are striving together to do homage to his memory. Eloquent and loving words are every where being uttered in the noble tongue which, infinitely above all others, he has done so much to adorn. This is as it should be, and however humble the offering, if it be brought reverently and in love, let it not be utterly despised.

AMERICAN LEGISLATION ON INSANITY.*

BY I. RAY, M. D.

When a man loses his reason, it becomes necessary that the reason of others, in a greater or less degree, shall supply its place. To that extent, the movements of the person thus afflicted are subject to the control of others, and his property is taken from his management and disposal. Humanity demands this; the peace and safety of society demand it, and the ultimate good of all parties is promoted by it. Thus, of necessity, one of the hardest penalties of the criminal law is visited upon men who have not only committed no crime, but are the victims of as sad a calamity as any in the long catalogue of human ills. The manner in which this consequence is determined, however, differs very much in the two cases. In the one, it follows a judicial investigation conducted according to the strictest forms of legal procedure, with all the safeguards and indulgencies which,

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in the progress of humanity, have come to be recognized as unquestionable rights; while in the other, in most instances, it is determined by the arbitrary will of individuals proceeding under none of the ordinary formalities of law and guided by none of its principles.

The inquiries which this first view of the subject suggests are of the deepest interest to all, and especially to those whose vocation, like ours, obliges them to execute the judgments of others. Under what circumstances is this interference with the inalienable rights of men, on the ground of insanity, to be allowed? To whom is the privilege of interference to be entrusted? By what safeguards against abuse is this trust to be protected? By what solemnities is this deprivation of liberty and property to be accompanied and recorded? It may prepare us somewhat to answer these inquiries, to consider the peculiar conditions of the case as compared with those which accompany other diseases.

In severe bodily disease the patient becomes entirely dependent on others, and subject to their good will and pleasure. His food, medicine and attendance, his outgoing and his in-coming, his up-rising and his down-lying, are directed by them, often contrary to his own wishes. In case of mental disease—in its more sudden and violent forms, certainly—this kind of relation must necessarily exist, because the exigencies of the case render it indispensable. If bodily disease disables a man from taking care of himself, for a much stronger reason, must mental disease have this effect. In fact, the outward control is more complete and arbitrary. The patient is placed under unceasing surveillance, his wishes are disregarded, medicine and food may be forced upon him, and his limbs may be subjected to restraint. And yet

all this—because necessary to the patient's welfare—is justified by the common sense and common feelings of mankind. No outrage is supposed to be committed, no right is trampled on, no apprehension of abuse is excited. On the contrary, the friends are regarded as under a moral obligation, laid upon them by the great law of humanity, to interfere, so far as the circumstances may require, precisely as if the disease were one of the lungs, or liver, instead of the brain. Now, it is not very obvious how, in the subsequent stages of the disease, this obligation can be lessened, or any different one created. Does there necessarily occur a period when society is bound to assume, in any degree, a charge for which the friends are no longer fitted? Few, probably, would contend that there is, but most people, while they would accord to the friends all the rights which they can justly claim, are disposed to provide, in a greater or less degree, against any possible abuse of their trust. This is perfectly proper; and then the question comes up, how far we are warranted in interfering with this privilege of the friends. Governed by abstract principles of the sacredness attached to personal liberty, we should say that the power of depriving a fellow-being of his liberty should be entrusted to no one without being most jealously watched,—limited and hedged around by a multitude of restrictions. Abstract principles are a poor foundation for repressive laws. The prudent legislator will wait for some actual evil requiring redress, before he places a new law in the statute-book. He knows very well that a law which reaches no existing evil is needless, and that one which undertakes to regulate what may as well be left to the unrestricted action of men, is worse than needless. If we are to legislate for every conceivable abuse of trust,

then, certainly, we should surround the care and custody of the insane, while under the control of their friends, by a multitude of restrictions. If, on the contrary, we weigh all the considerations for and against the actual and the possible evil, fairly and justly, with the light of some practical knowledge of the subject, we shall hesitate long before we indulge in much prohibitory legislation. In the spirit of these reflections, we may now consider how the confinement, or, technically speaking, the isolation of the insane can best be regulated with reference to the present and ultimate good of all concerned.

In relation to this measure, the insane may be divided into four classes. The first embraces those who have relations or friends more or less interested in their welfare, bound by a sense of duty or affection to care and provide for them. It would seem, at first sight certainly, as if they might safely be left in such a charge,—as if, in fact, their best good could be so well secured in no other way. The instincts of nature, the force of custom, the delicacy that would shrink from exposure of domestic afflictions,—all these cry out against all public interference not clearly and imperatively required. Here, if any where, in a time of calamity and confusion, the right to manage one's own domestic affairs would seem to be sacred. But, it is alleged, a right like this may be abused. Even the ties of near relationship are not always sufficient to prevent the intrusion of bad motives, which, under pretence of affording protection, may consign one's own flesh and blood to unnecessary confinement and deprivation. Unquestionably, this is possible. Relatives have been known to be hard-hearted and selfish, and even those who may be neither hard-hearted nor selfish may be biassed almost unconsciously by the pros-

pect of advantage likely to accrue to themselves. But, giving this consideration all the weight it is fairly entitled to, it does not follow that in every stage of the disease, if in any, the law should interpose,—that friends should be denied altogether the privilege of managing the patient in the way held forth as the ultimate result of the science and humanity of the age.

To deprive the insane of their liberty is a sort of first principle founded on the stern necessities of the case, and so imperative as to render the interference of the law unnecessary and impertinent. Nobody questions the right of the husband to confine his wife in his own house if she is bent on self-destruction, or disposed to wander about, or impelled to acts of mischief. The same position may be rightfully held by the wife towards the husband, by the parent towards the child, and by the child towards the parent. Neither would any one doubt the propriety of such a measure. On the contrary, to abstain from it would be justly regarded a most reprehensible neglect of duty. Now it is not very obvious how this right can become a wrong, by making the place of confinement some other than one's own home. If, in the progress of knowledge and philanthropy, institutions have become established expressly for the care of the insane, in which they are supposed to be more successfully treated than in their own homes, it would seem as if the natural right in question would be all the more heartily recognized by making choice of them for the purpose.

But, it is alleged, this right is sometimes abused, either by continuing the confinement after the necessity for it has ceased, or by using it at all in cases where neither the welfare of the patient nor the good of society require

it ; or by using it for some flagitious purpose on persons who have never been insane. It is not denied that some one or all of these wrongs may have been committed, but before legislating for a contingency of very infrequent occurrence, we should be well informed as to the actual facts in the cases here instanced. And, first, let us consider those in which, it is alleged, neither the welfare of the patient nor the good of society requires his isolation.

