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MEDICAL JURISPRUDENCE OF INSANITY.

A TREATISE

ON THE

MEDICAL JURISPRUDENCE OF INSANITY.

BY I. RAY, M.D.

FOURTH EDITION, WITH ADDITIONS.

BOSTON:
LITTLE, BROWN AND COMPANY.
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PREFACE

TO THE FIRST EDITION.

Few, probably, whose attention has not been particularly directed to the subject, are aware how far the condition of the law relative to insanity is behind the present state of our knowledge concerning that disease. While so much has been done, within a comparatively short period, to promote the comfort of the insane, and so much improvement has been effected in the methods of treating their disorder, as to have deprived it of half its terrors, it is both a curious and a melancholy fact, that so little has been accomplished towards regulating their personal and social rights, by more correct and enlightened principles of jurisprudence. While nations are vying with one another in the excellence of their public establishments for the accommodation of this unfortunate class of our fellow men, and physicians are every year publishing some instance of an unexampled proportion of cures, we remain perfectly satisfied with the wisdom of our predecessors in every thing relative to their legal relations. This, no doubt, is mainly the fault of medical men themselves, who have neglected to obtain for the results of their researches, that influence on the law of insanity, which they have exerted on its pathology and therapeu-

tics. In general treatises on legal medicine, this branch of it has always received a share of attention; but the space allotted to it is altogether too limited to admit of those details which can alone be of any really useful service; and it is one of those branches on which the author is usually the least qualified by his own experience, to throw any additional light. Insanity itself is an affection so obscure and perplexing, and the occasions have now become so frequent and important when its legal relations should be properly understood, that an ampler field of illustration and discussion is required for this purpose, than is afforded by a solitary chapter in works of this description.

Notwithstanding the great prevalence of insanity in Great Britain, and the vast amount of property affected by legal regulations and decisions respecting it, yet the English language does not furnish a single work in which the various forms and degrees of mental derangement are treated in reference to their effect on the rights and duties of man. Dr. Haslam's tract on *Medical Jurisprudence as it relates to Insanity* (1807), which was republished in this country in 1819 by Dr. Cooper, in a volume of tracts by various English writers on different subjects of medical jurisprudence, though abounding in valuable reflections, is altogether too brief and general, to be of much practical service as a book of reference. Among a few other works more or less directly concerned with this subject, or in which some points of it are particularly touched upon, the *Inquiry concerning the Indications of Insanity* (1830), by Dr. Conolly, late Professor in the London University, is worthy of especial notice in this connection, for the remarkable ability and sound judgment with which all its views are conceived and supported. Though not entirely nor chiefly devoted to the legal rela-

tions of the insane, yet the medico-legal student will find his views of insanity enlarged and improved by a careful perusal of it; and every physician will do well to ponder the suggestions contained in the chapter on the "*Duties of medical men when consulted concerning the state of a patient's mind.*" In the JUDGMENTS of Sir John Nicholl (contained in Haggard, Phillimore, and Addams's Reports), in the Ecclesiastical Courts, which in their jurisdiction of WILLS have frequent occasion to inquire into the effect of mental diseases on the powers of the mind, are also to be found, not only some masterly analyses of heterogeneous and conflicting evidence, but an acquaintance with the phenomena of insanity in its various forms, that would be creditable to the practical physician, and an application of it to the case under consideration, that satisfies the most cautious with the correctness of the decision.

In Germany this branch of legal medicine has received a little more attention, and in a work, entitled, *Die Psycologie in ihren Hauptanwendungen auf die Rechtspflege* (*Psychology in its chief Applications to the Administration of Justice*), by J. C. Hoffbauer, a Doctor of Laws and Professor in the University of Halle, and published in 1809, we had, till quite recently, the only complete and methodical treatise on insanity in connection with its legal relations. It bears the impress of a philosophical mind accustomed to observe the mental operations when under the influence of disease; it contains a happy analysis of some states of mental impairment; its doctrines are generally correct, and in many instances in advance of his own, and even of our time. Hoffbauer, however, not being a practical physician, was less disposed to consider insanity in its pathological than in its psychological relations, and consequently has attached

too little importance to its connection with physical causes, and to the classification and description of its different forms by means of which they may be recognized, and distinguished from one another. It is also too deeply imbued with the peculiar metaphysical subtleties in which his countrymen are so fond of indulging to suit the taste or convenience of the English reader. It has been translated into French by Dr. Chambeyron, with many valuable notes by Esquirol and Itard.

In France, M. Georget has cultivated this field of inquiry with a success proportioned to his indefatigable zeal and diligence; and his various writings will ever be resorted to by future inquirers, as they have been by the author of the present work, as to a fund of original and interesting information. Having long been devoted to the study of insanity, and especially to the observation of the manners and character of the insane, he was peculiarly well qualified to treat this subject in a spirit corresponding to the present condition of the science. His work entitled, *Des Maladies mentales considérées dans leurs rapports avec la législation civile et criminelle* (1827), is an admirable manual, and though but a humble brochure, it yet abounds with valuable information, and is pervaded by sound and philosophical views. In his *Examen médical des procès criminels des nommés Feldtman, Léger, Lecouffe* (1825), and his *Discussion médico-légale, sur la Folie* (1826), as well as a sequel to the last, entitled, *Nouvelle discussion médico-légale sur la Folie* (1828), he has collected accounts of numerous criminal trials in which insanity was pleaded in defence of the accused, and has taken the occasion to discuss the many important questions to which they give rise. In the course of these discussions there is scarcely a dark or disputed point in the whole range

of the subject, which he has not examined with great ability; and if he has not always settled them satisfactorily to the unprejudiced inquirer, he has at least afforded him the means of forming more clear and definite views.

