner; so far from discovering this state of affairs to exist, your Committee have to report that, from the beginning to the end of the proceedings care is taken that justice should be done, and that the interests of the prisoner should not suffer through the poverty, stupidity, or ignorance of himself or of his relatives." We have no doubt that this passage, true in 1896, is also true to-day.

The Committee reported that under the circumstances disclosed by their investigations they were unable to make any recommendations for the amendment of the law; and this was adopted by the Association with the addition of the words " while not approving the doctrine and definitions contained in the judges' answer to the House of Lords in 1843." (The McNaghten Rules.)

We had no instance brought before us by any witness personally acquainted with the facts of any case in which a miscarriage of justice took place in the execution of an offender. Two or three cases were suggested tentatively, and on investigation proved, in our opinion, unfounded. All of us have personal experience of the methods of the Home Office advising upon the

exercise of the prerogative of mercy and in administering the provisions of the Criminal Lunatics Act. We are not influenced by the presence of our two colleagues from the Home Office in saying that its duties are performed with a scrupulous care and single-minded devotion equally to the maintenance of the law and the legitimate protection of the prisoner. The public may be assured that no considerations have at any time any weight that are not directed to these two topics; and that the Secretary of State has never had more conscientious and careful advisers than those who at present, or for some years past, have had to undertake that thankless and most responsible task. In our opinion, in 1923, as in 1896, " to the insane person justice is done."

Summary.

It will be convenient to give a summary of our recommendations. We recommend that:—

1. It should be recognised that a person charged criminally with an offence is irresponsible for his act when the act is committed under an impulse which the prisoner was by mental disease in substance deprived of any power to resist. It may require legislation to bring this rule into effect.

2. Save as above, the rules in McNaghten's case should be maintained.

3. Where a person is found to be irresponsible on the ground of insanity, the verdict should be that the accused did the act (or made the omission) charged, but is not guilty on the ground that he was insane so as not to be responsible, according to law, at the time." The existing statutory provision in this respect should be amended.

4. Until such amendment, the verdict should always be taken and entered as guilty of the act charged, but insane so as not to be responsible, according to law, for his actions at the time.

5. Accused persons should not be found on arraignment unfit to plead except on the evidence of at least two doctors, save in very clear cases.

6. The present law as to appeal should not be altered, *i.e.*, there should be no appeal on the finding of insanity either on arraignment or after trial and, in the latter case, either as to the act or omission, charged or as to insanity.

7. Provision should be made, under departmental regulations, for examination of an accused person by an expert medical adviser at the request of the prosecution, the defence, or the committing magistrate.

8. Provision for a panel or panels of mental experts is unnecessary.

As to the Criminal Lunatics Act, 1884.

9. It is essential that the statutory power under Section 2 (4) should be maintained.

10. The procedure under the sub-section is satisfactory and does not require amendment.

11. The discretion of the Secretary of State should be exercised as at present.

We desire gratefully to acknowledge the valuable services of our Honorary Secretary, Mr. R. E. Ross, the Principal Clerk of the Court of Criminal Appeal. He has worked for the Committee gratuitously, and has spared no effort to make our labours easier. His profound knowledge of criminal law and procedure and his administrative experience have been of the greatest assistance.

(Signed) J. R. Atkin.
Ernest M. Pollock.
Th. H. Inskip.
Edward Marshall-Hall.
Herbert Stephen.
Richd. D. Muir.
A. H. Bodkin.
Edward Troup.
Ernley Blackwell.

Dated the 1st day of November, 1923.

APPENDIX A.

RULES IN McNAGHTEN'S CASE (1843).

10 C.L. AND F. 200 AT P. 209.

(*Q.* I.) "What is the law respecting alleged crimes committed by persons afflicted with insane delusion in respect of one or more particular subjects or persons: as for instance, where, at the time of the commission of the alleged crime, the accused knew he was acting contrary to law, but did the act complained of with a view, under the influence of insane delusion, of redressing or revenging some supposed grievance or injury, or of producing some supposed public benefit?"

(*A.* I.) "Assuming that your lordships' inquiries are confined to those persons who labour under such partial delusions only, and are not in other respects insane, we are of opinion that notwithstanding the accused did the act complained of with a view, under the influence of insane delusion, of redressing or avenging some supposed grievance or injury, or of producing some public benefit, he is nevertheless punishable, according to the nature of the crime committed, if he knew at the time of committing such crime that he was acting contrary to law, by which expression we understand your lordships to mean the law of the land."

(*Q.* II.) "What are the proper questions to be submitted to the jury where a person alleged to be afflicted with insane delusion respecting one or more particular subjects or persons, is charged with the commission of a crime (murder, for example), and insanity is set up as a defence?"

(*Q.* III.) "In what terms ought the question to be left to the jury as to the prisoner's state of mind, at the time when the act was committed?"

