

*The Law relating to Lunacy.* By Sir HENRY STUDDY THEOBALD, K.C., M.A. London: Stevens & Sons, Ltd., 1924. Medium 8vo. Pp. xxxvi + 854. Price £2 10s. net.

It was with considerable interest that we read of the publication of yet another volume on Lunacy Law. What was wrong, we asked ourselves, with Archbold, Fry or Wood Renton? Were they all out of date, or found wanting in some respect? One, perhaps all of them, had been friends in need—faithful and reliable. They had solved many a knotty problem for us, and indeed without such guides we should not proceed far in either private or public lunacy practice.

We know that such works are something more than mere copies of Acts of Parliament. We also know that Acts of Parliament do not constitute law. It is only when they are read and construed by the lawyers that the law begins to reveal itself to the layman. We remember, too, that the lawyers have never done construing (the uncharitable call it hair-splitting—twisting if you like), and that there is no finality to law, and that as regards the law, fond imaginings of to-day may prove vain to-morrow. Books on lunacy law should, then, be up to date, although maybe no new Lunacy Acts have been placed on the statute book.

Could, then, a place be found for the new-comer:

We were encouraged to think so, for the author's name was well known to us as that of a Master in Lunacy who was knighted on retirement in 1922, after some fifteen years' service. The experience thus gained of a side of lunacy practice which seldom catches the public eye would surely be of interest and importance.

Our surmises have proved correct, and Sir Henry Studdy Theobald's *Law relating to Lunacy* differs in many respects from all other treatises we have met with on the same subject. We confess, too, that we were afraid lunacy regulation or management and administration, strictly speaking, might bulk largely in the new work to the detriment of those other provisions of the Lunacy Acts the psychiatrist is more often in contact with; but we are now in a position to say that no aspect of the subject is neglected; every phase of lunacy law and practice is comprehensively considered, and, probably for the first time, lunacy regulation, or management and administration are adequately dealt with, and, at least in these latter subjects, Theobald's *Lunacy* will be a standard work for years to come.

Other books dealing with lunacy law, like the familiar ones already mentioned, comprise mainly copies of the Lunacy Acts, the various sections and subsections being profusely annotated. As a prologue there is either an introduction explanatory of the Acts, or a more or less complete *résumé* of the lunacy law under various headings used in the Acts, or perhaps a dissertation on some branches of Lunacy Law not dependent upon statute.

Theobald's work, however, is different. The Lunacy Acts, etc., without any annotation form merely appendices. They are no doubt included for convenience of reference, and they have the advantage of being printed as far as possible as amended by subsequent enactments. These appendices comprise the Lunacy Acts,

1890, 1891, 1908, 1911 and 1922; Rules in Lunacy and Order as to Fees, 1892-1921; Rules, 1890, as to Business of County Courts and Justices; Rules of Lunacy Commissioners; Asylums Officers' Superannuation Act, 1909; Mental Deficiency Act, 1913; Asylums and Certified Institutions Act, 1918; Mental Deficiency Rules. In a sense, the appendices could have been omitted without materially altering the value of the book or impairing its usefulness.

The greater part of the work is, as its title states, devoted to law relating to lunacy, and in its widest sense. The historian peeps out in nearly every chapter; indeed, many chapters are so rich in legal and historical research that an additional title of "A History of English Lunacy" would not have been out of place.

It is a book to be read and studied—in fact a text-book—rather than a work of reference. It can be read, too, with pleasure by the fireside. This cannot be said of many law-books. It is a serious book, though, and Sir Henry Studdy Theobald does not hesitate to criticize and condemn, or neglect to urge reform, where he thinks necessary. We cannot, of course, give the history of the book, but it is obviously the outcome of years of close study and patient research, and of a great practical experience of the subject.

Theobald's *Lunacy* is not likely to displace a recent edition of, say, Archbold, as a work of reference, especially in an emergency; but occasions such as these would be rare if the psychiatrist had a more systematic understanding of the subject. This understanding Theobald sets himself to convey. The manner in which he does it we will now attempt to show.