On becoming aware of the deficiency in our medical literature, of works on insanity considered exclusively in its legal relations, it was the author's first thought to make a translation, either of Hoffbauer's or Georget's work, but considering that the numerous notes which would be required in order to bring it up to the present state of the science, and adapt it to our own laws, would prove inconvenient and embarrassing to the reader, besides not fully accomplishing the object, he was induced to abandon this project, and, as the only means of fairly developing the subject, to prepare an original work, — original strictly in plan and in many of its general views only, — for the materials have been necessarily drawn, in a great degree, from other sources than the author's own experience. The main object which he proposed to himself was, to establish the legal relations of the insane in conformity to the present state of our knowledge respecting their disease. In furtherance of this object, he has given a succinct description of the different species of insanity, and the characters by which they are distinguished from one another, so that the professional student may have some means of recognizing them in practice; and thence deducing, in regard to each, such legal consequences as seem warranted by a humane and enlightened consideration of all the facts. He is well aware that he has presented some views that will not, at first sight, meet with the cordial assent of all his readers. He can only say in justification, that they have appeared to him to be founded on well-observed, well-authenticated facts, and that as such, it was an imperative

duty required by the claims of humanity and truth, to present them in the strongest possible aspect. Before being condemned for substituting visionary and speculative fancies, in the place of those maxims and practices which have come down to us on the authority of our ancestors, and been sanctioned by the approval of all succeeding times, he hopes that the grounds on which these alleged fancies have been built, will be carefully, candidly, and dispassionately examined. Of the manifold imperfections of his work, no one can be more sensible than the author himself; but if it succeed in directing attention to the subject and putting others on the track of inquiry, it will, at the very least, have been followed by one beneficial result.

March 20, 1838.

PREFACE

TO THE FOURTH EDITION.

SINCE the first edition of this work was published, no part of Medical Jurisprudence has received so much attention, in one way or another, as that which relates to Insanity. During that period have appeared several works especially devoted to it, among which that of our own countrymen, Wharton and Stillé, possesses superior merits, while the cases in which it has been discussed in English and American courts, greatly outnumber the whole amount of those which had been previously recorded. In preparing the present edition of this work, however, it has formed no part of my purpose to notice all, or a considerable number of such cases, but I have rather sought, by means of some additions prudently made, to indicate the progress of the science, to supply important omissions, and to place some views in a stronger light. I take the opportunity to state, that an increased practical acquaintance with the subject, while it has occasionally led me to more precision and accuracy of statement, has not weakened my belief in those doctrines which have been regarded as peculiar to this work. On the contrary, every year's experience has only strengthened the conviction, that much of the common law relative to insanity, whatever other support it may have, has no foundation in the facts of science.

PROVIDENCE, *March* 1, 1860.

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MEDICAL JURISPRUDENCE

OF

INSANITY.

PRELIMINARY VIEWS.

STATUTES were framed and principles of law laid down, regulating the legal relations of the Insane, long before physicians had obtained any accurate notions respecting their malady; and, as might naturally be supposed, error and injustice have been committed to an incalculable extent under the sacred name of law. The actual state of our knowledge of insanity, as well as of other diseases, so far from being what it has always heretofore been, is the accumulated result of the observations which, with more or less accuracy and fidelity, have been prosecuted through many centuries, under the guidance of a more or less inductive philosophy. In addition to the obstacles to the progress of knowledge respecting other diseases, there has been this also in regard to insanity, that, being considered as resulting from a direct exercise of Divine power, and not from the operation of the ordinary laws of nature, and thus associated with mysterious and supernatural phenomena confessedly above our comprehension, inquiry has been discouraged at the very threshold, by the fear of presumption, or, at least, of fruitless labor. To this superstition we may look as the parent of many of the false and absurd notions that have prevailed

relative to this disease, and especially of the reckless and inhuman treatment once universally bestowed on its unfortunate subjects. Instead of the kindness and care so usually manifested towards the sick, as if it were a natural right for them to receive it; instead of the untiring vigilance, the soothing attention, the lively solicitude of relatives and friends; the patient, afflicted with the severest of diseases, and most of all dependent for the issue of his fate on others, received nothing but looks of loathing, was banished from all that was ever dear to him, and suffered to remain in his seclusion uncared for and forgotten. In those receptacles where living beings, bearing the image and superscription of men, were cut off from all the sympathies of fellow men, and were rapidly completing the ruin of their spiritual nature, there were scenes of barbarity and moral desolation, which no force of language can adequately describe. The world owes an immense debt of gratitude to the celebrated Pinel who, with an ardor of philanthropy that no discouragement could quench, and a courage that no apprehension of danger could daunt, succeeded, at last, in removing the chains of the maniac, and establishing his claims to all the liberty and comfort which his malady had left him capable of enjoying. With the new aspect thus presented, of the moral and intellectual condition of this portion of our race, the medical jurisprudence of insanity became invested with an interest, that has led to its most important improvements.

§ 2. In all civilized communities, ancient or modern, some forms of insanity have been regarded as exempting from the punishment of crime, and under some circumstances at least, as vitiating the civil acts of those who are affected with it. The only difficulty, or diversity of opinion, consists in determining who are really insane, in the meaning of the law, which has been content with merely laying down some general principles, and leaving their application to the discretion of the judicial authorities. Inasmuch as the greatest possible variety is presented by the mental phenomena in a state of health, it is obvious, that profound study and extensive observation of the moral and intellectual nature of man can

alone prevent us from sometimes confounding them with the effects of disease. It would seem, therefore, an almost self-evident proposition, that a certain knowledge of the mind in its healthful state, is an essential preliminary to the attainment of correct ideas concerning its diseased manifestations. If, in addition to this, it is considered, that opinions on the nature of insanity, viewed solely in the light of a disease, — of a derangement of the physical structure, — have been constantly changing for the better, it follows of course, that its legal relations, which should be determined in some measure by our views of its nature, ought to be modified by the progress of our knowledge. That much of the jurisprudence of insanity in times past, should bear marks of the crude and imperfect notions that have been entertained of its pathological character, is not to be wondered at; but, it is a matter of surprise, that it should be adhered to, as if consecrated by age, long after it has ceased to be supported by the results of more extensive and better conducted inquiries. It is to be feared, that the principles laid down on this subject by legal authorities, have been viewed with too much of that reverence which is naturally felt for the opinions and practices of our ancestors; and that innovations have been too much regarded, rather as the offspring of new-fangled theories, than of the steady advancement of medical science. "We own," says one of them with commendable candor, "that we cannot attribute the fuss that has been made about monomania during the last two years to any new lights that have been thrown on the nature or structure of the mind. We are far more inclined to ascribe it to that sickly humanity for which our juries have latterly become proverbial, and which generally has crept more into fashion than quite becomes the sturdy manliness for which our countrymen have long been celebrated. Our fathers and grandfathers troubled their heads but little with such subtleties in criminal proceedings; if their practice was less remarkable for its humanity, it certainly was more distinguished by good sense than our own."[1]

[1] Sir George Stephen. Juryman's Guide.