(*A.* II *and* III.) "As these two questions appear to us to be more conveniently answered together, we submit our opinion to be that the jury ought to be told in all cases that every man is to be presumed to be sane, and to possess a sufficient degree of reason to be responsible for his crimes, until the contrary be proved to their satisfaction; and that to establish a defence on the ground of insanity it must be clearly proved that, at the time of committing the act, the accused was labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing, or, if he did know it, that he did not know he was doing what was wrong. The mode of putting the latter part of the question to the jury on these occasions has generally been, whether the accused at the time of doing the act knew the difference between right and wrong: which mode, though rarely, if ever, leading to any mistake with the jury, is not, as we conceive, so accurate when put generally and in the abstract, as when put with reference to the party's knowledge of right and wrong, in respect to the very act with which he is charged. If the question were to be put as to the knowledge of the accused solely and exclusively with reference to the law of the land, it might tend to confound the jury, by inducing them to believe that an actual knowledge of the law of the land was essential in order to lead to a conviction: whereas, the law is administered upon the principle that every one must be taken conclusively to know it, without proof that he does know it. If the accused was conscious that the act was one that he ought not to do, and if that act was at the same time contrary to the law of the land, he is punishable; and the usual course, therefore, has been to leave the question to the jury, whether the accused had a sufficient degree of reason to know that he was doing an act that was wrong; and this course we think is correct, accompanied with such observations and explanations as the circumstances of each particular case may require."

(*Q.* IV.) "If a person under an insane delusion as to existing facts commits an offence in consequence thereof, is he thereby excused?"

(*A.* IV.) "The answer must, of course, depend on the nature of the delusion; but making the same assumption as we did before, namely,

that he labours under such partial delusion only, and is not in other respects insane, we think he must be considered in the same situation as to responsibility as if the facts with respect to which the delusion exists were real. For example, if, under the influence of his delusion he supposes another man to be in the act of attempting to take away his life, and he kills that man, as he supposes, in self-defence, he would be exempt from punishment. If his delusion was that the deceased had inflicted a serious injury to his character and fortune, and he killed him in revenge for such supposed injury, he would be liable to punishment."

(*Q.* V.) "Can a medical man, conversant with the disease of insanity, who never saw the prisoner previously to the trial, but who was present during the whole trial, and the examination of the witnesses, be asked his opinion as to the state of the prisoner's mind at the time of the commission of the alleged crime, or his opinion whether the prisoner was conscious at the time of doing the act that he was acting contrary to law, or whether he was labouring under any, and what, delusion at the time?"

(*A.* V.) "We think the medical man, under the circumstances supposed cannot, in strictness, be asked his opinion in the terms above stated, because each of those questions involves the determination of the truth of the facts deposed to, which it is for the jury to decide, and the questions are not questions upon a mere matter of science, in which case such evidence is admissable. But where the facts are admitted, or not disputed, and the question becomes substantially one of science only, it may be convenient to allow the question to be put in that general form, though the same cannot be insisted on as a matter of right."

APPENDIX B.

STEPHEN'S DIGEST OF CRIMINAL LAW—6TH EDITION.

ARTICLE 28.

Insanity.

No act is a crime if the person who does it is at the time when it is done prevented (*either by defective mental power or) by any disease affecting his mind—

(*a*) from knowing the nature and quality of his act; or,

(*b*) from knowing that the act is wrong; (*or,

(*c*) from controlling his own conduct, unless the absence of the power of control has been produced by his own default).

But an act may be a crime although the mind of a person who does it is affected by disease, if such disease does not in fact produce upon his mind one or other of the effects above mentioned in reference to that act.

Queensland Criminal Code, 1899.

Section 27.—"A person is not responsible for an act or omission if at "the time of doing the act or making the omission he is in such a state "of mental disease or natural mental infirmity as to deprive him of "capacity to understand what he is doing or of capacity to "control his actions or of capacity to know that he ought "not to do the act or make the omission. A person whose mind at the "time of doing or omitting to do an act is affected by delusions on some "specific matter or matters but who is not otherwise entitled to the "foregoing provisions of this section is criminally responsible for the act "or omission to the same extent as if the real state of things had been "such as he was induced by his delusions to believe to exist."

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* The parts of the Article bracketed are doubtful.

APPENDIX C.

TABLES.

I.—Statement of the Number of Persons for Trial at Assizes and Quarter Sessions in England and Wales in each of the Years 1901 to 1922, and the Numbers of Males and Females found "Insane on Arraignment" and "Guilty but Insane"; distinguishing (*a*) Murder; (*b*) Attempts and Threats to Murder, Manslaughter, Wounding and Attempted Suicide; (*c*) Other Offences tried on Indictment.