He first introduces the reader to the origin of lunacy law and administration in England under the heading of "Prerogative of the Crown." This part of the book, which occupies Chapters I to VII, is largely historical. The reader is made acquainted with the origin of the King's guardianship of the insane—at first largely for the King's own profit, and ultimately solely for the protection of the insane; how it was first limited to natural fools and idiots who were possessed of lands, and then extended to all the insane, which included the idiots. The King's guardianship still exists as "a parental and protective jurisdiction for the benefit of the lunatic." Following this, the persons and the property subject to the Prerogative, and the extent of the Prerogative are closely considered. How the Prerogative has been, and is still being, exercised, and by whom, is then disclosed. We learn all about the Court of the King's Wards which existed until the time of Charles II, the jurisdiction in lunacy of the Lord Chancellor, and of Lord Justices of Appeal in Chancery, and the effects in lunacy of the Judicature Acts of 1873 to 1881. We are shown a copy of the Commission or Warrant under the Sign Manual for the exercise of the Prerogative, and told what happens as regards the King's Prerogative on the demise of the Crown. Of this Commission he says:

"It is addressed to the Lord Chancellor, the Master of the Rolls and the Lord Justices, but not by name, and is signed at the foot by the Home Secretary. It bears a 10s. stamp.

"The warrant is not addressed to any person by name, but whenever there is

a new Lord Chancellor, Master of the Rolls or Lord Justice a new warrant is required. The Lord Chancellor, as such, has no jurisdiction in Lunacy. That jurisdiction is entrusted to him by Royal Warrant under the Sign Manual, and until he has received this warrant he cannot act in Lunacy.

"This picturesque but tiresome procedure should be swept away by an Act of Parliament providing for the exercise of the Royal Prerogative in relation to lunatics by the proper officers."—(p. 13.)

The Prerogative in relation to the combined jurisdiction in Chancery and Lunacy, to the Lunacy Acts, 1890 and 1891, and Lunacy Appeals is discussed. As to lunacy jurisdiction and the general jurisdiction of judge, the author says:

"The jurisdiction in Lunacy is based on the Sign Manual, but after the grant of the custody, the powers of the Lord Chancellor as keeper of the King's conscience and the powers of the Lord Justices as Judges of the Supreme Court of Judicature apply."—(p. 16.)

It is learned that the powers possessed in lunacy matters by the Lord Chancellor are (*a*) those by virtue of the powers belonging to him as Keeper of the King's Conscience, and (*b*) those conferred on him with others under the Sign Manual as to the exercise of the Prerogative of the Crown.

This is all necessary before we can begin a proper understanding of "The Inquisition," which takes up Chapter III. We are told, in the first place, who may apply for such inquiries. It is interesting to know that—

"Persons detained as lunatics often express a wish for a Commission to investigate their mental condition, in the hope that the result may be a finding of sanity, but such a Commission has never been granted on the petition of the lunatic himself."—(p. 19.)

We continue our study of inquisitions: persons subject to inquiry; petition for inquiry, proceedings after order but pending inquiry; persons to hold inquiry, which includes a historical section on "Escheators," issue on inquiry; place of inquiry; mode of trial, etc. All these matters are treated historically, which gives the reader an insight regarding them which would otherwise not be obtained. There follow sections on "Invalidity, Traverse and Supersedeas"—terms often seen, but rarely understood.

The outcome of an inquisition might be the appointment of committees of estate and person. Such committees are dealt with very completely: their appointment, remuneration, security; their relation to the property of the lunatic; their powers and duties; and their liability and accounts. A section follows dealing with receivers. As regards the accounts of committees, he says:

"There has in recent times been much laxity in enforcing accounts by Committees of the person. It was found that in many cases such committees had considerable balances to their credit, which they were ready, and in fact anxious, to account for, but they had never been called upon to do so. There is no doubt that committees of the person have, in the past, often been allowed to put substantial sums into their own pockets owing to laxity of supervision. By the Rules of 1892, the committee of the person is required annually or from time to time to render to the Visitors a statement in writing of the various sums expended by them, the better to enable the Visitors to ascertain and report whether the lunatic is being suitably maintained and whether any additional comforts can be provided for him.

"The statement required by the Rule is merely for the information of the Visitors. The Visitors have not the time or the means for taking an effective account, and

they have never attempted to do so, though the statement has sometimes enabled them to call attention of the Master to points requiring explanation."—(p. 53.)