Undoubtedly, there is a class of patients who, being able to control the manifestations of disease, appear very well to the world, but have enough of mental disease to make them very unfit inmates of a private family, made up, in part, of children, and women of a nervous temperament. Outwardly, they may pass for patterns of propriety and injured innocence, suffering bitterly from the abuse of those to whom they had a right to look for kindness and protection, while they are completely destroying the peace and comfort of home by their jealousies and suspicions, their bursts of passion, their irregular ways, their disregard of domestic proprieties, their unhesitating mendacity, and even by scenes of violence. When such persons are placed in a hospital, they are too often regarded by the world as victims of domestic cruelty, and the popular wrath is kindled by charges against faithless husbands, or unfeeling wives, or heartless children. The utmost rigors of legislation are invoked to deliver them from duress and to punish those who, under the guise of humanity, thus perpetrate a great wrong. Now, the only question as to which the public has an unqualified right to be satisfied, is, whether or not such persons are really insane. When pronounced by competent authority to be insane, the disposal of the patient becomes a question of expediency, to be decided

by an intelligent appreciation of the interests of all parties. For instance, a woman who might be endured in a family composed of only two or three discreet, phlegmatic adults, would be intolerable if surrounded by children whose temper and conduct might be seriously damaged by familiar intercourse with her, or by those to whom the example of mental disorder becomes, by force of sympathy, a source of danger. Besides, let it be considered that when such persons have no legal claims on the personal care and attention of friends, the public have no right to complain if a different kind of care and protection is provided. And let it also be considered, that the fact that the friends send away the patient, shows that they are unable or unwilling to retain him; and in that case, it can hardly be questioned whether the kind and skilful service of the hospital is not preferable, on the whole, to that which is coldly and carelessly rendered at home.

Again, there are patients in whom the manifestations are not very demonstrative, or are such as may pass for eccentricity or strong peculiarity. If placed in a hospital, there will always be many to cry out against it as an unnecessary and heartless measure. Here, it is admitted, there is room for doubt as to the existence of insanity, and, of course, as to the propriety of isolation. It might seem, certainly, as if justice to all parties required that the doubt should be solved by some competent, constituted authority. Still, the only question which the public has a right to ask, is, whether the person is or is not insane; and the least formality necessary for this purpose is all that the public can fairly require. Special legislation for this particular class of cases is out of the

question, because it would first have to be authoritatively settled that the patient is really one of this class.

There is another class of cases, not a large one by any means, who, with mental disease enough to make them very unfit inmates of a private family, are not likely to be cured or greatly ameliorated in a hospital. They are careless of the little, perhaps the greater, proprieties of life, are up late at night, go out regardless of weather, and though never violent or mischievous, they are prone to get into trouble, and are a source of much anxiety to their friends. When placed in a hospital, the public are ever ready to say they should have been kept at home, or, at any rate, not deprived of their liberty, which is still to them a means of enjoyment.

Now, before we adopt the idea that the existence of such cases as are here adduced is a sufficient reason why the isolation of the insane should be accompanied by numerous and public formalities, it may be well to consider their ultimate effect on a different class of patients. Insanity is such a grievous affliction, coming on suddenly perhaps, and accompanied by many painful incidents, that in common humanity the friends should be spared every exercise of the law not strictly demanded by the necessities of the case. Besides, any procedure involving a public recognition of the disease induces the friends to delay the measure, though prompted alike by their own comfort and the welfare of the patient. The sensitiveness on this point is so strong and so natural that it is entitled to respect. The effect on the patient himself, provided he is conscious of what is going on, renders all public exposure highly objectionable. He becomes excited, probably his passions are roused, and unpleasant impressions are made on the mind, never to be effaced. This

is an element in the problem entitled to be duly considered, as well as the danger of isolating a man who might be safely allowed to go at large.

Upon a broad consideration of the various forms of insanity, of our social habits, of the liability to mistake, of the sacredness of private grief, and the requirements of justice, we are led to the conclusion that the only formality that should be required to authorize the isolation of an insane person, should be the certificate signed by one or two physicians, that the person is insane; and an application from some one whose character and position furnish presumptive proof of the correctness of the transaction. This is precisely the course already adopted in some of the States, either in consequence of a legislative enactment, or of a regulation of the hospital itself. That it has been sufficient to prevent abuses, the testimony of our experience warrants us in declaring in the most unqualified terms. But, it is alleged, the physician may be biassed by his relations to the family; he may be deceived by false representations, or be honestly mistaken in his opinion. The friends, too, who make the application may, from fear or selfishness, be too ready to confound caprice, or oddity, or passion, with insanity, and thus favor isolation when not strictly necessary. The liberty of any person in the community is at the mercy of one or two doctors who may be induced by one motive or another, to sign a certificate of insanity. Such is not an uncommon style of argument, and it makes an impression even on men whose culture might be supposed to place them beyond its reach. While we admit the possibility of the wrong, it is proper at the same time to consider the actual safeguards against it, and the practical results as shown by experience. By the conditions of

the case, the person is supposed to be insane, but not so insane as to justify isolation. Now, if the question is to be decided by any kind of procedure in the nature of an inquisition, who so competent to make it as a physician? If he has been acquainted with the person, he has materials for forming his opinion which no one else may have. If, on the contrary, he is a stranger, he is, of course, as far beyond the influence of prepossessions and biasses as any functionary whom the law might designate for the purpose. It is a question of expediency, not of abstract right, and the physician is as likely, to say the least, to decide it correctly as any commissioner or judge, with this advantage, that no unnecessary trouble or publicity is given to an afflictive domestic allotment, in the case of those of whose mental disease there can be no doubt whatever. To argue against the use of a thing from its possible abuse has always been regarded as poor philosophizing. It is true, certainly, that the liberty of any person in the community is at the physician's mercy, and so is the life of every person who calls in a physician when he is ill; but who hesitates to employ a physician from the fear that he may be bribed by wicked relatives to poison him? In signing a certificate of insanity, a physician performs a professional service in which he is amenable to his own sense of right and wrong, and responsible to the laws of his country. Under what better obligations and sanctions can any one act?