Who shall measure the extent of that feeling in the community, expressed in this honest avowal of a preference for the good old times when the plea of insanity was seldom heard, and an Old Bailey judge, undisturbed by the interference of counsel, could comfortably try and sentence to the gibbet some half dozen offenders, in a single morning? In their zeal to uphold the wisdom of the past, from the fancied desecrations of reformers and theorists, the ministers of the law seem to have forgotten that, in respect to this subject, the real dignity and respectability of their profession are better upheld, by yielding to the improvements of the times, and thankfully receiving the truth from whatever quarter it may come, than by turning away with blind obstinacy from every thing that conflicts with long-established maxims and decisions. In the course of the review proposed to be taken of the principles that have regulated the civil and criminal responsibilities of the insane, the reader will have constant opportunity to witness the influence of the spirit above condemned; and be inclined, perhaps, to consider it as the source of that striking difference, presented by the sciences of law and medicine, in the amount of knowledge they respectively evince on the subject of insanity.

§ 3. Legislators and jurists have done little more, than merely to indicate some of the most obvious divisions of insanity, without undertaking any thing like a systematic classification of its various forms. In the Roman law, the insane, or *dementes*, are divided into two classes; those whose understanding is weak or null, *mente capti*, and those who are restless and furious, *furiosi*. The French and Prussian codes make use of the terms *démence*, *fureur*, *imbécillité*, without pretending to define them. The English common law originally recognized but two kinds of insanity, *idiocy* and *lunacy*, the subjects of which were designated by the term, *non compotes mentis*, which was used in a generic sense, and meant to embrace all who, from defect of understanding, require the protection of the law. An occasional attempt has been made by jurists, to attach some definite ideas to these terms, and to point out the various descrip-

tions of persons, to whom they may be applied. Lord Coke says, there are four kinds of men, who may be said to be *non compotes mentis* : — 1. An idiot, who, from his nativity, by a perpetual infirmity is *non compos;* 2. He that by sickness, grief, or other accident, wholly loseth his memory and understanding; 3. A lunatic that hath sometimes his understanding, and sometimes not, *aliquando gaudet lucidis intervallis;* and therefore he is called *non compos mentis*, so long as he hath not understanding; 4. He that by his own vicious act for a time depriveth himself of his memory and understanding, as he that is drunken.[1]

§ 4. Nothing can show more plainly how imperfect were the notions of the early law-writers concerning insanity, than this classification of insane persons, and their attempts to define the several classes. An idiot is defined to be a person who cannot count or number twenty pence, or tell who was his father or mother, or how old he is, so as it may appear that he hath no understanding of reason, what shall be for his profit or what shall be for his loss; but if he have sufficient understanding to know and understand his letters, and to read by teaching or information, he is not an idiot.[2] Now the truth is, that many of those whose idiocy is unquestionable, are capable of attaining the kind of knowledge herein specified, by means of the ordinary intercourse with men, or of special teaching. The entire loss of memory and understanding, attributed to the second class, is observed only as a sequel to madness or some other disease, or as the result of some powerful moral causes; so that if this is to be considered an essential character of madness, by much the larger proportion of madmen will be altogether excluded from this classification; for, instead of wholly losing their understanding, they are for the most part perfectly rational on some topics, and in some relations of life; and a little effort is frequently necessary, in order to detect the fact of the understanding being at all impaired. Judging from the

[1] Coke's Littleton, 247 a.

[2] 1 Fitzherbert, Natura Brevium, 583, ed. 1652.

almost exclusive use of the term *lunacy*, and the frequent reference to lucid intervals, the intermittent character of madness was either more common, some hundreds of years since, or, which is more probable, in consequence of the general belief in its connection with lunar influences, this intermission was imagined to occur far oftener than it really did. This certainly is a more reasonable explanation, than the idea that the course of nature has changed, so that lucid intervals, which were once of the most common occurrence in insanity, are now among its rarest phenomena.

§ 5. Common sense and a tolerable share of the intelligence of the time, if fairly exercised, would probably prevent, in practice, any grossly improper application of these theoretical principles; but, in civil cases, the law, though not disposed to gauge the exact measure of men's intellects, has sometimes insisted on technical distinctions, that have little foundation in nature or reason. Originally, commissions of lunacy were granted for the purpose of inquiring whether the individual were either an idiot *ex nativitate*, or a lunatic, in Coke's meaning of the term, and, in consequence thereof, incapable of governing himself and managing his worldly affairs. The injustice of leaving beyond the protection of the law, that larger class of insane, who, though neither *idiots* nor *lunatics*, labor under more or less mental derangement, led to a change in the form of the writ, by which the phrase *unsound mind* was used for the purpose of embracing all others, who were considered proper objects of a commission. What is the precise meaning of this term, it is not easy to gather from the observations of various high legal authorities who have attempted to fix its meaning. It seems to be agreed, that it is not idiocy, nor lunacy, nor imbecility, but beyond this all unanimity is at an end. Lord Hardwicke held, that unsoundness of mind did not mean mere weakness of mind, but a depravity of reason or a want of it.[1] Lord Eldon once referred to the case of a person advanced in years, "whose mind was the mind of a child," and observed,

[1] *Ex parte Barnsley*, 3 Atkyns, 168.