Year.	Murder.							Attempts and threats to murder, manslaughter, wounding and attempted suicide.							Other Offences.							Total.						
	Persons for trial.			Insane on Arraignment.		Guilty but Insane.		Persons for trial.			Insane on Arraignment.		Guilty but Insane.		Persons for trial.			Insane on Arraignment.		Guilty but Insane.		Persons for trial.			Insane on Arraignment.		Guilty but Insane.	
	Total	M.	F.	M.	F.	M.	F.	Total	M.	F.	M.	F.	M.	F.	Total.	M.	F.	M.	F.	M.	F.	Total.	M.	F.	M.	F.	M.	F.
1901	74	46	28	2	7	10	9	1,294	1,079	215	5	—	12	3	9,425	8,422	1,003	10	—	4	2	10,793	9,547	1,246	17	7	26	14
1902	71	45	26	4	1	6	11	1,364	1,139	225	4	2	13	8	9,953	8,914	1,039	20	—	5	—	11,388	10,098	1,290	28	3	24	19
1903	78	55	23	3	1	7	9	1,306	1,075	231	5	3	14	4	10,494	9,419	1,075	15	—	10	—	11,878	10,549	1,329	23	4	31	13
1904	70	44	26	3	3	8	13	1,178	981	197	8	—	16	3	10,908	9,849	1,059	21	3	14	1	12,156	10,874	1,282	32	6	38	17
1905	63	47	16	2	2	6	8	1,217	1,022	195	10	3	12	2	11,042	10,029	1,013	8	3	9	1	12,322	11,098	1,224	20	8	27	11
1906	63	43	20	1	1	12	8	1,274	1,063	211	8	2	19	1	11,419	10,433	986	16	2	6	—	12,756	11,539	1,217	25	5	37	9
1907	45	33	12	1	4	7	4	1,283	1,070	213	9	5	10	6	11,269	10,280	989	13	4	6	—	12,597	11,383	1,214	23	13	23	10
1908	67	43	24	2	7	9	4	1,359	1,154	205	6	3	13	2	12,696	11,643	1,053	15	4	10	1	14,122	12,840	1,282	23	14	32	7
1909	77	49	28	2	3	10	10	1,230	1,042	188	5	—	10	—	12,442	11,430	1,012	14	—	3	—	13,749	12,521	1,228	21	3	23	10
1910	73	48	25	1	1	14	16	1,068	927	141	7	2	17	1	12,538	11,547	991	13	1	4	—	13,679	12,522	1,157	21	4	35	17
1911	77	53	24	5	—	8	9	1,157	971	186	11	2	10*	3	11,709	10,721	988	7	1	6	1	12,943	11,745	1,198	23	3	24	13
1912	63	40	23	3	4	7	8	1,150	968	182	4	3	11	1	12,071	10,887	1,184	19	2	2	—	13,284	11,895	1,389	26	9	20	9
1913	67	40	27	3	2	6	11	1,105	931	174	7	2	10	—	11,337	10,233	1,104	14	1	3	—	12,509	11,204	1,305	24	5	19	11
1914	55	37	18	1	5	11†	1	1,019	853	166	4	2	8	2	9,724	8,784	940	15	1	2	—	10,798	9,674	1,124	20	8	21	3
1915	47	28	19	—	2	5	7	676	533	143	7	1	5	—	5,286	4,578	708	5	2	1	—	6,009	5,139	870	12	5	11	7
1916	54	31	23	8	4	8	8	476	371	105	7	1	3	5	4,479	3,803	676	4	2	1	—	5,009	4,205	804	19	7	12	13
1917	48	28	20	4	1	7	2	407	309	98	4	1	3	4	5,131	4,240	891	4	1	2	1	5,586	4,577	1,009	12	3	12	7
1918	57	29	28	4	6	6	5	371	295	76	8	1	2	1	5,476	4,492	984	10	1	4	—	5,904	4,816	1,088	22	8	12	6
1919	83	56	27	10	3	11	9	596	503	93	6	4	8	—	7,204	6,187	1,017	6	—	1	—	7,883	6,746	1,137	22	7	20	9
1920	90	62	28	4	4	10	4	782	676	106	6	3	7	3	8,258	7,403	955	9	—	3	—	9,130	8,141	989	19	7	20	7
1921	63	40	23	5	2	5	9	658	578	80	7	2	9	1	82,13‡	7,393	819	14	—	3	—	8,934‡	8,011	922	26	4	17	10
1922	60	41	19	1	2	6	7	594	517	77	9	1	11	1	7,777	7,115	662	6	1	2	—	8,431	7,673	758	16	4	19	8
Total	1,445	938	507	69	65	179	172	21,564	18,057	3,507	147	43	223	51	208,851‡	187,802	21,048	258	29	101	7	231,860‡	206,797	25,062	474	137	503	230
				134		351					190		274					287		108					611		733	
Percentage of persons for Trial.				9·273		24·290					·881		1·270					·137		·051					·263		·316	

* Not including 1 case of "Guilty but Insane" in 1911 which was quashed by the Court of Criminal Appeal.

† In addition, in 1914, 1 was found "Guilty but Insane" by the Court of Criminal Appeal.

‡ In 1 case defendants were a corporate body.

II.—Number of Persons for Trial for Murder at Assizes in England and Wales during the Years 1901 to 1922, showing results of Trial: also number of Criminal Lunatics charged with Murder who were certified Insane before Trial.

