

Gibson, the learned judge directed an acquittal, on the ground that the patient of whom advantage had been taken was a secondary dement and not a congenital case, Stead's Act from its wording being held only to apply to the latter. The framers of Stead's Act probably did not intend this, and there is no reason why the secondary dement, and indeed every other lunatic, should not have the full benefit of this enactment.

Lord Ashbourne's bill further provides that the sixteenth section of the Act 38 and 39 Vict., cap. 67, shall be extended to include persons committed to asylums under the Act 30 and 31 Vict., cap. 118. In other words, the property of this class (known to the Irish law as "dangerous lunatics" and forming the greater number of the admissions to public asylums in Ireland) can, when this bill becomes an Act, be rendered available for their support.

Notes and Queries.

Sense of Smell in Nietzsche.

THE sense of smell is so closely related to the sexual instinct in a large number of animals, that there has long been thought to be a direct relation between them, and the relation of defect of smell and of sexual power in general paralytics was investigated many years ago without success. It may be doubted, therefore, that Nietzsche's acute sense of smell is, as Dr. Watson suggests, a reversion to a lower type; if it were so it should be rather accompanied by enhanced sexual instinct. The conclusion is that it was entirely pathological—a morbid sensory irritability, cultivated and exaggerated by habit.

Recovery.

Is it possible to arrive at a general understanding as to what constitutes *recovery* on the discharge of a patient from asylum care? A recurrent case may *recover*, yet there is every probability of relapse sooner or later. An acute case may *recover* sufficiently to take his place in the world, yet some indelible trace of his disorder may remain. A patient may be reported as having *recovered* after removal from the asylum, while he remains on the register, yet there may be doubts as to the value of such a report.

What constitutes a *recurrent case*? Should the term be used

on the second attack, or should it be reserved for the third and subsequent attacks? Or, in a case of *circular insanity*, at what point of the malady is the patient to be so classified?

Reviews.

The Report of the Commissioners of Prisons (England) 1900, with special reference to the working of the Prisons Act, 1898.

The very general use of expressions such as the fitness of things, the survival of the fittest, a perfect fit, a fitting reason and the like, raises the presumption that fitness is that which we now strain after in especial. Fitting correctly punishment to crime, then, if the thing to try to do, is yet presumably difficult, assuming that such a statement as the following by Sir H. S. Maine is to be accepted unreservedly: "It is always easy to say that a man is guilty of manslaughter, larceny or bigamy, but it is often most difficult to pronounce what extent of moral guilt he has incurred, and consequently what measure of punishment he has deserved. There is hardly any perplexity in casuistry or in the analysis of motive which we may not be called upon to confront, if we attempt to settle such a point with precision."⁽¹⁾

Nor is the difficulty lessened if we recognise the force of the arguments used by Mr. H. Ellis in his chapter on the treatment of criminals⁽²⁾, in which he quotes with approval two such different authorities, as Reinach saying in *Les Récidivistes*, "Imprisonment, especially if short, is an excitation to crime;" and the words of Prins the Inspector-General of Belgian Prisons, "What is the advantage, unless the necessity is absolute, of putting into prison the head of a family, etc.?"⁽³⁾

In fitting punishment to crime we are, therefore, met with two initial difficulties—(a) the form of the punishment to be inflicted, due regard being paid to the kind of criminal and the nature of the crime; and (b) its quantum, by reason of his imputability and susceptibility. There is not one common antidote for all poisons, nor is the same medicine given in similar doses to every patient. Why, then, should all offenders be either fined or imprisoned, and all who, for example, steal £5, be (broadly speaking) treated to a like amount of punishment?

As an aid to appreciate the advantage of appropriate punishment, that is, of retributive treatment, as being the form modern society's dealing with a recalcitrant member should rather take, a few preliminary observations upon the history of punishment and the right to punish, as well as upon its proper aims and objects, may here, perhaps, be not out of place.

The origin of punishment is often attributed to the reflex action of the individual injured, which in the case of a person struck prompts