An interesting chapter is that on the Lord Chancellor's Visitors: their origin and history, method of appointment, pay, qualification, etc., are all told. A list of those who have held office from 1843 is given.

This part (Part I) of the book concludes with an essay on the "Separation of Chancery and Lunacy," in which chancery and lunacy are contrasted, the evils resulting from chancery practice being imposed upon lunacy described, and it is shown that the improvement of lunacy administration has largely consisted of freeing lunacy from the domination of chancery practice and procedure. Lord Lyndhurst was the first to take up this matter. The creation of the office of Master in Lunacy completed the separation of lunacy from chancery.

The author, referring to the office he held with distinction for so long, says: (The Commissioners in Lunacy referred to were those appointed under the Act of 1842 for the purpose of holding inquisitions.)

"Thus a separate Lunacy Office was constituted, but the officers of that Office retained the name of Commissioners in Lunacy for three years only. The name was wanted for another body, which, though not created by the Act of 1845, was reconstituted and reorganized by that act with larger powers. The Commissioners in Lunacy of 1842 became Masters in Lunacy. They were to perform the duties hitherto performed by the Masters [in Ordinary] in Chancery in relation to lunatics. . . . Masters [in Ordinary] in Chancery were abolished in 1852 and their place was taken by Chief Clerks. . . . These Chief Clerks received the title of Masters [in Chancery] in 1897, but the real representatives of the old Masters in Ordinary in Chancery were the Masters in Lunacy."—(p. 62.)

Having thus, in Part I, as it were, laid the foundation of our English lunacy system, in Part II he develops his theme by an examination of the growth of legislation from 1774 to 1922. This part of the book, largely historical, is of absorbing interest.

Only the lunatic so found by inquisition had the benefit of the Royal Prerogative.

"For centuries no special protection was provided for the person or the property of lunatics not so found by inquisition, though their number must always have largely exceeded the lunatics so found. They could be confined in asylums and kept in private care without any legal authority."—(p. 60.)

He goes on to show how the insanity of King George III drew public attention to the subject of lunacy. Parliament had already inquired into the matter and attempted legislation.

"When once a person had been placed in a private asylum it was not difficult for the keeper to prevent him from having any access to the outer world, and a person who had disappeared into a lunatic asylum was very often not heard of again. . . . Patients were wrongfully detained; they were treated with great cruelty; they were often unsufficiently clothed and underfed; they were subjected to the terrors of solitary confinement and to methods of mechanical restraint which rivalled in cruelty the torture chambers of the Middle Ages."—(p. 65.)

He traces how Parliament in 1774 at last became convinced that something must really be done, and that year saw the commencement of a series of Lunacy Acts culminating in the famous Consolidating Act of 1890.

With much acumen the author deals with the evolution of lunacy

law and practice, and the gradual improvement which occurred in the care and treatment of the insane. He tells us of the attitude of the people of those days to lunacy, of the Acts of 1828 and 1832, establishing "Temporary Commissioners in Lunacy," and of the great Act of 1845 which called into being a "Permanent Lunacy Commission," and also contained elaborate provisions for the prevention of wrongful certification, detention, and other known abuses. We learn a lot about these Lunacy Commissions and what was expected of them. Of the Permanent Commission of 1845 he says :

"There was a great opportunity in 1845 of a comprehensive survey of the whole subject of Lunacy, when care and treatment, visitation and management of property might all have been brought under one great administrative department under the supreme authority of the Lord Chancellor. The Prerogative of the Crown might have been re-modelled so as to include within its protective care every lunatic."—(p. 71.)

Another chapter describes the progress from 1853 to 1891.

We leave Theobald's book for a moment to glance at two other works on lunacy law which appeared during this period.