Year.	Persons for Trial.			Convicted.		Acquitted.		Insane on Arraignment.		Guilty but Insane.		Persons certified Insane before Trial.	
	Total.	M.	F.	M.	F.	M.	F.	M.	F.	M.	F.	M.	F.
1901	74	46	28	26	2	8	10	2	7	10	9	—	—
1902	71	45	26	28	5	7	9	4	1	6	11	—	—
1903	78	55	23	35	5	10	8	3	1	7	9	2	1
1904	70	44	26	26	2	7	8	3	3	8	13	—	2
1905	63	47	16	31	1	8	5	2	2	6	8	2	1
1906	63	43	20	24	3	6	8	1	1	12	8	—	—
1907	45	33	12	18	2	7	2	1	4	7	4	3	—
1908	67	43	24	23	2	9	11	2	7	9	4	—	1
1909	77	49	28	27	4	10	11	2	3	10	10	2	—
1910	73	48	25	24	4	9	4	1	1	14	16	—	—
1911	77	53	24	26	5	14	10	5	—	8	9	—	—
1912	63	40	23	24	1	6	10	3	4	7	8	2	1
1913	67	40	27	24	4	7	10	3	2	6	11	—	—
1914	55	37	18	20	3	5	9	1	5	11	1	—	—
1915	47	28	19	17	3	6	7	—	2	5	7	1	3
1916	54	31	23	11	4	4	7	8	4	8	8	—	—
1917	48	28	20	14	2	3	15	4	1	7	2	—	2
1918	57	29	28	17	7	2	10	4	6	6	5	1	2
1919	83	56	27	20	5	15	10	10	3	11	9	1	—
1920	90	62	28	32	4	16	16	4	4	10	4	1	2
1921	63	40	23	12	3	18	9	5	2	5	9	1	—
1922	60	41	19	30	5	4	5	1	2	6	7	—	1
Total	1,445	938	507	509	76	181	194	69	65	179	172	16	16
				585		375		134		351		32	
Percentage of persons for trial.	100	64·91	35·09	40·49		25·95		9·27		24·29			
Annual Average	66	43	23	24	3	8	9	3	3	8	8	·7	·7
				27		17		6		16		1·4	

III.—Statement Showing the Number of Criminal Lunatics who were Certified Insane Before Trial and Received into Asylums in each year from 1901 to 1922.

Year.	Broadmoor or Rampton* Criminal Lunatic Asylums.	County and Borough Asylums.	Total		
			Males.	Females.	Males and Females.
1901...	3	12	15	—	15
1902...	1	6	7	—	7
1903...	2	9	9	2	11
1904...	2	11	8	5	13
1905...	5	10	13	2	15
1906...	—	3	3	—	3
1907...	2	11	10	3	13
1908...	1	17	13	5	18
1909...	2	10	12	—	12
1910...	3	16	18	1	19
1911...	—	3	2	1	3
1912...	1	7	5	3	8
1913...	—	14	13	1	14
1914...	—	10	10	—	10
1915...	5	6	8	3	11
1916...	3	7	8	2	10
1917...	2	7	6	3	9
1918...	3	5	2	6	8
1919...	2	5	7	—	7
1920...	3	9	7	5	12
1921...	2	11	10	3	13
1922...	4	1	4	1	5
Total ...	46	190	190	46	236

* Rampton was opened in 1912 and closed as a Criminal Lunatic Asylum on 29th February, 1920.

IV.—Persons sentenced to Death—Cases in which Statutory Inquiries have been held under Criminal Lunatics Act, 1884.

——	Certified Insane and removed to Broadmoor	Commuted.	Executed.	Total.
Cases in which Judge or Court of Criminal Appeal suggested inquiry, or raised question of sanity	20	15	21	56
Other Cases	11	15	28	54
	31*	30†	49‡	110
Percentage to total number of convicted of Murder (1001) from 1885 to end of 1922.	3·1	3·0	4·9	11·0

* In 5 cases insanity was not pleaded at trial.
† In 7 cases insanity was not pleaded at trial.
‡ In 9 cases insanity was not pleaded at trial.

APPENDIX D.

The following are the Members of the Criminal Responsibility Committee appointed by the Medico-Psychological Association of Great Britain and Ireland.

Sir Robt. Armstrong-Jones, C.B.E., M.D., F.R.C.P., J.P., Lord Chancellor's Visitor. President of the Association in 1906.

G. A. Auden, M.D., F.R.C.P., School Medical Officer, Birmingham.

C. H. Bond, C.B.E., M.D., F.R.C.P., Commissioner of Board of Control. President of the Association in 1921.

Donald Carswell, Esq., Barrister-at-Law.

J. Carswell, F.R.F.P.&S., J.P., late Commissioner of General Board of Control, Scotland.

R. H. Cole, M.D., F.R.C.P., Physician for Mental Disorders, St. Mary's Hospital.

M. A. Collins, O.B.E., M.D., Medical Superintendent, Kent County Mental Hospital.

Sir William Collins, K.C.V.O., M.D., F.R.C.S., late Vice-Chancellor Univ. of Lond. and Deputy Lieut. and J.P. County of London.

Sir Maurice Craig, C.B.E., M.D., F.R.C.P., Physician for Mental Diseases, Guy's Hospital; late Examiner in Psychological Medicine, London, and University of Cambridge.

T. M. Davie, M.C., M.D., Medical Officer, Banstead Mental Hospital, and Barrister-at-Law.

Sir H. Bryan Donkin, M.D., F.R.C.P., late Medical Adviser to Prison Commissioners, and now Director of Convict Prisons.

P. T. Hughes, M.B., Medical Superintendent, Worcestershire County Mental Hospital, Lecturer on Mental Diseases, Univ. of Birmingham.

T. B. Hyslop, M.D., M.R.C.P., late Medical Superintendent, Bethlem Royal Hospital.

R. L. Langdon-Down, M.B., M.R.C.P., Physician Nat. Association Welfare of Feeble-Minded.

D. Nicolson, C.B., M.D., M.R.C.P., President of the Association in 1895; late Lord Chancellor's Visitor.

J. G. Porter Phillips, M.D., F.R.C.P., Physician Superintendent, Bethlem Royal Hospital.

Nathan Raw, C.M.G., M.D., F.R.C.S., Lord Chancellor's Visitor (Chairman).