It is alleged, too, that by means of a medical certificate, persons who are not and have never been insane may be, and have been, torn from their homes and confined in hospitals for the insane. The idea of such an outrage is so appalling, that the strictest measures of

prevention seem to be required, however they may affect innocent parties who may come under the operation of the rule. Here, too, we may confidently take our stand on the general presumption just indicated, that the physician, in giving the certificate, as in the performance of any other professional duty, will act honestly and intelligently. And when we consider the difficulty of executing such a scheme of wickedness as is implied in the imprisonment of a sane man on the charge of insanity, we may be sure that it will be seldom attempted. Earl Shaftesbury, whose position must have given him abundant opportunities of knowing, once said in his place in Parliament, that he had never met with such a case, even in Great Britain, where, of all countries in the world, the crime is supposed to be most frequent. And if we inquire of those who have charge of hospitals in this country, whether among the thousands of patients that have passed under their observation, they have met with such a case, I doubt not their testimony would be precisely similar. They have had patients, certainly, whose insanity was vehemently denied by somebody or other who regarded all its alleged indications as only manifestations of passion or oddity, provoked, perhaps, by the unkindness of those from whom they had a right to every care and indulgence; but if their experience has been like that of the writer, they became satisfied, in every instance, that there was ample reason for regarding them as insane. Some of these patients have many adherents, however, who never cease to believe that they have been made the victims of a conspiracy, and who fill the community with their clamors. There can be no objection to a formal adjudication in this class of cases, not so much to convince the unbelieving, for

they are proof against any amount of evidence, but rather to satisfy every tolerably unprejudiced mind, that personal liberty is in no danger from that quarter. The writ of habeas corpus would be all-sufficient for the purpose, but being attended with circumstances that all the parties might wish to avoid, it would be well to furnish another provision equally effectual while free from unnecessary parade and publicity, in the nature of an inquisition. It should be not a general provision to be used in all cases of isolation, but a special, extemporary one applicable only to these.

In view of the inefficiency of legal enactments to meet all the requirements of the case, many discreet and intelligent men are of the opinion that a supervisory power should be lodged somewhere for the purpose of correcting mistakes, preventing abuses, and doing justice generally between the insane and their friends. They would have a special, permanent commission whose duty it should be to investigate every case of doubtful insanity in the hospitals, or of alleged unfitness for hospital treatment, and to discharge the patient if they think it proper. And in some other respects, the interests of the insane might be confided to their oversight. The arrangement looks well, and it is not strange that it should have found favor with intelligent men. Considered, however, under the light of practical experience, and our knowledge of the ways and habits of men, it appears to us preëminently calculated to do more harm than good. Such a commission would be led to its decisions by no fixed principles of law or science. Indeed, it is regarded, probably, as the principal merit of this provision, that it would be governed solely by an enlightened sense of honesty, justice, and fair dealing. This would be a

merit, certainly, were the question to be decided one that could be readily understood and appreciated by ordinary men. But here are professional points to be considered, and, with the best intentions, cannot be decided correctly without the knowledge of an expert. A disposition to do what is right is but a poor preparation for a scientific inquiry,—it may be even a dangerous one. What cares a man for the scientific bearings of a question, who looks only at its moral aspects, and is sure that he cannot be misled by his own honest sentiments. In the class of cases where the interference of the commission would be considered as most desirable, there are always facts on the true significance of which the question of sanity or insanity must turn. If in any given case, the conclusions of the commission coincide with those of the officers of the hospital, the fact may inspire fresh confidence in the latter, and to that extent be of some service; but if, on the contrary, they differ, it is not easy to see why the decision of the commission, not one of whom may have had any practical knowledge of insanity, can be more reliable than that of the officers whose field of observation may have been before them for years, and embraced thousands of cases. If it is to be considered a part of the duty of their office to visit the hospitals of the State, and investigate the case of every patient who complains of being unjustly confined, one can scarcely exaggerate the amount of mischief they would accomplish. And if, among the scores of cases to which their attention might be called, they should happen to find one unjustly detained, the service thus rendered would be dearly purchased by the restlessness and disappointment to which all the rest would be subjected. We may well ask, therefore, whether the object in view

cannot be as faithfully accomplished by some other agency, without all this fruitless annoyance. We think it can, and we see such an agency in the Board of Trustees, Directors, or by whatever name they may be called, to which the general management of every hospital is entrusted. No interest could possibly prompt them to do otherwise than right, or give them an improper bias. The only bias under which they might act, perhaps, would be a wish to avoid the annoyance attending the detention of an equivocal case, by discharging the patient too readily.

The practice of England furnishes us with some useful lessons on this point. There, as you are aware, the idea has been gaining ground, of late years, that the right of confining the insane in hospitals has been so much abused as to require some stringent checks on its exercise. All classes of men, except those much-suffering, much-abused gentlemen who have charge of the hospitals, seem to be united in the belief that many persons are confined in those establishments who are either not insane at all or not enough so to require confinement. In consequence of this state of feeling, the isolation of the insane is regarded with the most watchful jealousy, and the legal requirements have, almost every year, been encumbered with some new restriction calculated to make the measure more difficult of execution, and to deter the friends from resorting to it. Patients are thus kept at home long after they should have been sent to a hospital, and discharged from hospitals long before their recovery is complete, lest the absence of the more demonstrative signs of disease might lead the outside authorities to discharge them, and thus expose the physician to public censure, if not to harrassing lawsuits. Within a year or

two past, a person committed a homicide shortly after his discharge from an asylum, the history of the case being that he had previously made, at least, two homicidal attempts, that he was sent to the asylum on that account, that he was considered unsafe by the physician when discharged, and that the disappearance of the more active manifestations of disease renders it doubtful whether the commissioners might not consider him as fully restored, and the physician as deserving of censure for detaining him. We may get some idea of the mischievous consequences which have been thus produced, when we consider that such persons as Bellingham, who killed Mr. Percival, and McNaughton, who killed the secretary of Sir Robert Peel, could scarcely gain admission into a hospital at the present day, on the strength of any insanity they manifested previously to their bloody deeds. A man much familiar with insanity would have said, "I am satisfied that these are dangerous men. They imagine they have been deeply wronged; that they are annoyed and persecuted to such a degree as to be made utterly miserable; that if the Government afford them no redress, they are bound to get it with their own hands. With my knowledge of the insane, I have reason to fear that they will commit some act of violence. But to the casual observer, they appear very well; neither their conversation nor their conduct betrays any irregularity, and I could not ground a certificate of insanity on facts which would be satisfactory to the legal authorities."

It would be something gained, if these restrictions had the effect of establishing in the community a general conviction that they had accomplished the desired object. That such is far from being the fact, every one must

know who is much conversant with the newspapers, magazines and books of the time. It is notorious that anybody can obtain the ear of the public who can tell a tale of abuses, no matter how improbable, and, on the slightest evidence, the newspaper press is swift to pour out the vials of its wrath on the supposed offender. Indeed, so far has this prejudice gone, that, if we do not greatly mistake the present state of public sentiment, the mad doctor, as he is elegantly termed, is classed by multitudes of people with rogues and charlatans. Novel-writers seeking fresh stimulus for the jaded sensations of their readers, find it in depicting the horrors of the *mad-house*. In the latest performance of this kind, by one of the most popular writers of the day, who is also a clergyman of the established church, a gentleman whose successful efforts in ameliorating the condition of the insane entitle him to the respect and gratitude of the race, and whose works will hold a permanent place in the literature of our profession, is held up to ridicule and reproach.