What tribute can we pay their authors? Did they not convey the knowledge of these new things to where it was needed? By their studies and inquiries did they not guide for half a century or so, lawyers, psychiatrists, administrative officers, in fact everybody connected with lunacy procedure and practice? We asked the other day: Who was Archbold and what manner of man was he? We have found out some personal details regarding him, and hope in due course to present them to our readers. In the meantime we may say that the author of Archbold's *Lunacy* was Mr. John Frederick Archbold, a barrister-at-law and a member of Lincoln's Inn, being admitted on May 5, 1814. He resided at 9, King's Bench Walk, Temple. He published the famous treatise associated with his name in 1854. It was called *The New Statutes relating to Lunacy, comprising the Law relating to Pauper Lunatics with the Practice and Practical Forms, very fully given; also the Law respecting Lunatic Asylums, Public and Private, with the Duties of the Commissioners in Lunacy and Visiting Justices*.

There is no doubt that the almost revolutionary Lunacy Acts of 1845 (for there were two) gave lunacy law and administration its modern complexion. Of the Lunacy Acts of that year, one was repealed almost immediately, although it contained important provisions relating to the separation of curable and incurable cases. Neither is there any doubt that the surviving Act (8 and 9 Vict. Cap. 100) was a great statute, and it has been rightly called the "Magna Charta of the insane." It was this Act, and an amending Act (which established the discharge of patients on probation with an allowance) of 1853, which Archbold refers to as "new Statutes." In his preface he says :

"The Lunatics Acts passed in the last session, with a former statute on the same subject, 8 & 9 Vict. c. 100, form together a complete system of law for the management of lunatics throughout the Kingdom. In examining these Acts it is interesting to mark the care, the anxiety, the Legislature have evinced in making every necessary provision for those unhappy beings who cannot take care of themselves

—for their cure, if possible—but at all events for their management and comfort, for their lodging, maintenance, medicine, clothing and care, and for the management and application of their property, if they have any. Public asylums are provided, private establishments licensed, and hospitals registered, for the purpose, and all are placed under the supervision of a Board of Commissioners. Rules and regulations are made for their government; every precaution is taken that none but persons who are really insane, and proper subjects for detention under care and treatment in such asylum, licensed house or hospital be admitted into or detained in them; and a system of visitation is provided, by which the proper treatment of the patients is insured, and every abuse detected and corrected.”

As everybody knows, that was not the last word on lunacy law and management. Already a great battle had begun which still rages. Theobald, speaking of the feeling in those days, says:

“Persons interested in the subject were divided into two camps; there were the medical men who desired early and easy treatment of persons afflicted with mental disease, and at the same time demanded protection against the risks they ran in certifying persons as lunatics, and there were the lawyers who attached more weight to the liberty of the person than to the possibility of a cure by facilitating for compulsory confinement.”

*Fry's Lunacy Laws* appeared in 1864, the author being Danby P. Fry, of Lincoln's Inn, barrister-at-law. He had a great knowledge and experience of the Poor Law, and strongly felt the necessity of a consolidating measure which would bring together the nine or so Lunacy Acts which had become operative since 1774. It was a useful work, and his object was to “approximate towards consolidation.”

To return to Theobald. It was not until 1862 that something was done for the protection and administration of small properties belonging to patients not so found, but the Act of that year provided no proper control over any receiver, and there was sometimes laxity in the application of surplus income. The reforming zeal of Lord Chancellors which led to the Judicature Acts of 1873 and subsequent years had its effects on lunacy practice, and the Lunacy Orders of 1883 effected many improvements.

The position of affairs as left by the Act of 1845 was still considered unsatisfactory as regards certification. Theobald now traces how the insane obtained the full protection of the law. The so-called order was a mere authority and had nothing of a judicial nature about it. It was Lord Selborne, then Lord Chancellor, who in 1885 took up this matter and introduced a Bill which would give every insane person needing detention the protection of a judicial inquiry which would be “simple, speedy and inexpensive.”

“The Bill met with opposition from a quarter where it might have been least expected. Lord Shaftesbury, who had been the leader of the movement for improving the care and treatment of lunatics, had seen his own proposals for reform carried into effect. He was at this time Chairman of the Lunacy Commissions, but his reforming zeal was spent, and he was strongly opposed to Lord Selborne's Bill so far as it required a judicial inquiry as a condition precedent to the lawful detention of a lunatic under care and treatment. He went so far as to resign his chairmanship of the Commission, but before the resignation had been accepted the Government went out of office, and the Bill was suspended for the time being. He therefore continued chairman until his death, which happened soon afterwards in October, 1885.”—(p. 79.)