Prof. G. M. Robertson, M.D., F.R.C.P., Physician Superintendent, Royal Hospital, Morningside, Edinburgh, Prof. Psychiatry Univ. Edin. President of the Association, 1922.

R. Percy Smith, M.D., F.R.C.P., late Physician for Mental Diseases, St. Thomas's Hospital, late Physician-Superintendent to the Bethlem Royal Hospital. President of the Association in 1904.

J. G. Soutar, M.B., late Medical Superintendent, Barnwood House. President of the Association in 1912.

J. P. Sturrock, M.D., Commissioner of General Board of Control of Scotland.

W. C. Sullivan, M.D., Medical Superintendent, Broadmoor Criminal Lunatic Asylum.

Rees Thomas, M.D., M.R.C.P., Medical Superintendent, Rampton State Institution.

A. F. Tredgold, M.D., M.R.C.P., Neurological Specialist, Ministry of Pensions, Lecturer Lond. Univ. and Bethlem Royal Hospital.

A. H. Trevor, Esq., Barrister-at-Law, Commissioner of Board of Control.

R. Worth, O.B.E., M.B., Medical Superintendent, Springfield Mental Hospital. Hon. General Secretary of the Association since 1919.

MEDICO-PSYCHOLOGICAL ASSOCIATION OF GREAT BRITAIN AND IRELAND.

Report of the Committee on Criminal Responsibility.

(Adopted by the Association February 22nd, 1923.)

The Medico-Psychological Association of Great Britain and Ireland desires to submit the following observations to Lord Justice Atkin's Committee, who are considering whether any changes should be made in the existing law, practice and procedure relating to criminal trials in which the plea of insanity as a defence is raised.

The medical profession are equally concerned with the legal profession and the public generally to ensure that the defence of insanity is not abused; they feel, however, that the law as at present interpreted is unsatisfactory, and does not always permit the best and fullest evidence of a prisoner's mental condition to be laid before the Court and Jury.

1. *The Rules in M'Naughton's case* have for many years been the subject of cogent criticism, both by medical men and by jurists. That they have nevertheless retained their place in law to the present time has probably been due to—

(i) the failure to propound an acceptable alternative;

(ii) the fact that on numerous occasions individual judges have disregarded and declined to act on them;

(iii) the knowledge, shared by judges and juries alike, that although a prisoner may be found guilty and sentenced, his case will be carefully reconsidered by experts appointed by the Secretary of State, in accordance with the Criminal Lunatics Act, 1884, and action will be taken accordingly, notwithstanding the finding of the Court.

As regards the Rules themselves, we are aware that the Committee of this Association appointed to consider the matter in 1896 reported that they were unable at that time to make any suggestions for amending the law; but while fully conscious of the difficulty of the problem, we cannot agree that it is insoluble. We think that changes can be devised, which, without doing any violence to legal principles, would bring the law into closer accord with modern medical knowledge and requirements.

2. We desire in the first place to offer some criticism of the particular Rules.

The Answers to Questions 2 and 3.

We take particular exception to the precise tests of responsibility laid down in the following words: "To establish a defence on the ground of insanity, it must be clearly proved that, at the time of the committing of the act, the party accused was labouring under such a defect of reason from disease of the mind, as not to know the nature and quality of the act he was doing, or, if he did know it, that he did not know he was doing what was wrong."

Insanity is admittedly incapable of precise definition. The definition of a lunatic in the Lunacy Act, 1890, as "an idiot or person of unsound mind," although open to criticism, connotes defect or derangement of mind, and so may be accepted as a rough and ready criterion. Whatever may be the exact words used to describe the mental state of a person accused of crime, the law is only concerned to know whether it is a condition that negatives the existence of *mens rea*.

The legal principle involved creates a difficulty which is inherent in the problem of the criminal responsibility of the insane, and would have to be faced even if the M'Naughton Rules were abrogated. For these Rules are not wrong in holding that irresponsibility is only an inference that may or may not be drawn from insanity; where they err is in attempting to define precisely the conditions under which the inference is legitimate. They identify resposibility with knowing and reasoning,

whereas any medical man with experience of the insane must know of many persons as to whose insanity (and irresponsibility) there can be no possible doubt, who have realised the nature and quality of their act, have known that it was contrary to the law, human and divine, and have shown remarkable cleverness in carrying out their object.

The Answers to Questions 1 *and* 4.

These may be dealt with together, as they both presume a condition of insane delusion, in respect of one or more subjects or persons, or as to existing facts in persons who, it is suggested, are not in other respects insane.

We submit that these answers are based on distinctions which, in the light of the present knowledge of mental disease, are out of date. In our view all insane delusions are indicative and symptomatic of general unsoundness of mind. The evidence of their existence will be most material in assisting the jury to decide whether the prisoner is in fact insane, and whether in view of his insanity he ought or ought not to be held answerable in law for his act.

The Answer to Question 5.

This answer relates only to the admissibility of the evidence of a medical man conversant with the "disease of insanity," who never saw the prisoner previously to the trial, but who was present during the whole trial and the examination of all the witnesses.

The value of the opinion of such an expert depends on its intrinsic worth.

3. We desire, however, to make it clear that in our opinion the real objection to the M'Naughton Rules involves something more radical than criticism of the terms in which they have been framed.