The next class of the insane for whom isolation is required, embraces those for whom no one is bound to care or feel responsible, and who are likely to endanger the safety of themselves or the community. In every State there is some legal provision for establishing the fact of their insanity, and placing them either in a hospital or other place of safety. It is, in fact, an imperative measure of police, and it is difficult to conceive how it can be abused, inasmuch as they are, for the most part, without friends or property, and supported at the public expense, and thus no individual can have any interest in provoking or prolonging their confinement.

The next class of the insane to be considered in this relation, embraces those whose friends feel the necessity

of their being confined, but who, for one reason or another, wish to avoid the responsibility of the measure, and have it effected by due process of law. They may feel that their relationship is not near enough to warrant their interference, or if nearly related, like husband or wife, father or son, they may shrink from incurring the odium which, under some circumstances, might attend the measure, or provoking the anger and hostility of the patient. And, generally, such would be the best method of committing every case in which there may exist any doubt respecting the mental condition, or in which the writ of habeas corpus is likely to be procured. A legal adjudication, even if it do not prevent the issue of the writ, would protect all parties from harm. Valuable as such a provision would be, we are not aware that it exists in any State but Rhode Island.

The next and last class of the insane that may require isolation is that of paupers—those who are supported by the public. The municipal authorities might, no doubt, under the common law, commit them to a hospital or other suitable place of detention, but it is better that the measure should be expressly authorized by a legislative act. Besides the certificate of a physician, no other restriction upon the power would seem to be required.

We may observe, in this connection, that while the public mind is needlessly sensitive respecting the confinement of the insane in hospitals by their friends, it is perfectly apathetic respecting their confinement under circumstances of cruelty and neglect, in jails, poor houses, or even their own homes. Here, certainly, the interference of the law would be fully justified, and no community can make any pretension to humanity that indolently suffers abuses which are not occasional and excep-

tional, but a matter of course, and very common. Have we not arrived at a point in human progress where we are warranted in saying that society does not discharge its duties to the insane while it neglects to furnish them all the means of recovery or comfort which science has placed within its reach. Towns and cities should be compelled to send to hospitals such of their pauper insane as cannot be made comfortable anywhere else. Nor should private families be allowed to keep their insane at home under excessive restraint or confinement. The State of Maine provides against it by a very stringent law, and so should every State. The most abundant restrictions upon the privilege of placing the insane in hospitals might possibly prevent a very few cases of abuse, while a little legislation for the benefit of the poor, or friendless, would work an immense amount of good. And yet the public mind is far more exercised about the former than the latter.

The disposal of persons who have been tried for some criminal act and acquitted on the ground of insanity, is a matter of great importance, and ought, so far as it possibly can, to be clearly determined by the Legislature. At present, in some States, the law is silent on the subject; in some it meets difficulties partially and imperfectly; and in none is it so definite and thorough as it should and can be. Under the common law, such persons are committed to some place of custody, but there the law leaves them. If brought before the Courts on the writ of habeas corpus, and it be satisfactorily proved that the disease has disappeared, the Courts would probably order their discharge. In the absence of any legislative provision to the contrary, they could hardly do otherwise. In this country, an instance occasionally occurs,

but we are not aware that in England it has ever been issued. The subject is encumbered with difficulties, unquestionably, but the absence of all law is not attended with less. If such persons are to be held in durance ever after, whatever may be their mental condition, the law should say so unmistakably. If, on the contrary, the term of their confinement is to depend at all on their mental condition, then the law should prescribe the circumstances which authorize their discharge. It can scarcely be questioned that they ought not to be discharged while their insanity continues, unless its form becomes so changed as to be no longer dangerous. Nor can there be any question as to the propriety of their discharge when they have fully recovered, and are not likely to become again insane. Here comes the peculiar difficulty of the case, for however rational the person may appear, there may be reason to believe that the attack will be renewed at some time or other, and with it the renewal of the criminal propensity or design. Is the probability of a renewed attack to be a bar against discharge, as long as life lasts? If not, then under what conditions is it to be withdrawn? If we were quite certain that the person would remain well but a month or two, no one would advise his discharge. If, on the contrary, we were certain that eight or ten years would elapse before the return of another attack, we might, with much reason, regard his farther detention as inhuman. But with regard to intermediate periods, with this strong element of uncertainty in the case, what provision can meet all the requirements of the case,—the exercise of proper humanity to the individual, and suitable protection to society. There can, obviously, be no fixed rule on this point, if we should desire to have one. The

English practice implies that the chance of another attack warrants a life-long confinement. This, however, is only a matter of opinion, and before adopting it, it will be proper to consider some facts in connection not sufficiently appreciated, we think, in England.

In the first place, the chance ought to bear some proportion to the consequence, for we instinctively feel that a very small chance cannot justify so tremendous a penalty. But who has calculated the chances? By what system of experiments has any conclusion on this subject been reached? All we know about it is, that some persons who have been insane and, in that condition, committed criminal acts, have experienced subsequent attacks, accompanied with the performance of criminal acts, and that others of this class have had no renewal of their disease, or if they have, it was free from any dangerous element. Unquestionably, society is entitled to all reasonable protection, but it is bound to make out a pretty strong case, before it can be justified in visiting one of the severest penalties of crime on a person guilty of no crime, but only the victim of a great misfortune. A woman who, in a fit of puerperal mania, kills her new born child can scarcely become a dangerous subject, after the age of child-bearing has passed. The homicidal impulses of recent mania, may not accompany the subsequent stage of dementia. Besides, we are to consider that discharge need not be unconditional. The law may require some securities from the friends or guardian, which would lead them to seasonable interference on the occasion of any subsequent attack.

Regarding the custody of this class of the insane, we take this opportunity to express our strongest disapproval of the common practice of placing them in hospitals for

the insane. It would take more time than this occasion would allow, to present all our reasons for this opinion. But when we consider that a large part of these persons, even in their best estate, are of the baser sort; that they all enter these little communities with the stain of crime upon their characters; that the juxtaposition of such discordant elements must necessarily be disagreeable to all parties, and productive of many painful scenes, and that the architectural arrangements of a hospital do not furnish that security which society requires,—bearing these things in mind, it would seem as if nothing more were required to prove the impropriety of the measure in question. The only suitable place for this class of the insane, is an establishment constructed and managed with sole reference to their requirements.