However, Lord Halsbury, who succeeded Lord Selborne, reintroduced the Bill, which became the Lunacy Acts Amendment, 1889.

Of course, Theobald may be right as to the reasons for Lord Shaftesbury's opposition, but is it not possible that Lord Shaftesbury had a foresight of the future trend of events? It is this judicial inquiry, this trial at law as it were, this certification, this State branding of a person suffering from mental disorder as a "lunatic," which so many people object to, which has the effect of delaying proper care and treatment, and which leaves an unforgettable and unforgotten stigma. Perhaps Lord Shaftesbury thought something short of this judicial interference was sufficient to secure that the "liberty of the subject" was not unduly interfered with. If so, a multitude of people think with him, and so did the devisers of the Mental Treatments Bill of 1923. All historians will agree that Lord Shaftesbury held strong views on the necessity for early treatment. Speaking before a Select Committee in 1877, only eight years before, he said :

"The great principle of the Act of 1845 was early treatment; we maintain that by early treatment you may reduce the amount of lunacy to a very considerable extent. The asylums were to be divided into two; there was to be the principal asylum, which was for the acute cases, and there was to be the chronic asylum alongside of it, which was for old chronic incurable cases. All the recent cases were to be sent to the principal asylum, which was to have a full medical staff, and everything which could be necessary for treatment and cure, and the other cases were to be sent to those chronic establishments."

From 1853 to 1891 was the era of consolidation and revision in lunacy matters. Theobald more than once laments the fact that opportunity was not taken in 1889 to unify lunacy procedure.

"It may strike a critic, looking back from the experience of nearly forty years that it would have been better if the reforms of 1889 had dealt with the Crown's Prerogative in such a way as to introduce one uniform procedure and to get rid of the distinction between lunatics so found by inquisition and those not so found. But the old procedure by inquisition was treated as sacrosanct and left untouched. It still survives, but in a moribund condition. In 1800 there were about 1,200 lunatics so found by inquisition; by 1922 the number had dwindled to something between two and three hundred, and it is likely gradually to diminish."

Amending Act and Consolidating Act were introduced in 1889 at the same time. The former was passed and then consolidated with, and repealed by the latter which was passed in the following year, and thus the existing Lunacy Act of 1890 became law. It was amended in certain particulars by the short Act of 1891.

And so the story of present-day lunacy law is told, and "with the year 1891 the ancient history of lunacy closes, and modern history begins." Chapter X discloses the changes from old to new; records the occurrence of the Royal Commission of 1904 and the Tomlin Commission; discusses the question of amalgamation of Masters, Visitors and Lunacy Commissioners; and the passing of the Mental Deficiency Act of 1913, etc.—a chapter both instructive and illuminating.

Having by means of a reasoned history introduced the reader to present-day lunacy law and practice, in Part III he tells us all about "Existing Administrative Machinery." In Chapter XI he talks about Masters in Lunacy and their staff, the Lord Chancellor's Visitors, the Official Solicitor, and the Board of Control. A chapter is devoted to "Pay, Pensions and Allowances."

Of the Lord Chancellor's Visitors he says :

"The truth is, that if visitation is to be more than mere routine, medical knowledge is required, and a doctor of experience must inevitably be more useful than a barrister or solicitor, however tactful, judicious or worldly wise he may be. There is also no doubt that visitation by a lady, whether medical or not, would be most valuable."—(p. 132.)

In another place the same view is expressed :

"The reason why one of the visitors should have been a barrister is obscure. The proper person to visit a lunatic and advise upon his care and treatment is a medical man. The medical Visitors were not likely to require legal advice, and if they did a barrister who might have only five years' standing was not the person to give it. Probably the post of legal Visitor was created to suit the Lord Chancellor's convenience."—(p. 156.)

Referring to earlier Masters in Lunacy he says :

"Traditions of the earlier Masters still linger in the office. The first two Masters—Barlow and Winslow—had long been connected in the lunacy work. Master Barlow (1846–1880) had a long tenure of office. He was the Father of the office, he took great interest in the work and did much to regulate the practice, which under him was substantially the same as the then practice in the Court of Chancery." "It is said that Master Winslow (1846–1859) had peculiar views as to the proper destination of Committees' balances in which the Lord Chancellor did not concur. Master Winslow resigned."

