A Letter to the Right Hon. SPENCER H. WALPOLE, M.P., *&c., &c., Chairman of the Select Committee on Lunatics. By* JOHN CHARLES BUCKNILL, M.D., *Medical Superintendent of Devon County Lunatic Asylum.*

Sir,

When I had the honour to appear as a witness before the Committee over which you preside, I declined to give any opinion respecting Chancery lunatics. I did this from not feeling myself prepared at that time to place my opinions before you in a manner which would give them value.

As, however, you kindly requested me to communicate by letter anything further I might wish to say, and as I have recently been reminded by a member of your Committee that your enquiry is still open, I beg leave, most respectfully, to lay before you some considerations on the subject of Chancery Lunatics, chiefly founded upon my personal knowledge.

I see it proposed that the office of medical visitor of the Court of Chancery shall be abolished, and the visitation of the Chancery lunatics transferred to the Commissioners in Lunacy; yet the great and continuing increase in the number of inquisitions, and the demands of the public service, must lead the Court of Chancery to feel itself more than ever in need of medical officers of its own, a need unequivocally expressed in the provisions of the Bill introduced by the Solicitor General just before the last dissolution of Parliament.

The Committee, in investigating the duties of the Medical Visitors, appears to have exclusively directed its attention to that of the visitation of lunatics after inquisition. This duty has been their most important function hitherto, and it has been discharged in strict conformity with the law enacted at a date anterior to the recent improvements in the care, treatment, and supervision of the insane. Although there can be no doubt that the Chancery lunatics ought to be visited in a very different manner to that which was thought sufficient when the existing law was framed; yet merely to transfer the visitation to the Commissioners in Lunacy would be a very inadequate measure of reform, and would leave the greatest need felt by the Court of Chancery in dealing with lunatics even more unprovided for than at present; I mean

that need of assistance which the Court requires from medical men in whom it has confidence, during the proceedings which are adopted for placing a lunatic under its charge.

To understand this point it is necessary to be acquainted with the practical application of the law in working a petition of lunacy. I beg to offer a few suggestions founded upon my own observation and experience, which may, I trust, at least be sufficient to induce you to make further enquiry from persons more fully informed, and more competent to influence your opinion.

1. Petitions in lunacy are very rarely, if ever, presented before the lunacy is supposed to be chronic and incurable. I have known the greatest difficulties submitted to in the administration of property, or rather getting on without administering it, by borrowing money without security, incurring debt, &c., for a long period before the lunacy could be definitely pronounced incurable. To expect frequent cures, therefore, of Chancery lunatics is very unreasonable. In some few exceptional instances, the petition may be presented earlier, as when property is being rapidly dissipated; but the rule is that a Chancery lunatic is incurable before the petition is presented.

2. In a very large proportion of instances of the lunacy of persons of property, no petition is presented. I know lunatics, who, at the present time, are signing cheques, and ostensibly doing business the nature of which they are utterly incapable of appreciating. Consider how small a proportion of the insane are placed under the Court of Chancery, and it must be obvious to what an extent this is done. What is the cause of this except the expense and the painful nature of the proceedings in opposed petitions? Only think of the dreadful exposure of all one would wish to keep from the eye of the world, which an opposed petition involves; and the reason will be evident why so few petitions are presented, and that with few exceptions, those that are presented are unopposed. The presentation of a petition, indeed, may be held to indicate, either that the members of the family of the lunatic are unanimous as to the desirability of the petition, or that need of the protection of the Court is so urgent, that it must be obtained at all risks.

The family, of course, frequently are unanimous, and everything goes on smoothly and well; the powers of the Court to protect the lunatic's person and property are sought, and, in spite of the law which still gives to every lunatic the option of a jury, matters are so managed that this right is very rarely

exercised, and inquisitions are held with as much privacy and economy as can be desired. But, the cases in which the intervention of the Court is most desirable, are precisely those in which the family of the lunatic are not of one accord, in which, perhaps, some one relative or other person is making undue use of his influence over the lunatic, either as to the present direction or the future disposition of the property. It is in such cases that the proposal to present a petition is met with the threat to oppose, which, if carried into execution, would entail all the evils of a public trial of a most painful nature, and the expenditure of a sum of money in law costs which might alone be sufficient to make the heirs of the lunatic hesitate. In two cases, within my own recent knowledge, the sums of two and of three thousand pounds were respectively expended in the proceedings of contested petitions, and this for moderate properties. In one of these cases, the expenses amounted to nearly a fourth part of the whole property of the lunatic. I have heard of still larger sums being expended, and that in the well-known case of Mrs. Cummings, the whole of the lunatic's property was exhausted in the costs of the enquiry.