The responsibility of the insane for criminal acts is still regulated, both in this country and Great Britain, by the common law, which is loose, inconsistent, vague and vacillating. As it does not admit insanity to be, unconditionally, an excuse for crime, nothing short of the utmost diversity of opinion as to the kind and degree of the disease which should have this effect, could be expected. In fact, it would be difficult to indicate a single rule or principle on this subject, which may be considered as settled and universally admitted by Courts. The reason is obvious. Correct principles can be founded only on a large practical experience with the insane, while in fact the rules of law are actually laid down by men who may have seen, but never observed, even a single case. We feel, therefore, that we are not going beyond our rightful province in indicating what we consider as correct principles respecting the criminal responsibility of the insane,—principles that rest on a large

and accurate observation of the unsound mind. This we must do, however, without discussing the imperfections of the law, for that would require more attention than this occasion would admit.

The only general rule we are disposed to sanction, is that which has long been recognized in the French Code and in the statutes of some of our own States. It is, that no person shall be deemed guilty of a crime who was insane when it was committed. This rule, if adopted unconditionally and without reference to the common law, would render the legal consequences of monomania, delusion, and other mental infirmities no longer a matter of question. We would not say that insanity, necessarily, in each and every case, annuls responsibility, but, the existence of the disease being established, it should be held to have this effect, until the contrary is shown—until it can be proved, beyond a reasonable doubt, that the criminal act was not the offspring of the disease, nor in any way connected with it. Nothing less than this ought humanity to claim ; nothing more should society ask.

A great imperfection in our present mode of criminal procedure, is the absence of any provision for ascertaining the mental condition of the party accused. If he have friends able and willing to assist him, they may procure the attendance of experts at the trial who will give their opinion, directly or indirectly, on the evidence. They may even visit him in jail previous to trial, and there learn all that can be learned in a few casual interviews. These opportunities for ascertaining the mental condition often fail entirely of any satisfactory result, for lack of that steady, persistent observation which can only be maintained in a hospital for the insane. Besides, at

present, it may sometimes happen that the plea of insanity is not anticipated by the government, and, of course, not met, as it might otherwise have been, by rebutting evidence. Wisely, therefore, the State of Maine provides that a person waiting trial for any criminal act, shall be placed by the court in a hospital for the insane, when satisfied that the plea of insanity will be made in his defence, there to be detained until the officers of the institution shall have formed an opinion respecting his mental condition. Such a provision should be adopted in every State.

As to the legal consequences of insanity in civil cases, it is impossible to make any statutory provisions beyond the few affirmatory of some general principles that seem to be universally recognized, and of a few more that ought to be. During the last hundred years, the tendency of public sentiment has been, more and more, to protect the insane from the usual consequences of their civil acts; and both humanity and science now demand the recognition of the general principle, that insanity should vitiate every civil act without good reason to the contrary. These reasons, for instance, are the honesty and good faith of the other party, and his ignorance of any mental infirmity in the person he was dealing with; the necessities of the insane person; the absence of fraud or undue advantage; and the unquestionable benefit, at the time of the transaction, to the insane party. As all these reasons have received the sanction of judicial decision, it seems hardly necessary to make them a part of the statute law. In one instance, at least, the Legislature has, unquestionably, gone too far in the endeavor to improve or modify the common law. In some States, it is made one of the qualifications of

the will-making power, that the testator should be of sane mind. Of course, if this expression is to be applied in its literal and common meaning, no insane person, whatever the form of his disease, could make a valid will—a result the very opposite to that which is favored by a true sense of right and the uniform practice of Courts. No mischief has been allowed to follow, simply because Courts have no hesitation, in this case nor in some others, in construing the language of the statute by the principles of the common law. It is better for the Legislature to enact nothing that is not strictly correct, and, at the same time, to provide against any glosses upon its meaning derived from the common law.

How far the insane are responsible in a civil suit for their aggressions, is a point not yet clearly settled in law. In the matter of *tort* and *trespass*, as they are called, it is an undisputed principle that the insane are liable for damages in a civil suit. Fault has been found with it, more probably from the hardship of its operation in particular cases, than any real injustice in the general principle. The subject is encumbered, no doubt, with difficulties that cannot be easily overcome by legislation. They can only be met, more or less completely, by the discretion of courts and juries. There seems to be no way of avoiding the general conclusion, that inasmuch as the ultimate consequences of an insane person's acts must fall either upon himself or the aggrieved party, it ought in justice to be the former. He may be innocent of any intention to do wrong, abstractly considered; he may be unconscious even of having done anything; yet the injury is no less real, while the aggrieved party is equally innocent of intention or consciousness of wrong. It may be objected, perhaps, to this view of the matter,

that such acts should be regarded as the visitation of Providence, or, to use the legal phrase, the act of God, the consequences of which, like those of storm or fire, should be borne exclusively by the aggrieved party. They often, certainly, seem to have this character, and it would be little better than heathenism to treat them as the acts of a rational being. On the other hand, they are sometimes just as clearly the offspring of obstinacy, carelessness, and reckless disregard of the public welfare. But where is the line to be drawn? What legal procedure will enable us to change the consequences of the act in question from one party to the other, according to the merits of the case? When the injury is small, and can be repaired without any serious detriment to the estate of the insane party, the course seems to be perfectly clear; but let the damage be sufficiently great to absorb his whole estate, we then hesitate and look around for some other principle to guide our steps. In this dilemma, we know no better course than to make the general rule in favor of the aggrieved party, and to graduate the amount of damages by the pecuniary means of the parties, to the provocation sustained by the defendant and any other circumstances which, in a criminal suit, would furnish ground for mitigation of punishment.

In the appointment of a guardian, the procedure differs considerably in different States. In some it is made a necessary consequence of isolation. In some it is made a function of the Probate Court; in others, it is entrusted to a commission, general or special, with or without a jury. Considering the pecuniary condition of the parties, that method should have a decided preference which is attended with the most dispatch and the least expense.

In most of the New England States, the Court of Probate summons the parties to appear before it, makes inquiry into the case, and determines accordingly. Unquestionably, this method secures the ends of justice as effectually as that of a large and costly Commission of Lunacy. There is one objectionable feature, however, in all these methods,—that of serving the notice upon the person who is the object of the inquiry. The effect of this measure upon the disordered imagination of the patient, is but poorly paid for by any fancied requirement of justice. In fact, the process, after all, is little better than a farce, for the court does not expect that the person, even if under duress, will be brought before it; and if satisfied by competent evidence of the insanity of the party, it may not ask for the reason of his absence. Now this is very loose and uncertain practice. If the party must be summoned, the court should insist on his production. If the condition of the patient would sometimes render this quite impracticable, then it is but a cruel mockery to read the writ; and if the reading of the writ may be waived in one case for good and sufficient reasons, then it may in others without necessarily defeating the ends of justice. In the State of Rhode Island, where the writ is directed to a patient in the hospital, it is not read to him, if in the opinion of the physician such reading would be likely to be detrimental to his health. This is a wise provision and worthy of universal adoption. It saves no trifling amount of mental distress, and cannot promote any improper end. It does not debar the court from having an interview with the patient, if it be thought desirable, as it would, were there any reason to suspect the propriety of the transaction.