that, "it was, therefore, in that sense, imbecility and inability to manage his affairs, which constituted unsoundness of mind."[1] The same high authority had observed on a previous occasion, that "the court had thought itself authorized to issue the commission *de lunatico inquirendo*, provided it is made out, that the party is unable to act with any proper and provident management; liable to be robbed by any one; under that imbecility of mind, not strictly insanity, but as to the mischief, calling for as much protection as actual insanity."[2] Mr. Amos, late professor of Medical Jurisprudence in the London University, has said, that "the term unsoundness of mind, in the legal sense, seems to involve the idea of a morbid condition of intellect, or loss of reason, coupled with an incompetency of the person to manage his own affairs."[3] Whatever it may signify, it has always been insisted on, that the return of the commission must state the incapacity or inability of the party to manage his affairs to be evidence of its existence, in order that the party may have the protection of the law. If the jury are unwilling, from what they see, to infer the presence of a mental condition, to which the highest dignitaries of the law have declined fixing a precise, intelligible meaning, then the inquisition is quashed. The feelings of dread and disgust, with which madness has been generally contemplated, have often deterred juries, acting under a commission, from returning a verdict of unsound mind, which has become equivalent to insanity; either from a disinclination to embarrass the family with an odious distinction, or because the individual was not really unsound in the popular acceptation of the term, though his mental faculties might have been so far enfeebled by old age, or sickness, or congenital causes, as to render him absolutely incapable of conducting himself or his affairs, — a fact which they have sometimes returned. These attempts to change the ordinary course have never succeeded, the court having in every case required the verdict to be in the words of the inquisition, or

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[1] Haslam: Medical Jurisprudence as it relates to Insanity, 336.

[2] 8 Vesey, 66.

[3] London Medical Gazette, viii. 19.

in equipollent words. "It is settled," says Lord Eldon, "that if the jury find merely the incapacity of the party to manage his affairs, and will not infer from that and other circumstances unsoundness of mind, though the party may live where he is exposed to ruin every instant, yet upon that finding the commission cannot go on."[1] The consequence is, that the afflicted party must either forego the protection of the law, or fix upon his family a sort of stigma of the most disagreeable and onerous description. When it is considered how many are the cases, where individuals are incapacitated from managing their affairs, simply from that impairment of the mind so common in old age, or mere defect of memory, the other powers remaining sound, it is a little surprising, that no effectual measures have been taken, to render the operation of the law less imperfect and unequal. It is not easy to see the ground of the extreme repugnance displayed by the English courts, towards any return that does not assert the mental unsoundness of the affected party, unless it may be some obstacle thereby thrown in the course of the subsequent proceedings. The object of the commission is, to ascertain whether or not the party in question is incapable, by reason of mental infirmities, of governing himself and managing his affairs; and if they so find him, it certainly is irrelevant to any useful purpose, to connect this inability as an effect with any particular kind of insanity, whether expressed in common or technical language. Indeed, to require a jury to infer explicitly unsoundness of mind from inability to manage affairs, which is of itself sufficient evidence of all the mental unsoundness that is required for practical purposes, and reject their return if they do not, would seem exceedingly puerile, were it not strictly professional. In *Ex parte Cranmer*,[2] where the jury pronounced the party in their verdict, "so far debilitated in his mind as to be incapable of the general management of his affairs," Lord Chancellor Erskine gives some reasons for finding fault with the terms of the verdict, and directing the inquisition to be quashed. "The

[1] 19 Vesey, 286.

[2] 12 Vesey, 406.

verdict," he says, "does not state distinctly that he is incapable; but that he is so far debilitated in his mind, that he is not equal to the general management of his affairs." The very word *incapable*, it is true, is not used, but the words "not equal" are surely of equivalent meaning; and it is not easy to conceive, how a clearer or stronger idea of a person's incapacity can be conveyed, than to pronounce him "not equal to the management of his affairs." "How can I tell," he asks, "what is '*so far* debilitated in his mind that he is not equal to the general management of his affairs?'" He certainly could not tell the precise quantity of mind left, but even if the party had been returned *non compos, and therefore* unequal to the management of his affairs, it is not quite obvious, how any more definite notion on this point would have been conveyed.[1]

§ 6. The business of the jury in these cases is, to ascertain whether the individual is mentally capable of managing his affairs; and this is a duty, which, generally speaking, they are able to perform with tolerable correctness. But what can be more irrelevant to the object in view, or more remote from the ordinary circle of their reflections, than the additional duty of deciding whether his mental impairment has gone far enough, to bear being designated by the technical phraseology, unsoundness of mind? When it is recollected, too, that the members of these juries are mostly uneducated men, and but few of them at all acquainted with the force of legal or medical distinctions, it cannot be supposed, that such a return is always the recorded opinion of unbiased, understanding minds. Indeed, the inconvenience and injustice of this proceeding have been so strongly felt, as to have led to the repeated expression of a wish, that its defects were reme-

[1] In a recent case, the inquisition was quashed by Lord Lyndhurst, because the verdict of the jury said too much, instead of too little, namely: "that the party was not a lunatic, but partly from paralysis and partly from old age, his memory was so much impaired, as to render him incompetent to the management of his affairs, and consequently that he was of unsound mind, and had been so for two years." *In re Holmes*, 4 Russel's Chancery Reports, 182.

died by the action of the legislature. That it should still continue in a country, where it is linked in with a system, whose foundations are in the very constitution of the government, is perhaps not strange; but, that it should be used in some of our own States which are untrammelled by such considerations, is certainly an anomaly in legislation.

§ 7. This is not the only instance where the principles of common sense and common justice, which ought to regulate the legal relations of the insane, have, with astonishing inconsistency, been strangely disregarded in the maxims of the common law. While theoretically it requires that contracts, to be valid, should spring from a free and deliberate consent, it refuses to suffer the party himself to avoid them on the plea of lunacy, in accordance with an ancient maxim, that no man of full age shall be allowed to disable or stultify himself; though at the same time, it does allow his heirs, or other persons interested, to avail themselves of this privilege.[1] Thus, a person who recovers from a temporary insanity before the return of an inquisition, has no remedy at law or in equity for the most ruinous contracts that he may have entered into while in that condition, except on the ground of fraud, though, after his death, his heirs may have them set aside by establishing the fact of lunacy alone. Well may a distinguished jurist exclaim, that "it is matter of wonder and humiliation, how so absurd and mischievous a maxim could have found its way into any system of jurisprudence, professing to act on civilized beings."[2] It arose, no doubt, in part, from erroneous notions of the nature of insanity, and partly from apprehensions, not well founded, of the consequences, that might follow the admission of the plea of lunacy in avoidance of contracts. Within a few years, however, the English courts have almost entirely disregarded the ancient maxim,[3] and in this country, it has long since lost its

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[1] 2 Blackstone, 295.