"Master Warren (1859–1877) was more famous as the author of *Ten Thousand a Year* than in any other capacity. It has been said that he drew a good deal of his book—*The Diary of a Late Physician*—from the contents of Affidavits in Lunacy. Unfortunately for the story the book was published before he became a Master."

Of the Board of Control he says :

"As will be seen, the Board of Control is the old Lunacy Commission with a new name and with greatly increased powers and duties. The title is colourless, and was no doubt chosen because of the strong feeling among medical men and others that the word 'lunacy' involves some slur, and should be avoided as far as possible."—(p. 141.)

To us, "Control" suggests that the insane are a special section of the population needing control, and the word conveys no idea that they are sick people requiring, above all, care and treatment by doctors and nurses.

Part IV deals with "Care and Treatment." The provisions of this section of the Lunacy Act are dealt with comprehensively, and in readable form. A chapter discusses the "Liability of Judicial Authority and Others." At the present time Sir Henry Theobald's views on the protection the law affords to medical practitioners will be doubly interesting. After stating that the certifying medical practitioner's immunity from prosecution has not yet been established by law, he goes on to say :

"Different considerations apply to different causes of action. The better opinion appears to be that he cannot be made liable in an action for imprisonment. The imprisonment is not the immediate consequence of his certificate. The act of a third person intervenes, namely, the judicial authority. There is no contractual relation between the practitioner and the lunatic. If, however, the medical practitioner is not protected by the theory of the intervening act of a third party, or if the action is not based upon anything done under the order, the question arises whether the statute imposes any duty upon the medical practitioner towards the lunatic. Is he protected if he acts in good faith, or must he exercise reasonable skill and proper care, or only proper care? The better opinion appears to be that he cannot be sued for want of skill."—(p. 156.)

LXXI.

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The chapter on "Places for Care of Lunatics" is very carefully written, and the conflict regarding the abolition or continuance of private institutions tactfully dealt with. Chapter XXIV deals with mental defectives and the Mental Deficiency Act of 1913, and the chapter following with lunacy in the Army, Navy and Air Force.

We cannot continue our quotations indefinitely, but those we have given will allow our readers to form a good idea of the thoroughness with which Theobald treats his subject. We need now to proceed more quickly.

Our author now tackles "Lunacy and the General Law": matters of contracts (including marriage) and the insane; disposition by deed and will; torts (in which he draws attention to Dr. W. G. H. Cook's recent book); crimes and the McNaughton Rules; criminal lunatics and the Criminal Lunatics Act of 1884; offences against the insane; liability to provide for pauper patients (public authorities, various relations); proceedings by and against lunatics (a very interesting subject); Statutes of Limitation and Prescription; chancery jurisdiction over lunatics; effects of the Law and Property Act of 1922 on lunacy; probate and administration; lunacy of the Sovereign and of persons holding Office and positions of trust, etc.

Sir Henry Theobald, by reason of his long and in some respects unique experience of the legal side of lunacy, can be regarded as an authority on these subjects, and the value of his book is much enhanced thereby. The same remark applies to Part VI on "Management and Administration," which concludes his treatise proper. In this latter part is an interesting chapter on "Lunacy Records." Papers relating to lunacy going back to 1604 still exist.

There are one or two matters of special importance just at present which we should like our readers to know how Sir Henry Theobald views them, and this must be our apology for some further quotations.

On the discharge of patients, he says:

"It has sometimes been said that it is easy to procure the confinement of a person as a lunatic, but that it is difficult for him to obtain his discharge. This may have been true during some part of the last century, but neither branch of the proposition can be admitted at the present day. An alleged lunatic is now surrounded by statutory safeguards against improper detention, which err, if they err at all, on the side of favouring personal liberty. On the other hand, institutions for lunatics of every kind are so carefully visited and watched that it is difficult to see what further protection can be given. It is almost impossible that a person can at the present day be improperly placed under care as a lunatic, or that such detention can improperly be continued."—(p. 172.)