Of all civil acts performed by the insane, none other

is so frequently litigated as that of making wills, and yet there is no one which has been so little the subject of legislative enactment. And we may also add, there is no one in regard to which the rules of law, as recognized in judicial decisions, are so conflicting and unsettled. In view of the fact that the insane often retain their mental powers unimpaired to some extent, and perform many acts in a rational and judicious manner, the common law assumes that insanity does not necessarily deprive one of the testamentary capacity. And this seems to be the only principle in the matter which is universally admitted. In many cases it is a question of capacity—the mental infirmity consisting of a want of power, of ability to comprehend and appreciate a variety of relations of persons and property, rather than a derangement which confuses and distorts the perceptions, so that when the patient recovers, he looks back upon those acts which, to a casual observer, seemed so rationally and correctly performed, with surprise and dismay. The common law abounds in tests of testamentary capacity, which, however correct they may be as the recognition of a general principle, cannot, in the nature of things, admit of a practical application. Common sense and common equity require that the mind should be adequate to accomplish the purpose which it undertakes. If it is a question of capacity, the testator should be able to remember and call to mind those, at least, who are near of kin, to appreciate their various claims on his bounty, and understand, with some degree of clearness, the relations of value. If it is a question of mental obliquity of limited extent, it is equally imperative that no shadow of disease should come between the mind of the testator and the heirs-at-law. The legislator,

however, can do little more than to affirm the general principle, that in cases of doubtful testamentary capacity, it shall be incumbent on the party setting up the will to prove that the testator was able to comprehend the various relations implied in the particular act, and was free from all morbid influences in his views and feelings towards those who are the natural objects of his bounty.

Having thus considered the objects for which legislation seems to be required, we may now inquire how far they have been met in the existing laws of the different States. For this purpose, we have examined the statutes of nearly all the loyal States, and find that with all our noted proclivity to legislation, it has, on this subject—in most of its aspects, at least—been exceedingly meagre and defective. The course of practice has always been regulated by the common law; and it is only where some peculiar exigency, arising out of the very different condition of American society, has rendered its provisions quite inapplicable to our purpose, that Legislatures have undertaken to supply the defect by statutory laws. For instance, the establishment of hospitals for the insane, created and supported by the State, has made it necessary to determine exactly the relation between the hospital and the community. So, too, the absence of any chancery court has rendered it necessary to provide for the guardianship of the insane, by means of some other judicial power; and the great variety of arrangements thus resorted to exemplifies a tendency of the mind, which might well engage the attention of the philosophical inquirer.

Before the introduction of hospitals, the insane were so generally and closely secluded from public notice as to be overlooked by the Legislature, which, consequently,

did little to secure their rights or promote their comfort. And even when it became necessary to recognize their existence as a class by providing establishments for their cure or custody, no apprehension was excited that these might be wrongfully used for the detention of sane men. The friends of the insane were allowed to keep them at home, or place them in hospitals, as they pleased, without any sanction of law. This right of friends so to do has been clearly and explicitly confirmed, so far as we can learn, in no other States but Rhode Island, New Hampshire and New Jersey. Even in Massachusetts, where there has been more legislation regarding the insane than in any other State, the Supreme Court, in a case that came up for adjudication, a few years since, was obliged, in the admitted absence of any statute to the purpose, to rest this right of the friends, on "the great law of humanity." True, in some States the right may be implied in the conditions prescribed for the admission of persons into the public hospitals. In Rhode Island, the only conditions required are an application for admission by some respectable person, and a certificate of insanity signed by a regular physician, and, these conditions being complied with, the hospital is exempted from all responsibility on the patient's account. In a few States this right of disposal on the part of friends has been curtailed by positive enactments. Thus, in Maine, it is confined to minor children, and can be exercised only within thirty days after the attack begins. In all other cases, application must be made to the municipal authorities, who, if satisfied, on inquiry, that the person is insane, and that his safety and comfort, and that of others interested, would thereby be promoted, they order his committal to the hospital, there to be detained until

restored, or otherwise discharged by due process of law. In Illinois, married women and minor children may be placed in the State hospital by husbands, parents and guardians. In other cases, the friends must make application to the county court, by which the case is given to a jury of six, whose verdict decides its disposal.

Every State provides, as a measure of police, for the isolation of such insane persons as are found dangerous to be at large, and whose friends, if they have any, are unable or unwilling to care for them, or prefer that the measure should be executed by due course of law. Authority for this purpose is, in most States, given to justices of the peace—one or more—or judges of law or probate. In Connecticut and Indiana, it is given to the municipal officers. In most States these tribunals make direct inquiry, and their decision is final. In Massachusetts, the judge must give the case to a jury, if the party desire it. In Indiana, the jury trial is imperatively provided, and it is accompanied by some singular conditions. The jury swear that they have no interest in the case, are not related to the party, and have no prejudice against him. If they find him not insane, the cost of the proceeding falls on the complainant, but he or any one else has the right of appeal from this decision, to the Court of Common Pleas, which causes the case to be retried. If, however, the jury find him to be insane, he is placed in charge of some person, and within ten days the justice reports the case to the Court of Common Pleas, by whose direction the same proceedings are repeated, and followed by the same legal consequences. In Maryland, cases of this kind are brought before the Circuit Court of the county, or the Criminal Court of

Baltimore, by which a jury of twelve is summoned and directed to try the question of insanity.

In most States, the municipal authorities are empowered to isolate insane paupers, usually, but not universally, on the strength of a medical certificate. In New Jersey the overseer of the poor applies to a judge of the County Court, by whom the pauper is sent to the hospital, if satisfied by the report of two physicians that it is a curable case. In Maryland, they are subjected to the same course of proceeding as persons dangerous to be at large. In Massachusetts, paupers having no settlement in the State may be committed by two justices of the peace.

In all these instances, it will be observed, the power thus exercised is discretionary. In New York, it is compulsory, the law providing that paupers *shall*, in a greater or less degree, enjoy the benefits of a hospital for the insane. This, unquestionably, is right, but it would be idle to make it a part of the general law until sufficient hospital accommodation has been provided for the purpose.

For the most part, persons acquitted on a criminal trial, on the ground of insanity, are sent by the court to some place of confinement—to the State lunatic hospital, if there is one; otherwise to the county jail or state prison. It is presumed that the insanity which led to the criminal act has continued up to the time of trial. In most States, no provision is made for establishing this fact, on the presumption, probably, that whether recovered or not, the party is liable to have another attack when he would be dangerous to be at large. In New Jersey, it is provided that such persons shall be committed to the asylum, if the court is satisfied, on careful

inquiry, that the insanity continues. So, too, in Maryland, the party is ordered to be confined in the almshouse hospital or other place, if found to be insane at the time of trial. In Rhode Island, if the court consider the party dangerous to be at large, it certifies that fact to the Governor, who orders him to be placed in a hospital. In Pennsylvania these persons are either sent by the court to a hospital, or delivered to their friends, guardians, or overseers of the poor, they recognizing in sufficient security against harm.