[2] Story, Commentaries on Equity Jurisprudence, § 225.

[3] *Bagster* v. *Earl Portsmouth*, Chitty on Contracts, 256; *Gates* v. *Boen*, 2 Strick. 1104.

authority altogether.[1] Indeed, there now seems to be a strong disposition to run to the opposite extreme. We cannot but think that the ends of justice would be better obtained, if no general rule at all were adopted, and every case decided on its own merits. Where the insanity of one of the parties is perfectly well known to the other, or might have been so by the exercise of ordinary sagacity, a contract between them, except for the necessaries of life or comforts and luxuries suitable to his wealth or station, should obviously be held invalid, because the insane party is deprived by the act of Providence of his natural share of discernment and foresight. It often happens, however, that a person's insanity is not generally known and is not very apparent, and, in such cases, if it can be proved, that the contract is a fair and reasonable one on the face of it, and was entered into in perfect honesty and good faith, he certainly should not be permitted to stultify himself, in order to escape its performance. Neither does his death or interdiction so change the case, as to render it proper for his heirs or guardians to do that which he could not do for himself. Much as the law is bound to protect the interests of the insane, it is no less requisite to protect those who deal with them, unacquainted with their mental condition. It as often happens, that the same party suffers from the avoidance of the contract, as that the insane or his heirs do from its validity; and nothing can be more clearly unjust, than the application of a maxim or general rule that favors only the interests of the unsound party.[2]

§ 8. Though little of this pertinacious adherence to merely technical distinctions is observed, in the application of the law to criminal cases, yet there is much of the same respect

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[1] *Webster* v. *Woodward*, 3 Day, 90; *Rice* v. *Peet*, 15 Johns. 503; *Mitchell* v. *Kingman*, 5 Pickering, 431.

[2] Since this paragraph was written (1838), decisions of both English and American courts have been in conformity to the principles there expressed. *Beavan* v. *M'Dowell*, 24 English Rep. 486; 9 Wells H. and G. 309; *Molton* v. *Camroux*, 4 Exch. 17; *Beals* v. *See*, 10 Barr, 56; *Desilver's Est.* 5 Rawle, 11; *Bonsall* v. *Chancellor*, 5 Wharton, R. 37.

for antiquated maxims, that have little else to recommend them but their antiquity, and are so much the more pernicious in their application, as the interests of property are of less importance than reputation and life. It by no means follows, that a person declared to be *non compos* by due process of law, is to be considered, on that account merely, to be irresponsible for his criminal acts. This is a question entirely distinct, and is determined upon very different views of the nature of insanity, and of its effects on the operations of the mind; and, here it is, that the lawyer encroaches most on the domain of the physician. The first attempt to point out precisely those conditions of insanity, in which the civil and criminal responsibilities are unequally affected, was made by Lord Hale. "There is a partial insanity," says he, "and a total insanity. The former is either in respect to things, *quoad hoc vel illud insanire*. Some persons that have a competent use of reason, in respect of some subjects, are yet under a particular *dementia*, in respect of some particular discourses, subjects, or applications, or else it is partial in respect of degrees; and this is the condition of very many, especially melancholy persons, who for the most part discover their defect in excessive fears and griefs, and yet are not wholly destitute of the use of reason; and this partial insanity seems not to excuse them, in the committing of any offence for its matter capital; for, doubtless, most persons that are felons of themselves and others, are under a degree of partial insanity, when they commit these offences. It is very difficult to define the invisible line that divides perfect and partial insanity; but it must rest upon circumstances duly to be weighed and considered both by judge and jury, lest on the one side there be a kind of inhumanity towards the defects of human nature; — or, on the other side, too great an indulgence given to great crimes."[1] So strongly was this celebrated jurist possessed with the idea, that it is the *strength and capacity* of the mind only that are affected by insanity, that he has actually founded upon it a test of

[1] Pleas of the Crown, 30.

criminal responsibility. "Such a person," says he, "as laboring under melancholy distempers, hath yet ordinarily as great understanding as ordinarily a child of fourteen years hath, is such a person as may be guilty of treason or felony." As if the only difference between sanity and insanity were precisely that which is made by difference of age, and as if there could be two things more unlike than the mind of a person "laboring under melancholy distempers," and that of a child fourteen years old.

§ 9. The doctrines thus dogmatically laid down by Lord Hale, have exerted no inconsiderable influence on the judicial opinions of his successors; and his high authority has often been invoked against the plea of insanity, whenever it has been urged by the voice of philanthropy and true science. If, too, in consequence of the common tendency of indulgence in forced and unwarrantable constructions, whenever a point is to be gained, his principles have been made to mean far more than he ever designed, the fact impressively teaches the importance of clear and well-defined terms, in the expression of scientific truths, as well as of enlarged, practical information, relative to the subjects to which they belong. In the time of this eminent jurist, insanity was a much less frequent disease than it now is, and the popular notions concerning it were derived from the observation of those wretched inmates of the mad-house, whom chains and stripes, cold and filth, had reduced to the stupidity of the idiot, or exasperated to the fury of a demon. Those nice shades of the disease in which the mind, without being wholly driven from its propriety, pertinaciously clings to some absurd delusion, were either regarded as something very different from real madness, or were too few, too far removed from the common gaze, and too soon converted by bad management into the more active forms of the disease, to enter much into the general idea entertained of madness. Could Lord Hale have contemplated the scenes presented by the lunatic asylums of our own times, we should undoubtedly have received from him a very different doctrine, for the regulation of the decisions of after generations.