An important chapter is that on "Crimes." Theobald recognizes the subject of insanity and crime as a very difficult one, and that the problem has of late years become more difficult by recent developments in the study of mental disorders:

"It is dangerous to lay down general rules on the subject. The safer course is to consider each case as it arises, applying to it all the medical knowledge obtainable, together with the commonsense, learning and legal acumen which the Bench supplies. Law and Medicine must work together; the tendency of the one to

follow the beaten path and to shrink from novel ideas must be enlarged by the knowledge the doctor acquires from the study of mental disease in the asylum, and, on the other hand, the leaning of the medical profession to speculative theories of psychology and doubtful metaphysics must be corrected by the accuracy and sound sense of the law and its interest in protecting the community at large.

"The law develops (apart from statutory interference) through the medium of decided cases. Principles are deduced from decided cases, and gradually, by the arguments of the Bar, the decisions of Judges and the discussions of the learned, a body of law is developed and receives authoritative statement. The law never stands still. It develops with the national growth. This development sustained a rude check in the case of the law of criminal responsibility by the unprecedented desire of the House of Lords for information in connection with the trial of a man called McNaughton."—(p. 236.)

He then gives the details of the McNaughton case, and what are known as the McNaughton Rules. Several pages are devoted to a criticism of the latter.

"One of the principal criticisms made against the rules is that they treat criminal responsibility as a matter of the intelligence only and not of the will. But the question of irresistible impulse was not raised by the House of Lords. The Judges rightly assumed that they were dealing with the case of a free agent—that is to say, a person free from constraint, whether physical or mental, for freedom involves not only freedom from physical constraint, but freedom from mental constraint. If there is irresistible impulse there is no criminal responsibility, but it must be irresistible and be proved to the satisfaction of the jury to be irresistible. Irresistible in this connection obviously does not mean irresistible physical force. It means a mental impulse, the irresistibility of which must be proved, not by a mathematical demonstration, but by such evidence as will satisfy an ordinary reasonable man after hearing medical evidence and cross-examination. It is a matter very difficult of proof, and it is for the jury to decide, subject, of course, to the direction of the Judge.

"Criminal responsibility must be determined by the law and not by medical theory. As Mr. Justice Stephen admirably puts it, the question is: Was there knowledge that the act was wrong and power to abstain from doing it? (vol. ii, p. 183). There it is in a nutshell, and the statement cannot be improved. To decide this question there is no reason to exclude any assistance that medical men can give."—(p. 243.)

"There is, among some medical men, a view that there can be no criminal responsibility if there is unsoundness of mind, or, at least, such unsoundness of mind as would justify a medical man in signing a certificate of insanity under the Act of 1890.

"This is a much more serious position. It is based upon a view of the law which is not the well-established law and not the law as approved by the great majority of the public, including most of the medical profession. It is well settled that a person may be guilty of a crime though he may be a certifiable lunatic. It is a question of fact for a jury whether his lunacy is of such a kind as to affect his responsibility. Is a man who believes himself to be the prophet Isaiah to be allowed to commit murder with impunity, though there is no reason to suppose that that prophet had any murderous inclinations? The mere statement of the position carries with it its own refutation.

"If this state of the law is to be altered it must be done by the authority of Parliament. If it is done there can be little doubt that the public will be deprived of valuable safeguards which it now enjoys.

"It is true that the executive which has to deal with the convicted criminal has allowed a practice to grow up which appears to give some approval to the doctrine 'if certifiable, then not criminally liable,' or at any rate not to be punished, but this does not touch the question of legal responsibility as administered in the Courts."—(p. 244.)

We are tempted to linger and make some comments on these extracts, but we regret it is impossible. We may say that the man who believed himself to be the prophet Isaiah might be a very

dangerous man for all that. It is the state of mind, in this case probably grandiose and persecutory, which is of supreme importance as regards crime; the outward expression of it might take any form, from the patient believing himself to be Hell's Gate porter to being the Recording Angel, and we have even met, if the patient were to be believed, God's eldest brother.

The Report of the Lord Justice Atkin Committee is then dealt with fairly fully. Referring to the legal recognition of "irresistible impulse," he says :

"It cannot be supposed that any special value is to be attached to the words 'in substance' used in the recommendation. It would have the same meaning if they were omitted, but no doubt they will lead to endless discussion. If it is not sinful it is, at least, a pity 'seeking to mend, to mar a subject that before was well.'"

