Sir George Grey's Amended Act.

"THE announcement by Sir George Grey that it was 'the intention of her Majesty's Government to propose an amendment' of the Insane Prisoners Act, gave universal satisfaction, as affording a hope that we might thereby gain some compensation for the lamentable miscarriage of justice in the Townley case. Probably, some simple-minded lovers of 'the true and just' hoped for even more than this. They may have reasoned—'the whole law relating to criminal insanity is felt by all to be in a most unsatisfactory state; there are no great and engrossing subjects of domestic policy to absorb the time and energies of Government and Parliament; while the consideration of criminal insanity, in some degree, will be forced upon them by this Act: surely, then, we may look for some large and statesmanlike measure of legislation on the subject.' Well, the Home Office has been in labour on the matter; and what has it brought forth? We cannot make use of the well-known classical quotation on the occasion; for the entire absence of any grandeur or loftiness of conception in the present 'superior clerk' of that department of the Government would render that degree of comparison between parent and bantling ludicrous; but if the throes of parturition are in any measure proportioned to the product, the friends and admirers of Sir George Grey may, at any rate, feel assured that his health and strength have not undergone any severe strain. The proposed legislation is confined to the amendment of Act 3 and 4 Vict., cap. 54; and what does the amendment amount to? The certificate of insanity is to be signed 'by two or more of the visiting justices,' instead of 'by any two justices,' and 'by two physicians or surgeons selected by them,' instead of 'by any two physicians or surgeons;' and on the receipt of such certificate, the Secretary of State 'may, if he think fit,' direct further inquiry into the case before directing the removal of the prisoner, while the present Act only provides that 'it shall be lawful' for him to order such removal at once. The amended Act is to apply to England alone, so that there will be 'one law in operation in England, another in Scotland, and another in Ireland.' It seems a very sorry piece of patchwork legislation; but it was foolish to hope for more. We must suppose that Sir George Grey approved of the present Act, or it would have been amended long ere this; and as legislation on the matter has only been forced from him by popular indignation, it is natural that he should do as little as possible, and should make the amended Act as like as possible to the present one. Still, the amendments are improvements; and we are taught that we ought to be thankful for even the smallest mercies, though it is scarcely to his civil governors that an Englishman looks for such teaching. How the amended law is to be set in action does not appear on the face of it. Sir George Grey says, 'by those who have to act;' but the phrase, 'if any person . . . . . shall appear to be insane,' is precisely the same in both Acts, and we know that in Townley's case the Act was set in motion by his own solicitor. That the justices shall be 'two or more of the visiting justices,' may be an improvement on the 'any two justices,' but certainly a very infinitesimal one, for the visiting justices do not appear to be appointed on account of any other fitness than the propinquity of residence to the gaol. That the required 'two physicians and surgeons' should be selected by the visiting justices, instead of by the friends or solicitor of the prisoner, is a decided change for the better; though it cannot be said that any assurance is thereby given that these gentlemen should be selected on account of their possessing any experience of insanity, or any special skill in the diagnosis of mental disease,

https://doi.org/10.1192/bjp.10.49.132 Published online by Cambridge University Press

or in unravelling complex and difficult points of evidence; nor is any safeguard given against their being men ruled by special theories of insanity or moral depravity. We do not learn what is to be the form of the certificate. The present Act simply states that 'it shall be duly certified by such justices and such physicians and surgeons that such person is insane;' but as it is required that ordinary certificates of lunacy shall state the symptoms on which the diagnosis had been formed, we must suppose that the words 'duly certified' mean that the certificate shall be framed like the ordinary legal certificate of insanity; it would be an injustice to Sir George Grey to imagine that it need be only 'a deliberate and recorded opinion,' without containing the grounds on which that opinion had been arrived at. We allow, then, that Sir George Grey's Amendment Act will be better than the Act 3 and 4 Vict.: but, at the same time, we think that this mode of determining as to the sanity or insanity of a condemned criminal is inadequate and wrong. It will, we believe, be generally felt that it is not fit or just that such an inquiry should be committed to a private tribunal composed of two or more justices, and two medical men of their selection. Publicity is the very genius of English justice, and it is imperative that it should be afforded as far as possible under all circumstances. Questions of insanity are, perhaps, not always best tried by ordinary juries; and in the case of a prisoner condemned to death, and after conviction reputed insane, what is called the true English mode of trial by judge and jury would probably be too slow and cumbersome a means of arriving at the truth. The examination ought, we think, to be entrusted to a commission appointed by Government; and their report should be made public, whatever their decision may be. And, we believe further, that the commission ought to consist of medical men eminent for their experience and knowledge of insanity—the very subject, that is, about which the inquiry has to be made. The opinions expressed in the House of Commons during the debates on Sir George Grey's bill on the unfitness of medical practitioners to deal with this question, would be amusing, were not the matter one of such vital importance. Some members would permit of a mixed commission, composed of medical men and lawyers, while others would not admit medical men at all; and the latest and most pregnant proofs of the soundness of these opinions are the reports of the two commissions in Townley's case;—the first from a mixed commission, having been a hesitating compromise, which left the matter pretty much where it was before; while the second, composed of medical men only, was so clear, logical, decided, and scientific, that it satisfied every one, and removed all the doubt and confusion which had gathered round the case. As to the machinery by which Government should be moved to appoint a commission, we are inclined to think that a statement from the governor and surgeon of the gaol, that such and such a convict had become insane, would meet all requirements. It is greatly to be regretted that Government has not seen fit to take the opportunity of amending the law generally as regards criminal insanity, and of making it more consonant with the knowledge, science, and humanity of the age; and we cannot but hope that Sir Fitzroy Kelly, or some equally competent private member of Parliament, may bring in a bill to supply the neglect of her Majesty's ministers.

"We cannot now discuss the question of how medical science may be best employed to elicit the truth in cases where insanity may be pleaded; but we would direct our readers' attention to an able and temperate pamphlet on 'Insanity and Crime,' lately put forth by the editors of the 'Journal of Mental Science,' in which they will find some very judicious and admirable remarks on the subject."—*Medical Times and Gazette*, February 27.

https://doi.org/10.1192/bjp.10.49.132 Published online by Cambridge University Press