In regard to the discharge of this class of patients, we find, in American legislation, every variety of practice except the proper one. In Maine they may be discharged by a judge of the Supreme Court, or by two justices of the peace, one chosen by his friends and the other by the trustees of the hospital, on satisfactory proof that, if enlarged, they would not be dangerous to the peace and safety of the community. In Connecticut, the court may entrust their custody to any person who will enter into a suitable recognizance to confine them as the court may direct. In Massachusetts, they may be discharged at the discretion of the court. In New Jersey and New York, they may be discharged by the court, "if it shall appear safe, legal and right." In New Hampshire and Maryland, they are to be retained "until recovered, or discharged by due course of law," whatever that may be.

In Maine, persons on trial for crime and pleading present insanity are sent by the court to the insane hospital for the purpose of observation. The same course is taken previous to the trial, if the court is satisfied that the plea of present insanity will be made. Persons who escape indictment on the ground of insanity when the act was committed, are also sent to the hospital. In the

same way they are disposed of in Massachusetts, New Jersey and New York, unless the court is satisfied that they have recovered or that their going at large would not be dangerous to society, in which case they would be discharged.

The discharge of persons from confinement, other than such as are committed by some legal process, is effected, in practice, by the parties that provoked the confinement, though this right is expressly recognized no where but in Rhode Island. There, too, the right is also given to any person who may have come under obligation to secure the payment of the party's expenses, and has no other way of closing the obligation but that of removing the patient.

Where the patient is committed by some legal process, the usual course is, for the authority that commits to discharge also, but there are many variations from the rule. In Massachusetts, the trustees of the state hospitals may discharge patients committed by justices of the peace, judges of the courts, or municipal authorities. In Maine, where the patient is committed by the municipal authorities, the party liable for his support may, six months afterwards, and not before, apply to these authorities, who inquire into the case, and either cause his removal or order his continuance. At the end of six months this process may be repeated.

The laws of every State provide for the guardianship of the insane, but with a great diversity of practice. In Maine, Massachusetts, Rhode Island and Connecticut, the measure is accomplished by a decree of the Probate Court, which makes inquiry into the case; in New Hampshire, by decree of same court, the municipal authorities having first made inquisition, and reported

the person to be insane; in Indiana, by decree of the same court, if a jury, appointed by the court, find the person insane and a fit subject for a guardianship; in New Jersey, by authority of the Court of Chancery, which appoints a commission of inquiry, whose results are transmitted to the Orphans' Court of the county, with directions to appoint a guardian; in Kentucky, by decree of the Circuit or Chancery Court of the county, if the party is found to be insane, by a jury appointed by the court. In Pennsylvania and New York, the old English practice still continues, except that the commission issues from the Court of Common Pleas in the one, and the Supreme Court in the other, instead of the Chancery Court. In the former, the commission consists of one or more persons; in the latter, of three. In the former the jury consists of not less than six nor more than twelve; in the latter, of not less than twelve nor more than twenty-four. The verdict of the jury is transmitted to the court, and in accordance therewith, the court decides. In the latter, parties adverse to the measure may petition to have the inquisition set aside, or for leave to traverse it, which leave is or is not given by the verdict of a jury ordered for that purpose. In Pennsylvania, a married woman is placed under guardianship if found to be insane by a committee of three appointed by her husband.

Whether the party is to be notified of the proposed measure, and whether, if notified, he is to appear in court, are points, too, on which there is a variety of practice. Wherever there is a jury trial, the presence of the party is expected, but, of course, whether the law actually provides for the contingency or not, this must be dispensed with if his physical or mental condition

renders his absence imperative. Under this procedure, the person must necessarily be notified. In New Hampshire the person is both notified and personally inspected by the authorities. In Massachusetts the reading of the notice is imperative, but the presence of the party in court is neither expected nor desired. In Rhode Island the party is not expected to appear, nor is the notice to be read to a person confined in the hospital, if, in the opinion of the Superintendent, it would probably be prejudicial to his health of body or mind. In Connecticut, it is enough for the officer to leave the notice at the party's usual place of abode. In Maine, neither the notice nor the presence of the party is required.

The guardian is usually discharged by the same authority that appointed him, and by a similar course of procedure. It will be hardly worth our while to notice the little varieties of practice which may be found in different States.

In regard to other civil relations of the insane but little has been enacted in this country, the common law being supposed to be adequate to every emergency.

In Pennsylvania, the insane are not liable to arrest or imprisonment on mesne or final process in any civil action.

In Massachusetts, Rhode Island, Pennsylvania, and New York, the statutes require, as one of the qualifications of the testamentary power, that the testator shall be of "sane mind." Still, this language, unconditional as it is, is never construed literally by the courts of those States, which have never held that insanity in whatever form necessarily disqualifies one from making a will, but on this subject have always been guided by the doctrines of the common or the civil law.

Having now indicated the kind of legislation required by the progress of knowledge and proper regard for the rights of men, and exposed deficiencies of all actual legislation, the committee have concluded that they would fulfil the object for which they were appointed, by preparing the project of a general law, suitable, so far as it goes, for the circumstances of every State. In framing its several provisions, it has been their endeavor to meet the requirements of the case in a direct, simple manner, in conformity with the usages of the community, and free from unnecessary prolixity and expense; to recognize and make effective the established facts of science; to guard against abuses and secure the highest welfare of all parties concerned, and to cover the whole ground which the subject fairly presents. It is not expected that all existing laws shall be discarded in favor of these. Where any object here proposed is already provided for, though in a little different manner, it becomes a simple question of expediency whether any change should be made. Modes of procedure which have become familiar to a community may, for that reason, be preferable to others better calculated, on the whole, abstractly considered, to promote the object in view. With the relations between the State Government and the State hospitals, which are necessarily the subject of some legislation, we have not thought it proper to interfere. No principle is involved in the matter, and every State may be safely left to manage its own establishments in its own way.

PROJECT OF A GENERAL LAW FOR DETERMINING THE LEGAL
RELATIONS OF THE INSANE.

1. Insane persons may be placed in a hospital for the insane, by their legal guardians, by their relatives or friends in case they have no guardians, and, if paupers, by the proper authorities of the towns or cities to which they are chargeable, but in all cases according to the rules hereinafter mentioned for the admission of persons into such hospitals.