"It is to be hoped that Parliament will not be asked to try its heavy hand upon so delicate a matter as this, but that it will be left to the common law to develop in accordance with the requirements of the times, without legislative interference. If the common law should prove inadequate, and it is believed that it has not hitherto done so, legislative assistance can be sought."

In his preface the author warns us that the words "lunatic" and "lunacy" will be freely used, since his book deals with lunacy. Such terms, he says, are convenient, concise and hallowed by time. He admits, however, that they should be omitted in documents likely to be seen by the patient, "in order to avoid giving pain." He notes that some years ago the Masters in Lunacy ceased to use the words in legal proceedings. Having conceded this point we are inclined to agree that such considerations do not apply to a treatise addressed to lawyers and those administering the law, except that their use tends to perpetuate the survival of terms around which many members of the public centre superstitions—unmerited and unkind ideas regarding those mentally disordered. He approves of the word "asylum" as being of pleasant sound and ancient associations. We have no prejudice or sentimental view on this point. We look at it from a practical point of view. An institution devoted entirely to the care of the chronic insane could well be called an asylum. A word however with less evil associations in the public mind would be better. But an institution mainly devoted to the cure of the insane with its special staff, special buildings and special administration for this purpose is a hospital, and should be so called.

We have given this book a more than lengthy review because we think the occasion justly warrants it. The reading and studying of it has been both an education and a pleasure. The task was not lightly or hastily undertaken, because we recognize that although the subject Sir Henry Theobald deals with is and has always been of great importance, yet at the present moment, when some people are advocating a complete revolution in our lunacy laws and methods of dealing with the insane, it is of even greater importance.

The public owes much to eminent officers of the State like Sir Henry Theobald, and doubly so when their ripe knowledge and experience gained in the public service can be obtained in the form

of a treatise such as the one under review. Such a work is a fitting epilogue to a distinguished career, but although the author is now retired and unfortunately blind, we would hope that in his case it will not be an epilogue, but rather a prologue, if it were not for the fact that this is not the first of Sir Henry Theobald's writing. We trust, however, that he will be spared for years to come, and that this is not the last occasion we will feel called upon to review something from his pen.

J. R. LORD.

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*An Introduction to the Study of Mental Disorders.* By FRANCIS M. BARNES, jun., M.A., M.D. London: Henry Kimpton, 1923. 2nd edition. Royal 8vo. Pp. vii + 295. Price 18s.

The author does what he sets out to do, very thoroughly, in the pages of this book. The student is not merely introduced to the study of mental disorders as ordinarily taught, but he is given that breadth of view of the subject which is all-important if the knowledge so acquired is to be used to the best advantage.

After chapters devoted to historical matters and methods of study, first place is rightly given to mental hygiene and social psychology, and psychology in relation to medical practice. These when taken together form the platform from which the intending medical practitioner should be taught psychology and mental diseases.

The diagnosis, care, treatment and cure of individual mental disorders is no doubt an important part of medical practice, but the prevention of such disorders and allied conditions and the encouragement and preservation of sound mental health are matters of even greater importance. That these are the ultimate aims and objects of psychological medicine cannot be too firmly impressed on those entering upon the study of this subject. As Dr. Barnes aptly says, "In mental hygiene, as elsewhere in medicine, the greatest good is looked for in prevention."

The other outstanding feature of this book is the remarkable lucidity of the author when dealing with psychological processes, such as consciousness, memory, association and orientation, which often present difficulties to the ordinary student. Indeed, some students never really grasp their meaning. To the latter especially Dr. Barnes's treatment of them will be a revelation.

Under "Treatment" we are glad to see that occupational therapy and industrial mental hygiene are given a prominent position.

Part II of the book deals with the principal forms of mental disorder quite adequately for the author's purposes.

Our view is that this is a most useful book to all students of psychiatry. It is also a work that can be commended to mental hygiene and social workers in every field.

The original edition appeared in 1918. The present edition combines also Dr. Barnes's *Notes on Mental Diseases*, 1919, 3rd edition, 1920.

J. R. LORD.