(i) Even a slender acquaintance with the details of criminal cases in which medical evidence has seemed to fail to give the guidance to the Court that it was intended to provide, reveals the fact that some definite change in the medical view as to what constitutes insanity has occurred since 1843, when, it must be assumed, the judges framed the M'Naughton Rules in accordance with what they were advised was the generally accepted medical view as to the nature of insanity. Doubtless it was thought that medical men would find no serious practical difficulty in answering the supposed questions. Such an accommodation is now impossible, because it implies a conception of unsoundness of mind that is obsolete. Unsoundness of mind is no longer regarded as in essence a disorder of the intellectual or cognitive faculties. The modern view is that it is something much more profoundly related to the whole organism —a morbid change in the emotional and instinctive activities, with or without intellectual derangement. Long before a patient manifests delusions or other signs of obvious insanity he may suffer from purely subjective symptoms, which are now recognised to be no less valid and of no less importance in the clinical picture of what constitutes unsoundness of mind than the more palpable and manifest signs of the fully developed disorder, which may take the form of delusions, mania, melancholia or dementia.

The practical bearing of this is two-fold: first, it shows how it has come about that present-day medical witnesses find a real difficulty in satisfying the Court when pressed to give a categorical Yes or No to the M'Naughton questions as framed; and, second, it shows the impracticability of attempting to frame any other formula. On this basis, therefore, it is thought to be a reasonable proposition to say, Let the facts as to insanity be put before the Court unhampered by any formula. Elucidation of all the relevant facts, including such conditions of defective control as occasion epilepsy, impulses, obsessions, hysterical

states, drug addiction and alcoholism in their bearing upon an alleged crime, would, in many cases, be necessary, and medical witnesses experienced in the care and treatment of the insane could give assistance to the Court in that direction. A jury, upon the facts so presented, with such guidance as the judge might feel it necessary to give, should have no insuperable difficulty in reaching a correct conclusion.

(ii) In our view the Law should be framed so as to allow the medical witness alleging insanity to make it clear that the facts observed by himself, supplemented by other evidence before the Court, form in his mind a coherent clinical picture of mental disorder; and he should be in a position to state that the prisoner's criminal act is symptomatic of, or at least inconsistent with, such a condition. His evidence should enable a jury to find that, even if there should be no apparent logical connection between the prisoner's mental derangement and his criminal act, it is reasonable to conclude that both form part of his mental unsoundness, and it is important that that evidence should be placed before them as fully as possible. According to the present practice, experts on this question are subject to restrictions which are not imposed on experts on other matters. There does not appear to be any sufficient reason why a medical man should not be allowed to state his grounds for arriving at an opinion in his own way, subject always to the fullest cross-examination by the other side and by the Court.

(iii) We see no reason why a medical witness who has not examined the prisoner should not be asked " hypothetical " questions.

4. It may be objected to the foregoing observations that they imply the abandonment of a legal criterion of responsibility, and that such a criterion is indispensable. In this connection it may be useful to refer to the practice at present prevailing in Scotland.

By Scots Law, as by the Law of England, insanity is a good defence only in so far as it negatives the existence of *mens rea*, and the Rules in M'Naughton's case were for some time quoted with approval by judges as expressing the law of Scotland no less than that of England. (Gibson, 2 Broun 332, and Smith and Campbell, 2 Irvine 1 — per Hope, Lord Justice-Clerk.) But they do not now appear to be considered in Scotland. The present state of Scots Law in regard to insanity as a plea or defence is thus expressed by Lord Dunedin, Lord Justice-General, in H.M. Advocate *v.* Brown (1907 S.C. (J) 67 at p. 76):—

> " In one sense no one can say what insanity is. I do not think if we had all the doctors here who are learned on the subject that any two of them would agree on a definition. It is quite certain that what may be called the scientific view on insanity has greatly altered in recent years, and Courts of Law, which are bound to follow, so far as they can, the discoveries of science and results of experience, have altered their definitions and rules along with the experts. . . . Acts of Parliament cannot deal with scientific opinions, and therefore it is left to juries to come to a common-sense determination on the matter, assisted by the evidence led and any direction which the judge can give."

Reference may also be made to the direction of Lord Moncreiff, Lord Justice-Clerk, in H.M. Advocate *v.* Miller (1874, 3 Coup. 16).

5. In accordance with the views expressed above we have come to the following conclusions:—

(i) The legal criteria of responsibility expressed in the Rules in M'Naughton's case should be abrogated, and the responsibility of a prisoner should be left as a question of fact to be determined by the jury on the merits of the particular case.

(ii) In every trial in which the prisoner's mental condition is in issue, the Judge should direct the jury to answer the following questions:

(*a*) Did the prisoner commit the act alleged?

(*b*) If he did, was he at the time insane?

(c) If he was insane, has it nevertheless been proved to the satisfaction of the jury that his crime was unrelated to his mental disorder?

(iii) We would further suggest that the present practice of dealing with persons who are found insane upon arraignment is unsatisfactory and might be reconsidered. As the law stands a finding of insanity upon arraignment may result in a man—conceivably unconnected with and innocent of the offence with which he is charged—being sent to a criminal lunatic asylum. Experience shows that it is always best, if possible, to let the prisoner stand his trial and plead. This course does away with his after grievance that he was never convicted of the offence with which he was charged, and that in fact he never was tried for it. In the vast majority of cases there is no reason to doubt that the man did commit the act, but the fact that the crime was never brought home to him, and that, being found insane, he has been ordered to be detained during His Majesty's pleasure, does give him a grievance of which he makes the utmost use, and to which it is difficult to give a satisfactory answer.