§ 10. Until quite recently, the course of practice in the English criminal courts has been in strict conformity to the principle laid down by Hale, that partial insanity is no excuse for the commission of illegal acts. For instance, in the trial of Arnold, in 1723, for shooting at Lord Onslow, Mr. Justice Tracy observed, "that it is not every kind of frantic humor, or something unaccountable in a man's actions, that points him out to be such a madman, as is exempted from punishment: it must be a man that is totally deprived of his understanding and memory, and doth not know what he is doing, no more than an infant, than a brute, or a wild beast, such a one is never the object of punishment."[1] This is but the echo of Lord Hale's doctrine, and the circumstances of the case show how faithfully the principles were applied. Arnold seems to have been of weak understanding from his birth, and to have led an idle, irregular, and disordered life, sometimes unequivocally mad, and at all times considered exceedingly strange, and different from other people; one witness describing him as a strange, sullen boy at school, such as he had never seen before. It was testified by his family and his neighbors, that for several years previous, they had considered and treated him as mad, occasionally if not always, although so little disposed to mischief, that he was suffered to be at large. Contrary to the wishes of his friends, he persisted in living alone in a house destitute of the ordinary conveniences; was in the habit of lying about in barns and under hay-ricks; would curse and swear to himself for hours together; laugh and throw things about the house without any cause whatever, and was much disturbed in his sleep by fancied noises. Among other unfounded notions, he believed that Lord Onslow, who lived in his neighborhood, was the cause of all the tumults, disturbances, and wicked devices that happened in the country, and his thoughts were greatly occupied with this person. He was in the habit of declaring, that Lord Onslow sent his devils and imps into his room at night to disturb his rest, and that he constantly plagued and bewitched him, by

[1] 8 Hargrave's State Trials, 322.

getting into his belly or bosom, so that he could neither eat, drink, nor sleep, for him. He talked much of being plagued by the *Bollies* and *Bolleroys;* he declared in prison it was better to die than live so miserably, and manifested no compunction for what he had done. Under the influence of these delusions, he shot at and wounded Lord Onslow. The proof of insanity was strong enough, but not that degree of it, which the jury considered sufficient to save him from the gallows, and he was accordingly sentenced to be hung. Lord Onslow himself, however, thought differently; and, by means of his intercession, the sentence was not executed, and Arnold was continued in prison for life. It is clear that the court recognized that class of madmen only, as exempted from the penal consequences of crime, whose reason is completely dethroned from her empire, and who are reduced to the condition of an infant, a brute, or a wild beast. If it be true, as the court said, that such are never the objects of punishment, though it neglected to state that they are never the objects of prosecution, the converse must be equally true, that those not exactly in this condition can never avoid punishment on the plea of insanity. It appears, then, that the law at that time did not consider an insane person irresponsible for crime, in whom there remained the slightest vestige of rationality; though it did then, and has ever since deprived him of the management of himself and his affairs, and vitiates his civil acts, even when they have no relation to the delusions that spring from his madness. That the progress of science and general enlightenment has produced no improvement of the law on this subject, is abundantly shown in the strong declarations of Sir Vicary Gibbs, when attorney-general of England, on the trial of Bellingham, in 1812. "A man," says he, "may be deranged in his mind, — his intellects may be insufficient for enabling him to conduct the common affairs of life, such as disposing of his property, or judging of the claims which his respective relations have upon him; and if he be so, the administration of the country will take his affairs into their management, and appoint to him trustees; but, at the same time, such a man is not discharged from his responsibility for

criminal acts." [1] Lord Erskine had previously given the same doctrine the sanction of his authority, in his celebrated speech in defence of Hadfield. "I am bound," he says, "to admit that there is a wide distinction between civil and criminal cases. If, in the former, a man appears, upon the evidence, to be *non compos mentis*, the law avoids his act, though it cannot be traced or connected with the morbid imagination which constitutes his disease, and which may be extremely partial in its influence upon conduct; but, to deliver a man from responsibility for crimes, above all, for crimes of great atrocity and wickedness, I am by no means prepared to apply this rule, however well established when property only is concerned."

§ 11. That a person, whom the law prevents from managing his own property, by reason of his mental impairment, should, in respect to criminal acts, be considered as possessing all the elements of responsibility, and placed on the same footing with men of the soundest and strongest minds, is a proposition so strange and startling, that few, uninfluenced by professional biases, can yield to it unhesitating assent, or look upon it in any other light, than as belonging to that class of doctrines which, while they may be the perfection of reason to the initiated, appear to be the height of absurdity to every one else. Georget, an able French writer on the legal relations of the insane, in commenting on the speech of M. de Peyronnet who, in the trial of Papavoine, had adduced the passage above extracted from Lord Hale, in support of his own views, expresses his astonishment and indignation, that such a sentiment should ever have been uttered, least of all, quoted with approbation, in a French court of justice, by the chief law-officer of the government. "Can we help wondering," he exclaims, "at these sentiments of Lord Hale, who seems to make more account of property than life. No excuse for the unfortunate man who, in a paroxysm of madness, commits a criminal offence, while civil acts are to be annulled, even when they have no relation to the insane

[1] Collinson on Lunacy, 657.

impressions that might have influenced his conduct." [1] The language of the law, virtually addressed to the insane man, is, your reason is too much impaired to manage your property; you are unable to distinguish between those measures which would conduce to your profit and such as would end in your ruin, and therefore it is wisely taken altogether from your control; but if under the influence of one of those insane delusions that have rendered this step necessary, you should kill your neighbor, you will be supposed to have acted under the guidance of a sound reason; you will be tried, convicted, and executed like any common criminal whose understanding has never been touched by madness. As for any physiological or psychological ground for this distinction between the legal consequences of the civil and criminal acts of an insane person, it is in vain to look for it. That the mind, when meditating a great crime, is less under the influence of disease, and enjoys a more sound and vigorous exercise of its powers, than when making a contract, or a will, few, probably, will be hardy enough to affirm; and yet the practice of the law virtually admits it. The difference, if there be any, would seem to be all the other way. In the disposal of property, the mind is engaged in what has perhaps often exercised its thoughts; the conditions and consequences of the transaction require no great mental exertion to be comprehended; and there may be nothing in it, to deprive the mind of all the calmness and rationality of which it is capable. Now criminal acts, though abstractly wrong, may under certain circumstances become right and meritorious; and if the strongest and acutest minds have sometimes been perplexed on this point, what shall we say of the crazy and distorted perceptions of him, whose reason shares a divided empire with the propensities and passions? Most maniacs have a firm conviction that all they feel and think is true, just, and reasonable; and nothing can shake their convictions. The contracts of the insane are, in many cases, declared to be invalid, and are set aside, in courts of equity, on the