It may be urged that this is an evil which cannot be avoided, that a person to whom lunacy is attributed has a right to defend his personal and civil liberty to the fullest extent to which his advisers may think fit to go. This principle is clearly just in its application to cases in which any doubt of the lunacy may exist; but it is unreasonable to apply it generally to cases wherein it can readily be ascertained that the alleged lunacy is obvious; and where no beneficial result can possibly arise from it except in augmenting bills of costs.

The remedy I have to suggest is only novel in the extent of its application. It is in substance that addition to the functions of the Medical Visitors of the Court of Chancery which has been pointed to as contemplated in the evidence of Mr. Barlow, (see *Report*, page 128, q. 1313, 1314, 1315,) namely, that the Court of Chancery should always employ physicians acting as its own salaried officers to report on cases of disputed petition.

I would go further than this contemplated change, and strongly recommend that the Court should employ its own medical officer to report in all cases, whether the petition be opposed or not. Such an arrangement would, I believe, tend greatly to facilitate the duties of the Court, to promote the ends of justice by discouraging petitions from being withheld from the fear of unscrupulous opposition, and to

prevent the reckless and extravagant expenditure of money in opposing well-founded petitions. The Court does, indeed, at present, avail itself of referees in cases of difficulty, and I myself have had the honour to be employed by it in this capacity in the two past years, on two important occasions. My opinion on each of these occasions proved to be correct, but I do not the less hesitate to express my conviction, founded upon the experience thus gained, that the duties of a medical referee in these cases are too responsible and too invidious to be entrusted to any private person, and that the intention of the Court to provide itself for this purpose with the services of Physicians permanently attached to it in an official capacity, is one which your Committee will probably consider to have been formed on most sufficient reasons.

But a still more important consideration is that the action of the medical referee, whether private or official, comes too late in the enquiry to be of as much service as it would undoubtedly be under different arrangements. The medical referee (or rather the medical officer of the Court, since in this case he would not be a referee) ought to be employed before and not after the parties are committed to a contest. His action might then be expected frequently to forestall litigation and to prevent the great evils of contested inquisitions.

A person believed to be of unsound mind has made a will disinheriting his relations, or has given away large sums to persons holding him under undue influence, or has dealt with landed property in a manner prejudicial to his heirs; a petition in lunacy is presented by one or other of his relatives, accompanied by affidavits supposed to be sufficient to prove the case: these are answered by others supposed to be sufficient to disprove it, and after, as Mr. Barlow says, "an enormous number of affidavits are filed on each side, it has been found that the best mode of shortening the discussion has been for the Lord Chancellor to call in an officer of his own, and get him to give them the assistance of his opinion as to the state of mind of the alleged lunatic." But unfortunately, this is not done until *after* an enormous number of affidavits have been filed on each side, and both parties have been committed to the contest. The report of the medical referee, although it may determine the decision of the Lord Chancellor or the Lords Justices whether or no an inquisition shall be granted, will not at this stage of the proceedings have any influence in preventing further litigation, however hopeless such litigation may appear. An inquisition was held at Exeter in 1858, on a gentleman on whose lunacy I, as medical referee, had reported very decidedly. After evidence of the

lunacy had been given, the leading counsel in opposition (Mr. Montague Smith, Q.C.) laid his brief upon the table declining to attempt a reply against such a weight of testimony. The expenses of the proceedings, however, amounted to £2,000.

Now supposing that in this case the medical officer of the Court of Chancery (not a person casually employed in a difficulty, but one with the prestige of an important and responsible office) had been sent to examine the state of mind of this gentleman before any of the affidavits testifying to his sanity had been filed, is it not almost certain that the opposing parties would have refrained from proceedings obviously leading to an adverse issue, and thus needlessly incurring great loss of time and of money, to say nothing of reputation.

It may be urged that the small proportion of inquisitions which are opposed, would scarcely justify the permanent increase of official salaries which the Bill of Sir Hugh Cairns contemplated. The reply to this is two-fold.

First, that if one such an opposed inquisition were prevented annually, the increase of salary would be more than saved.

Secondly, that the great evils attending opposed inquisitions hinder the presentation of petitions in cases where the protection of the Court is most needed, and thus indirectly give rise to a denial of justice. Within a recent period I have myself been consulted on three cases in which there could be no doubt of the existence of insanity, and in which it was most desirable that the lunatics should be placed under the protection of the Court of Chancery; but in each of these cases the prospective evils of an opposed inquisition were sufficient to prevent that protection from being claimed. In one of these cases, involving very large interests, the petition was, I believe, actually presented, but was subsequently withdrawn.