When a person is found unfit to plead we would suggest that a plea of "Not Guilty" should be recorded by the Court, and the trial on the facts allowed to proceed—in his absence if he cannot properly be present in Court, arrangements being made for him to be represented by counsel and solicitor. We presume that to enable this course to be adopted some amendment of the Criminal Lunatics Act, 1800 (39 and 40 Geo. III., c. 94), sec. 2, would be necessary.

(iv) We would also suggest that the law be amended to enable the verdict now expressed as *Guilty but insane* to rank as a conviction for the purposes of appeal to the Court of Criminal Appeal.

(v) We are of opinion that it would not be practicable to have medical assessors to the Court in cases where insanity is raised as a defence to a criminal charge. We think, however, it might be possible to have a panel of accredited experts appointed, any of whom could be called on by the Court to give evidence, subject to cross-examination by either side, and without any derogation from the right of either side to call its own expert witnesses.

6. We do not favour any amendment of the Criminal Lunatics Act, 1884, the provisions of which are both humane and necessary.

(*Signed*) Nathan Raw (*Chairman*).
R. Worth (*Hon. Gen. Sec.*).
G. M. Robertson (*President*).

BRITISH MEDICAL ASSOCIATION.

Memorandum of Evidence on Legal Responsibility for Crime, Submitted by the Council of the British Medical Association to the Committee appointed by the Lord Chancellor.

(A) Historical.

The Council of the British Medical Association on learning that the Lord Chancellor had appointed a Committee to consider and report upon what changes, if any, are desirable in the existing law, practice, and procedure relating to criminal trials in which the plea of insanity as a defence is raised, and whether any, and if so what, changes should be made to the existing law and practice in respect of cases falling within the provisions of Section 2, Sub-Section 4, of the Criminal Lunatics Act 1884, instructed the Medical Secretary of the Association to approach the Secretary of that Committee stating that the Association would be glad

of an opportunity of giving evidence before that Committee. A favourable reply having been received, a Special Sub-Committee of the Association was set up, consisting of Sir Jenner Verrall, LL.D. (Chairman), Dr. J. W. Bone, Dr. H. B. Brackenbury, Dr. H. C. Bristowe, Mr. Roland Burrows, LL.D., Mr. E. J. Domville, O.B.E., Dr. R. Langdon-Down, Dr. James Scott, Lt.-Col. T. Knowles Stansfield, C.B.E., Dr. W. B. Crawford Treasure, and Mr. E. B. Turner.

As a result of the Central Association for Mental Welfare having approached the Association with a view to co-operation, 3 members of that Association, viz., Dr. E. Prideaux, Dr. F. C. Shrubsall, and Dr. A. F. Tredgold, were added to the Sub-Committee.

It is understood that evidence dealing with the position of prisoners committed for trial but not yet tried, will be permissible, and such evidence is submitted in para. VIII hereof.

(B) Memorandum of Evidence.

The Memorandum of Evidence which the Sub-Committee, on behalf of the Council of the Association, desires to lay before the Committee appointed by the Lord Chancellor is as follows:—

Sub-Section 4 of Section 2 of Criminal Lunatics Act, 1884.

I. The Council, realising its very great importance, has given careful consideration to this matter, and has come to the conclusion that it cannot suggest any improvement in the method laid down in Sub-Section 4 of Section 2 of the Criminal Lunatics Act, 1884, which reads as follows:—

> (4) In the case of a prisoner under sentence of death, if it appears to a Secretary of State, either by means of a certificate signed by two members of the visiting committee of the prison in which such prisoner is confined, or by any other means, that there is reason to believe such prisoner to be insane, the Secretary of State shall appoint two or more legally qualified medical practitioners, and the said medical practitioners shall forthwith examine such prisoner and inquire as to his insanity, and after such examination and inquiry such practitioners shall make a report in writing to the Secretary of State as to the sanity of the prisoner, and they, or the majority of them, may certify in writing that he is insane.

Legal Responsibility for Crime.

II. The Council of the Association is of opinion that the following might be accepted by the Medical Profession as a fair definition of responsibility for crime:—

> An act may be a crime although the mind of the person who does it is affected by disease or defective power if such disease or defect does not in fact prevent him:—
>
> (*a*) from knowing and appreciating the nature and quality of his act or the circumstances in which it is done; or
>
> (*b*) from knowing and appreciating that his act is wrong; or
>
> (*c*) from controlling his own conduct unless the absence of the power of control is the direct and immediate consequence of his own default;
>
> but no act is a crime if the person who does it is at the time it is done prevented either by defective mental power or by any disease affecting the mind:—
>
> (*a*) From either knowing or appreciating the nature and quality of his act or the circumstances in which it is done; or
>
> (*b*) From either knowing or appreciating that the act is wrong; or

(*c*) From controlling his own conduct, unless the absence of the power of control is the direct and immediate consequence of his own default.

N.B.—"Wrong" may mean (*a*) morally wrong; (*b*) illegal.