[1] Discussion medico-légalè sur la Folie, 8.

ground of fraud; in accordance with an established principle that the parties to a contract must be capable of giving their deliberate and rational consent, the power of doing which is destroyed by mental derangement.[1] In point of mental soundness they must be equal, and common justice requires, that the insane man, in his dealings with his fellow men, should be protected from the effect of his disorder. Even in the simplest transaction, it is supposed that the insane party may not be able to discern all the circumstances that may conduce to his advantage, and may not act as if his mind were perfectly sound. But it remains to be proved that, in the commission of a criminal offence, he has more clearly apprehended its abstract nature, its relations to the injured party, and its consequences to himself, than he would all the circumstances attending a contract; if, therefore, he have not acted rationally, but under the influence of a disordered mind, he ought to be no more responsible for the former than for the latter.

§ 12. A distinction is also made between civil and criminal cases, in regard to evidence respecting the state of the party's mind. In the former, proof drawn from the nature of the act in question is sometimes paramount to all others, and, in the absence of others, admitted to be alone conclusive; while, in the latter, to seek to prove the existence of insanity from the character of the act, would be viewed as nothing less than a begging of the question. "If a lunatic person," says Swinburne,[2] "or one that is beside himself at sometimes but not continually, make his testament, and it is not known whether the same were made while he was of sound mind and memory or no, then in case the testament be so conceived, as thereby no argument of phrensy or folly can be gathered, it is to be presumed that the same was made during the time of his calm and clear intermissions, and so the testament shall be adjudged good, yea, although it cannot be proved that the testator useth to have any clear and quiet

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[1] Story's Commentaries on Equity Jurisprudence, § 227.

[2] Of Testaments and Last Wills, Part II. Section 3.

intermissions at all, yet, nevertheless, I suppose that if the testament be wisely and orderly framed, the same ought to be accepted for a lawful testament." Sir John Nicholl has observed, that where there is no direct evidence of the time, or, consequently, of the deceased's state of mind at the time, of the act done, recourse must be had to the usual mode of ascertaining it in such cases — which is by looking at the act itself. "The agent is to be *inferred* rational, or the contrary, in such cases, from the character broadly taken of his act."[1] So, on the other hand, "in the case of a person who is sometimes sane and sometimes insane, if there be in it a mixture of wisdom and folly, it is to be presumed that the same was made during the testator's phrensy, even if there be but one word sounding to folly."[2] If, then, testamentary dispositions that conflict with the natural distribution of property and the known and expressed intentions of the testator, yea, if they contain but one word "sounding to folly," are to be held as sufficient evidence of unsound mind, in doubtful cases, why, when an atrocious crime is shown to be motiveless, unnatural, in opposition to the habits, feelings, and principles of the whole past life, and unfollowed by any consciousness of guilt, should not this act be considered as equally strong proof of unsoundness of mind? Why is it, that instead of being thus considered, it actually avails the accused nothing; the character of the act, in the last resort, being too often explained, on the supposition of an inherent ferocity and thirst for blood, which no considerations can restrain; even in the face of totally different dispositions, indicated by the whole tenor of his life?

§ 13. In still another respect is there a wide difference between civil and criminal cases. While the statute book of England teems with enactments regulating the confinement and custody of the insane, and hedging them around with

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[1] *Scruby and Finch* v. *Fordham and others*, 1 Addams, 74. See also, 1 Phillimore, 90; *McAdam* v. *Walker*, 1 Dow, 178, for a recognition of the same principle.

[2] Swinburne, Part II. § 3, pl. 16.

checks and safeguards, the relations of insanity to the criminal law have been left entirely to the discretion of courts. An instance of unjust confinement is sufficient to arouse the whole community, and lead to prosecution, and penalties of the severest kind; but year after year have persons of doubtful sanity ended their lives on the gibbet, without one voice being raised in reprobation of the barbarity. On the 9th of August, 1843, a man named Higginson was arraigned for the murder of his son, a little boy. There were two counts in the indictment, one charging him with burying him alive, and the other with fracturing his skull. Something being said about the mode of the murder, the prisoner spoke out in a very audible voice, "I buried him alive." He had no counsel and made no defence. Some suspicion of his sanity being expressed, the court requested that any one who knew any thing of the prisoner in that respect, would come forward and testify. Whereupon two officers of the prison, one of whom had been a school-fellow of the prisoner and known him ever since, testified that he was of "very weak intellect," and the surgeon of the prison also testified that he was of "very weak intellect, but capable of distinguishing right from wrong." In the charge to the jury, the court, Mr. Justice Maule, said, that if the prisoner knew right from wrong, he was responsible for his acts, although he was of weak intellect. He was found guilty and executed.[1] Now observe the reverse of the picture. In that same year, 1843, a female patient in one of the best asylums in Scotland, sent a letter to the Secretary of the Home Department, Sir James Graham, complaining of false imprisonment, in a very ingenious, plausible manner, and requesting inquiry into her case — such a letter, in fact, as those in charge of hospitals are in the habit of seeing every day. Her appeal was immediately answered, and so much importance was attached to the case, that the lord advocate of Scotland, Mr. Alison, the historian, was directed to go down himself, see the woman, and make a thorough inquiry into the matter. We have never heard

[1] *Reg.* v. *Higginson*, 1 Car. & Kir. 129.

that the home secretary or anybody else, troubled himself about the fate of Higginson.