The experience of the Court of Chancery must have amply proved to all the learned judges who have presided there, that whatever value evidence given on affidavit may possess on matters of fact, on matters of opinion it is of little worth; and hence it occurs that this kind of evidence so completely fails to enlighten the Court upon the real state of mind of an alleged lunatic. It is really astonishing what liberties people take in evidence of this kind, not perhaps so much in the absolute statement of falsehood as in the suppression of truth; but positive untruthfulness also is rife to a degree which cannot be excused on the ground of ignorance, although this also is a prolific source of misrepresentation. A large proportion of the mass of affidavits filed on an opposed petition, will be found to be those of persons quite incapable, from want of mental culture, of forming an opinion on a question of

mental sanity. Some ignorance however is less excusable; for I have heard even professional men aver that in conversations with supposed lunatics, on which they have subsequently given evidence, they have carefully avoided dangerous topics. The result is confessed in the law which refers the final decision in all cases to an oral enquiry, and in the practice of the Court which refers the conflicting statements of one-sided affidavits to the arbitrament of an impartial medical examination.

What I recommend, therefore, is:

1st. That a petition in lunacy shall, when filed, only be accompanied by such affidavits as may be deemed sufficient to establish the *bona fides* of the petition, and the right of the petitioner to present it, and *prima facie* to establish a ground for the enquiry, and to afford such information as may be needful to instruct the Court and its officers respecting the history and circumstances of the alleged lunatic.

2nd. That after due notice to the alleged lunatic, the Physician of the Court shall be ordered to institute a thorough examination into the state of mind, and to report fully thereupon.

3rd. That the Court shall receive affidavits (if any) in reply to those of the petitioner, and to the report of its medical officer.

4th. That the Court shall order or refuse the inquisition.

5th. That when the inquisition is held, the medical officer shall re-state his report, and be examined thereupon as a witness in the case by the Master presiding.

I observe that Dr. Bright, in his evidence before the Committee, recommends that a medical man in the capacity of "medical assessor," be conjoined with the Master in Lunacy holding inquisitions. It would appear to me a far more simple and useful arrangement that the medical man, whose duty it has been to examine and report upon the state of the patient's mind to the superior Court, should act at the inquisition as a necessary witness, called in contested cases neither by one side nor by the other, and examined in chief by the presiding judge, but subject to the reasonable test of cross examination by the council on either side, under which he ought to require no other protection than that afforded by the fulness of his information and the impartiality of his position.

It may, perhaps, be thought that the intervention of the Physician of the Court, in the manner here proposed, would be needless in simple cases of unopposed petition; but the following considerations will, I think, shew that it would be attended with benefit in all cases. In the first place, although the petition may be unopposed, the inquisition may be opposed

at a late period by the alleged lunatic claiming the right to be tried by a jury. I have known this occur in a case of dangerous and aggravated lunacy, in which the solicitor, who had the carriage of the petition, misled by the very obvious nature of the man's insanity had omitted to procure the attendance of the necessary witnesses, and all the proceedings were near proving abortive.

Secondly, in the most simple of all cases, where neither the petition nor the inquisition are opposed, an impartial, careful, and skilful examination of the state of mind by an officer of the Court, previous to the inquisition, must necessarily tend to satisfy the mind of the Court, and to render the proceedings complete and satisfactory. I have seen even a simple inquisition of this kind on the point of being broken off, in consequence of the absence of sufficient evidence of the state of mind, the solicitor who had the carriage of the petition not being well-informed as to the testimony which ought to be produced even in the most unequivocal cases.

The plan I have the honour to propose would insure in all cases the presence of at least one competent, impartial and fully instructed medical witness, whose evidence would be of much value to the Master, while his report even in the most simple cases could not fail to be of service in determining the judgment of the Court above, which must often at present order inquisitions to be held on very insufficient evidence of their necessity.

I would beg, in this place, incidentally to observe that it would seem desirable that in all cases a solicitor should attend the inquisition on behalf of the alleged lunatic. Very often no doubt this attendance would be a mere form, but it would seem to be a form conformable to the nature of the inquiry. Any enactment, however, for this purpose, should be so framed as to prevent the solicitor from feeling himself compelled to oppose proceedings which he may consider beneficial to the alleged lunatic.