Evidence as to Mental Condition of Accused Persons.

III. The Council of the Association is of opinion that the following Standing Order issued by the Prison Commissioners, which is understood to apply to prisoners who have been committed for trial but not yet tried, should be embodied in the official Prison Rules:—

302.—(1) In the case of an untried prisoner, especially if charged with an offence of a grave nature, the Secretary of State desires that the prisoner's insanity shall, if possible, be publicly decided by the verdict of a jury, and that the prisoner shall, for this purpose, be left to stand his trial, unless there be strong reasons to the contrary.

(2) When immediate removal to an asylum is unnecessary, the Governor will merely forward the report of the Medical Officer to the Prison Commissioners, saying that it is not proposed to obtain the usual certificate of insanity, and will state the probable date of trial.

(3) When removal to an asylum appears to the Medical Officer to be, for special reasons, necessary, the usual certificate will be obtained and forwarded, as directed in Order 301. In filling up the certificate the probable date of the trial will be added to the particulars of commitment, and the report of the Medical Officer, setting out the nature of the insanity and the necessity for immediate removal, will be enclosed, together with a newspaper report of the Police Court proceedings. If this latter is not procurable, a short report of the particulars of the prisoner's crime will be furnished.

(4) When a prisoner awaiting trial has been certified to be insane, or is believed by the Medical Officer to have been insane on reception, or when there is any doubt as to his mental condition, the Medical Officer will furnish a report in writing to that effect to the Governor, who will forward it to the Clerk of Assize or Clerk of the Peace, as the case may be. In all cases when there is any reason to suppose that questions are likely to arise in Court as to the mental state of the prisoner, the Medical Officer will attend to give evidence if required, whether he gets a subpœna or not.

IV. The Council of the Association suggests that, wherever a report from the prison Medical Officer as to the mental state of the prisoner is communicated to the Clerk of the Court, it should be the duty of the Clerk to furnish a copy of the Report to Counsel or the solicitor acting for the prosecution and defence respectively.

Position of Persons found "Guilty but Insane."

V. The Council of the Association is of opinion that every person found "Guilty but Insane" should have the same right of appeal as is conferred by the Criminal Appeal Act on persons convicted on indictment; provided that if in any appeal brought by such person the Court should be of opinion that the verdict should be set aside so far as the finding of insanity is concerned, the Court should have the power to order a new trial.

Persons found "Unfit to Plead."

VI. The Council of the Association is of opinion that persons found "Unfit to Plead" by the verdict of a jury and ordered to be detained, should be entitled, whilst so detained, at any time on proper conditions to apply to a Judge of the High Court to order the re-trial of the issue as to fitness to plead.

(It is understood that the rules by which such applications would be governed would need to be framed by the appropriate authority).

Medical Officers of Prisons.

VII. The Council of the Association has given very careful consideration to the question of the status of Medical Officers of Prisons and wishes particularly to emphasise that it is desirable that such Medical Officers should have had experience in the diagnosis and treatment of disorders and defects of the mind.

EVIDENCE BY SPECIAL SUB-COMMITTEE OF THE BRITISH MEDICAL ASSOCIATION.

VIII. The foregoing is in substantial agreement with the policy adopted by the British Medical Association in 1915.

The Special Sub-Committee of the Association is of opinion:—

(1) That in the interest both of the community and of persons charged with or convicted of offences, it is desirable that, where there is reason to believe that the accused person suffers from mental defect or disease, machinery should be provided for the independent and impartial mental examination of the accused person.

(2) That the present method, by which medical evidence is presented by the Prosecution and the Defence in cases in which the accused is a person of means, is bewildering rather than helpful to Judge and Jury and liable to lead to miscarriage of justice; that a similar miscarriage of justice may result in the case of persons without means owing to the absence of facilities for expert psychological examination.

(3) That some such scheme as follows might be adopted:—

(*a*) That a Panel should be formed consisting of medical practitioners with expert knowledge and experience of psychological medicine and of recognised standing, and that any accused or convicted person in whose case there is reason to consider that mental defect or disease is present should be referred to such panel for examination.

(*b*) That in the case of any such person charged with an offence which is punishable upon summary conviction such examination should be made by one or more members of the panel. That in the case of any such person charged with an offence which is punishable by death or a long period of penal servitude such examination should be made by not less than three members of the panel.

(*c*) That the report of such examination should be furnished to Prosecution and Defence before the trial and that at the trial evidence should be tendered in person by the expert or experts who examined the accused and should be considered by the Court in deciding the responsibility or otherwise of the accused.

(C) NAMES OF WITNESSES OF THE ASSOCIATION.

The following Witnesses have been appointed to give evidence on behalf of the Council of the Association before the Committee appointed by the Lord Chancellor:—

Sir Jenner Verrall, LL.D., L.R.C.P., M.R.C.S., Consulting Surgeon, Sussex County Hospital—Chairman of the Insanity and Crime Sub-Committee, British Medical Association.

Roland Burrows, LL.D., Barrister-at-Law.

R. Langdon-Down, M.B., B.Ch., Physician to the National Association for the Welfare of Feeble Minded.

E. Prideaux, L.R.C.P., M.R.C.S., Mental and Neurological Inspector, Ministry of Pensions; late Assistant Medical Officer, Banstead Asylum.

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5th January, 1923.

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