2. Insane persons may be placed in a hospital or other suitable place of detention by order of a magistrate, who, after proper inquisition, shall find that such persons are at large, and dangerous to themselves or others, while the fact of their insanity shall be certified by a responsible physician.

3. Insane persons may be placed in a hospital by order of any Justice of the Supreme Judicial Court, after the following course of proceedings, viz : on statement in writing of any respectable person, that a certain person is insane, and that the welfare of himself or of others requires his restraint, it shall be the duty of the judge to appoint immediately a commission, who shall inquire into and report upon the facts of the case. If, in their opinion, it is a suitable case for confinement, the judge shall issue his warrant for such disposition of the insane person as will secure the objects of the measure.

4. The commission provided in the last section shall be composed of not less than three nor more than four persons, one of whom, at least, shall be a physician and another a lawyer. In their inquisition they shall hear such evidence as may be offered touching the merits of

the case, as well as the statements of the party complained of, or of his counsel. The party shall have seasonable notice of the proceedings, and the judge is authorized to have him placed in suitable custody while the inquisition is pending. The expenses of the inquisition shall be defrayed from the estate of the party alleged to be insane. If he have no estate, then they are to be paid by the party making the request for the inquisition.

5. On a written statement being addressed by some respectable person to any Justice of the Supreme Judicial Court, that a certain person then confined in a hospital for the insane, is not insane, and is thus unjustly deprived of his liberty, the judge shall appoint a commission of not less than three nor more than four persons, one of whom, at least, shall be a physician and another a lawyer, who shall hear such evidence as may be offered touching the merits of the case, and, without summoning the party to meet them, shall have a personal interview with him, so managed as to prevent him, if possible, from suspecting its objects. They shall report their proceedings to the judge, and if, in their opinion, the party is not insane, the judge shall issue an order for his discharge. The expenses shall be defrayed as in the last section.

6. The commission provided for in the last section shall not be repeated, in regard to the same party, oftener than once in six months; and in regard to those confined under the third section, such commission shall not be appointed within the first six months of their confinement.

7. Persons confined in a hospital under the first section of this act, may be removed therefrom by the party that placed them in it.

8. Persons confined in a hospital under the second section of this act, may be discharged by the order of a magistrate, unconditionally, if recovered, and if not recovered, on recognizance being entered into by competent authority.

9. On statement in writing to a Justice of the Supreme Judicial Court, by some friend of the party, that a certain party confined in a hospital under the third section, is losing his bodily health, and that consequently his welfare would be promoted by his discharge ; or that his mental disease has so far changed its character as to render his farther confinement unnecessary, the judge shall make suitable inquisition into the merits of the case, and according to its result, may or may not order the discharge of the party.

10. Persons confined in any hospital for the insane may be removed therefrom, by parties who have become responsible for the payment of their expenses ; provided that such obligation was the result of their own free act and accord, and not of the operation of law, and that its terms require the removal of the patient in order to avoid farther responsibility.

11. Superintendents of hospitals for the insane shall receive no person into their custody, under the provisions of the first section, without a written request from the party therein authorized to make it, and a certificate of insanity from some regular physician.

12. Insane persons shall not be made responsible for criminal acts in a criminal suit, unless such acts shall be proved not to have been the result, directly or indirectly, of insanity.

13. Insane persons shall not be tried for any criminal act during the existence of their insanity ; and for set-

ting this issue, one of the judges of the court by which the party is to be tried, shall appoint a commission consisting of not less than three nor more than four persons, one of whom, at least, shall be a physician, who shall examine the accused, hear the evidence that may be offered touching the case, and report their proceedings to the judge, with their opinion respecting his mental condition. If it be their opinion that he is not insane, he shall be brought to trial; but if they consider him insane, or are in doubt respecting his mental condition, the judge shall order him to be confined in some hospital for the insane, or some other place favorable for a scientific observation of his mental condition. The person to whose custody he may be committed shall report to the judge respecting his mental condition, previous to the next term of the court; and if such report is not satisfactory, the judge shall appoint a commission of inquiry, in the manner just mentioned, whose opinion shall be followed by the same proceedings as in the first instance.

14. Any person in confinement, waiting trial for crime, shall be examined by a commission appointed and constituted as in the last section, by any judge of the court by which he is to be tried, when satisfied that there are reasonable grounds for suspecting the person to be insane; and the report of the commission shall be followed by the same proceedings as in the last section.

15. Whenever any person is acquitted in a criminal suit, on the ground of insanity, the jury shall declare this fact in their verdict, and the court shall order the prisoner to be committed to some place of confinement, from which he may be discharged in the manner provided in the next section.

16. If any Judge of the Supreme Judicial Court shall

be satisfied by the evidence presented to him, that the prisoner has recovered, and that the paroxysm of insanity in which the criminal act was committed, was the first and only one he had ever experienced, he shall order his unconditional discharge; if, however, it shall appear that such paroxysm of insanity was preceded by, at least, one other, then the court shall appoint a guardian of his person, and to him commit the care of the prisoner, said guardian giving bonds for any damage his ward may commit.

17. If it shall be made to appear to any Judge of the Supreme Judicial Court, that a certain insane person in the custody of his friends is manifestly suffering from the want of proper care or treatment, he shall order such person to be placed in some hospital for the insane, at the expense of those who are legally bound to maintain him.

18. Application for the guardianship of an insane person shall be made to the Judge of Probate, who, after a hearing of the parties, shall grant the measure, if satisfied that the person is insane, and incapable of managing his affairs discreetly. Seasonable notice shall be given to the person who is the object of the measure, if at large, and, if under restraint, to those having charge of him, but his presence in court, as well as the reading of the notice to him, may be dispensed with, if the court is satisfied that such reading or personal attendance would probably be detrimental to his mental or bodily health. The removal of the guardianship shall be subjected to the same mode of procedure as its appointment.

19. Insane persons shall be made responsible in a civil suit, for any injury they may commit upon the persons or property of others; reference being had in regard to

the amount of damages, to the pecuniary means of both parties, to the provocation sustained by the defendant, and any other circumstance which, in a criminal suit, would furnish ground for mitigation of punishment.

20. The contracts of the insane shall not be valid, unless it can be shown, either that such acts were for articles of necessity or comfort suitable to the means and condition of the party, or that the other party had no reason to suspect the existence of any mental impairment, and that the transaction exhibited no marks of unfair advantage.

21. A will may be invalidated on the ground of the testator's insanity, provided it be proved that he was incapable of understanding the nature and consequences of the transaction, or of appreciating the relative values of property, or of remembering and calling to mind all the heirs-at-law, or of resisting all attempts to substitute the will of others for his own. A will may also be invalidated on the ground of the testator's insanity, provided it be proved that he entertained delusions respecting any heirs-at-law, calculated to produce unfriendly feeling towards them.