I know that solicitors employed by lunatics to oppose proceedings, which every one except the lunatics believe to be entirely beneficial, often feel themselves in an equivocal position. The professional rule to act according to instructions must be abrogated, when instructions from an unsound mind are obviously at variance with the client's welfare.

One final suggestion I have to make on the manner of these enquiries is, that the alleged lunatic should be examined by the Master, in the presence of the jury, if there is one, at the commencement of the proceedings, and again, if in the discretion of the Court it is thought desirable, at their

termination. Such preliminary examination would often go far to facilitate and shorten the enquiry; while the contrary course sometimes gives occasion to a tedious and painful investigation of a matter which might perhaps be determined in a few minutes. The Master could find little difficulty in conducting this preliminary examination before evidence has been taken, in such a manner as would tend solely and fairly to promote the object of the enquiry, namely, to ascertain the existing state of mind.

The Visitation of Chancery Lunatics. The efficient visitation of asylums by the Commissioners in Lunacy which has of late been established, together with the waste of labour in sending two sets of visitors over the same ground, appear to have led the Committee to the opinion that it may be advisable altogether to transfer the visitation of Chancery Lunatics to the Commissioners in Lunacy. But the duties of the latter are already so onerous that this transference could only be effected by relieving the Commissioners from the duty of visiting the 7000 insane persons confined contrary to law, justice, and humanity in workhouses.

The loss of time and labour consequent upon the Commissioners in Lunacy and the Medical Visitors of the Court of Chancery, passing over the same ground in the discharge of duties nearly equivalent, is in reality not so great as it would at first appear to be. In regard to Chancery patients residing in asylums, this loss of labour does no doubt exist, since an asylum may be visited on the same day, by the Commissioners and the Visitors; but in visiting single patients, the track of the Visitors will be quite different from that of the Commissioners, and it must be borne in mind, that in these journeyings, it is in the short divergencies from the main lines of travel, to visit single patients on the one hand, or to visit union houses on the other, that the greater part of time and labour is expended. A journey of fifteen miles to and fro in a cab, consumes as much time as the journey by express from London to Exeter.

All the duties of visitation of Chancery lunatics were arranged in Sir Hugh Cairns' Bill to be discharged in an efficient manner by the Medical Visitors; but if the views above enunciated respecting the additional duties to be imposed upon these officers be accepted as sound ones, it must be taken into consideration whether their discharge would leave the medical officers of the Court of Chancery in a position to undertake the whole of these increased duties of visitation. Even assuming the improbable event that the number of petitions will not increase, the present number would leave

to each of two medical officers an examination and report, and an attendance upon an inquisition in nearly each week of the legal year. In some cases the examination and report and also the inquisition would occupy much time. I have known the examination and report in a difficult case spread itself over ten days, and the inquisition ordered upon it occupy five long days. This, of course, is an exception to the general rule, but such exceptions must occasionally take place.

On review of the circumstances, the best suggestion which presents itself to my mind is, that the visitation of all Chancery lunatics who live with their friends, or in their own establishments, or anywhere as single patients, should be made by the physicians of the Court of Chancery as arranged in Sir Hugh Cairns' Bill, and that the visitation of all Chancery lunatics residing in asylums should be made by the Commissioners in Lunacy. This arrangement would impose only a small amount of additional duty on the Commissioners in Lunacy, while it would greatly relieve the medical officers of the Court, and prevent that waste of labour from different officials traversing the same ground, which has been made a subject of complaint.

Perhaps it may hereafter be found, that in many instances the superintendence of Chancery lunatics may be rendered more efficient, by a somewhat different selection of the individuals, appointed to act as "committees of the person," to that which it is at present the custom to make. I have, I am happy to say, seen instances in which the greatest devotion to the welfare of the lunatic has been displayed by the committee of the person; but indifference and neglect are at least as frequent. Sometimes also the lunatic has a personal antipathy to the committee, which forbids visitation. It would therefore promise to be in every way advantageous if in many cases, the Court were to appoint a physician residing near the lunatic, to be the committee of the person, with power restricted to making visitations, and reports, and such changes in the condition of the lunatic as the Master or Board may direct.

In all cases indeed, and whoever may be the committee of the person, it would appear most desirable that no material change in the condition of the lunatic, as a change of residence, or of care, should be permitted without the sanction of the Master or of the Court.

Some cases of difficulty which occasionally arise would also indicate the desirability of appointing some one person to act as official committee of the estate, in all lunacics where there are no relatives who can be appointed to act in this capacity.

I beg to subscribe myself, &c.,

JOHN CHARLES BUCKNILL, M.D., &c.

Exeter, May 16th, 1860.