

There is a third aspect of the remarkable excitement following Koch's announcement of an antidote for tuberculosis. Whatever degree of success may eventually attend the employment of the bacillary lymph, the flocking of so many thousand persons to Berlin, medical and non-medical, from all parts of the world, will form the subject of another chapter in the history of Epidemics, not unlike those of the Middle Ages, which the psychologist cannot fail to study with interest.

Plea of Insanity in Criminal Cases.

The most effectual mode of bringing the knowledge of mental experts to bear upon the plea of insanity and alleged consequent irresponsibility has from time to time been brought before, and considered by, the Medico-Psychological Association.

So far back as 1868, Professor Laycock read a paper at the annual meeting, entitled "Suggestions for the Better Application of Psychological Medicine to the Administration of the Law," and moved the appointment of a committee to consider the subject. The proposal was carried, and the following members were placed on the committee:—Dr. Laycock, Dr. Rhys Williams, Dr. Christie, Dr. Sankey, Dr. Lockhart Robertson, and Dr. Maudsley, with power to add to their number.

The report was presented at the annual meeting of 1869.* The incompetency of a jury to understand scientific evidence was pointed out. "It is impossible to believe that a jury can, even under the guidance of the best judge, who has not special knowledge, be instructed to the requisite point within the short period of the trial." The proposal made by the committee was to pursue the course adopted in Admiralty cases, in which "the judge is assisted by assessors of competent skill and knowledge in the technical matters under consideration." It was further urged by this committee that a Royal Commission should be appointed to inquire "into the relations of mental science to the administration of justice, with a view to a revision of the existing system of criminal jurisprudence in its relation to insanity." The result was that the Government replied that they saw no necessity for taking any steps in the direction indicated.

* See "Journal of Mental Science," Vol. xv. No. 71.

In February, 1880, at a quarterly meeting of the Association, held in London, a debate took place on the same subject, in which Dr. Maudsley recalled the attention of the members to the foregoing recommendations of the committee in 1869, and advocated them. It was urged by the writer of the paper * which led to the discussion, that the ground of complaint was the utter uncertainty as to what course would be pursued when a prisoner, regarding whom suspicions of mental unsoundness were raised, came before the magistrate, and he urged that this was precisely the period when it was all important to discover his condition of mind. He maintained that magistrates should obtain at least one expert in addition to the gaol surgeon, full powers being given them to make a careful examination of the prisoner. If committed to trial their report should be presented to the Court, they being subject to cross-examination. It was not proposed to take away from the defence and prosecution the right to call medical witnesses. The most important Act of Parliament, viz., 27 and 28 Vict., c. 29, s. 2, was cited, although it did not contemplate the prisoner, when brought before the magistrate, fresh from the commission of the crime. An extension of the provisions of this Statute was proposed as the best means of carrying out an improved system of ascertaining the mental condition of prisoners for whom the plea of insanity was raised. Dr. Nicolson pointed out that prison-surgeons were in many instances induced to report that there was no indication of insanity in cases which were found to be clearly of unsound mind, and detained in consequence at Broadmoor during her Majesty's pleasure. And why? Simply because "the great bugbear of cross-examination stuck in their throats. They did not like to raise the question of a man's insanity, knowing that they might be had up and pestered with all sorts of questions for which they were not prepared; so they preferred to go on quietly till the end of the sentence, and then let the man be discharged in the usual way. The Chairman, Mr. Mould, observed that "barristers did not want assessors any more than they wanted experts, because they would find that they knew too much for them." The discussion ended with the reference of the subject to the Parliamentary Committee of the Association. The question was considered at the next meeting of this committee, but it did not see its way to make

* "Mental Experts and Criminal Responsibility," by D. Hack Tuke, M.D. (See "Journal of Mental Science." Ap., 1882.)

a definite proposal to the Government, partly in consequence of the refusal of the latter on a previous occasion to consider the propositions of the Association or even receive a deputation.

In 1883 Dr. Orange, the President of the Association, made the criminal law in relation to madness the fitting theme of his Address—fitting, for no member, surely, had so great a right as he to expound this difficult relationship—and although he dwelt mainly on the test of legal responsibility, especially as expounded by Mr. Justice Stephen, he brought forward after the delivery of his discourse a suggestion as to the best means of ensuring a medical examination of a prisoner charged with crime. Before reviving it we may cite one passage here as containing the expression in the fewest possible words of what is theoretically desirable, whether attainable or not. “In a more ideal state of society than that which now exists, the class of criminal lunatics would disappear, because no one would be sentenced to punishment without *his mental state being ascertained before sentence*, instead of, as now so generally happens, afterwards; and, furthermore, because persons known to be insane would then be placed under control before, and not, as now, after, they had committed some alarming act of homicide or violence.”

Dr. Orange's suggestion was this:—That the following persons should examine and report upon the mental condition of a prisoner charged with crime and suspected to be insane: “The medical officer of the prison, the medical officer of the county asylum or hospital for the insane in the neighbourhood, and a physician of standing in the town where the prison is situate.” Appended to this was the recommendation that the examination should be made “as soon after the commission of the crime as possible.” Dr. Orange observed that these examiners would be appointed either by the Treasury or the Public Prosecutor. The proposition contained the recommendation that the three medical men should, after consulting together, draw up a *joint* report to be given to the prosecuting counsel. The resolution, which was moved by Dr. Yellowlees and seconded by Dr. Hack Tuke, was carried *nem. con.*—(Journal, Oct., 1883, p. 451.)

This resolution, brought under the notice of the Government, appears to have exerted some influence, although not in the precise form indicated.

The Attorney-General (Sir Henry James) directed "that whenever an accused person should be brought before justices on a capital charge the magistrates' clerk should communicate with the solicitor of the Treasury, and that that officer should take charge of the prosecution unless he finds that some competent person or local body has the conduct of it." Moreover, "in these cases in which insanity is alleged, full inquiry shall be made, and in the absence of his or her friends' ability to produce witnesses, the Treasury Solicitor shall secure their attendance."

The expression "full inquiry" is understood to include any medical examination which may be thought needful. It is to be noted, however, that the Attorney-General's directions apply exclusively to capital cases, whereas the crimes committed by persons sent to Broadmoor during her Majesty's pleasure are of various kinds.

The next step forward was the appointment of a "Crown referee in cases of supposed insanity." Dr. Bastian was the first to hold, and still fills, this responsible office.

Whether the action which the Government has taken is sufficient, and whether the remedy provided is systematically employed, is a question worthy of consideration. Anyway, very few persons appear to be aware of what has already been done in order to insure expert examinations of and reports on prisoners accused of crime and suspected of insanity.

At the last Quarterly Meeting of the Association, held at Bethlem Hospital, Dr. Savage read a paper (see the current number, p. 238) on the "Plea of Insanity," in which he commented on the unsatisfactory state of the law in the matter we are discussing, and proposed several alternative remedies for the alleged defects in the practice of the Treasury and Home Office in criminal cases connected with insanity. To this communication and the discussion which followed upon it (see report of the Meeting in "Notes and News") the reader is referred. Whatever course may be adopted—the existing one or a better—let it be uniform and definite, and let it cover all forms of crime, and extend to the examination of a prisoner before trial, and to a man after his conviction.