§ 14. Notwithstanding that Lord Hale's doctrine was cited with approbation by M. de Peyronnet (§ 11), yet, by the French penal code, madness, without limit or condition, exempts from the punishment of criminal acts. The language of the law is, that "there is no crime nor offence when the accused was in a state of madness at the time of the action."[1] The existence of insanity once established, the accused is, by the spirit of the law, acquitted. This intention has sometimes been near being defeated, in consequence of the great liberty allowed to French juries, in the construction of the phraseology of their verdict, in which they may declare, if they choose, not whether the accused was guilty or not guilty, sane or insane, but whether or not the act was committed *voluntarily*.[2] A verdict of this kind, in an instance mentioned by Georget, led to a curious result, in the hands of men who were not indoctrinated in the subtleties of metaphysics. The fact of insanity having been given to the jury for decision, they returned that the accused acted *voluntarily* and with *premeditation;* and, secondly, that he was insane at the time of committing the act.[3] This verdict, so consistent in reality, but so utterly contradictory in a legal sense, was received by the court and understood to mean, that the accused possessed the will of a madman, a merely animal will which excludes legal culpability. Had not the last question been raised, the accused, though mad, would have been condemned to death.[4] It seems evident, that the legislator,

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[1] Il n'y a ni crime ni délit lorsque le prévenu était en état de démence au temps de l'action. Art. 64.

[2] Special verdicts in criminal cases are quite common in France.

[3] Des maladies mentales, 100.

[4] It is one of those metaphysical subtleties, so prevalent on the subject of insanity, that the acts of an insane mind are *involuntary*. It certainly can be of little practical consequence, what epithet is applied to the acts of a mind admitted to be insane; though it seems to be an abuse of language, to call any act involuntary, which proceeds from a person's own free will. True, the exercise of the will may be greatly influenced by the condition of the

in framing that law, was impressed with the difficulty of drawing the line between general and partial insanity, and of estimating the quantity of reason left after the invasion of this disease, and therefore determined to avoid it altogether by recognizing but one kind of insanity. Though not prepared to acquiesce entirely in the dispositions of this enactment, yet it is infinitely preferable, with all its faults, to the English practice of requiring a number of men, who may have had very little education of any kind, and least of all, any very accurate notions of the influence of insanity on the operations of the mind, to sit in judgment on the measure of a man's understanding, and decide whether or not he had enough of reason left to discern the nature of the act he committed. True, mental unsoundness is not necessarily incompatible with crime, for we can conceive of cases, where the criminal act is beyond the sphere of the influence of the reigning delusion, and therefore, as far as that is concerned, the offspring of a sound mind; yet we must acknowledge the extreme difficulty of establishing this fact, and the caution with which we should proceed to a decision.

§ 15. On the trial of Hadfield, for shooting at the king in

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mind, even to such an extent as to deprive a person of all criminal responsibility. But this does not necessarily prove the act to be involuntary, unless, for instance, every man, who commits a criminal act under the influence of strong passions, is considered as acting involuntarily. The objection to this distinction is, that it is used as a test in the decision of doubtful cases, every one being left to decide, as he pleases, what acts are voluntary, and what involuntary. A curious application of the distinction is made by Mr. Shelford, in his work on Lunatics (Introduction, p. xlix.), when speaking of suicide. "The art with which the means are often prepared, and the time occupied in planning them, seem to mark it [suicide] as an act of deliberate volition; but the acts of an insane mind are involuntary, and not voluntary; therefore, the question must always revert to what was the real condition of the mind when suicide was committed." If the preparation for the suicidal act be so indicative of that volition which is exercised by sound minds only, it is not very clear by what process of logic, from these two propositions would be drawn the conclusion, that the "question must always revert to what was the real condition of the mind when suicide was committed."

Drury Lane theatre, in 1800, there occurred for the first time, in an English criminal court, any thing like a thorough and enlightened discussion of insanity as connected with crime; and the result was, that a fatal blow was given to the doctrines of Lord Hale by Mr. Eskine who brought all the energies of his great mind to bear upon the elucidation of this subject.[1] In accordance with these doctrines, the attorney-general had told the jury, that to protect a person from criminal responsibility, there must be a total deprivation of memory and understanding. To this Mr. Erskine very justly replied, that if these expressions were meant to be taken in the literal sense of the words — which however he did not deny — "then no such madness ever existed in the world." This condition of mind is observed only in idiocy and fatuity, and its unhappy subjects are never made accountable to the laws. In proper madness, on the contrary, so far was there from being a total deprivation of memory and understanding, that "in all the cases that have filled Westminster Hall," said he, "with the most complicated considerations, the lunatics and other insane persons who have been the subjects of them, have not only had memory *in my sense of the expression* — they have not only had the most perfect knowledge and recollection of all the relations they stood in towards others, and of the acts and circumstances of their lives, but have, in general, been remarkable for subtlety and acuteness. Defects in their reasonings have seldom been traceable — the disease

[1] One reason why the criminal law of insanity has undergone so little improvement in England is, probably, that the accused, not having been allowed counsel to speak in their defence, except in trials for high treason, the officers of government have always been at liberty to put their own construction on the law, and urge it on the jury as the only correct one, without fear of being contradicted or gainsayed. Thus the old maxims have been repeated, year after year, and not being questioned, their correctness has remained undoubted, both in and out of the legal profession. Can any one doubt, that had those insane criminals who have been condemned within the last half century, been defended by an Erskine, many of them would have been acquitted, and a great advance made in the law of insanity, that would have prevented some of those exhibitions of presumptuous ignorance, which will one day be universally regarded with feelings of disgust and pity?

consisting in the delusive sources of thought: — all their deductions, within the scope of their malady, being founded on the *immovable* assumption of matters as *realities*, either without any foundation whatever, or so distorted and disfigured by fancy, as to be nearly the same thing as their creation." Instead therefore of making that kind of insanity which would exempt from punishment to consist in the absence of any of the intellectual faculties, he lays down *delusion* as its true character, of which the criminal act in question must be its immediate unqualified offspring.[1] Here was a great step made in this branch of medical jurisprudence, and it might have been expected, that the victory thus gained over professional prejudices and time-honored errors, would be felt in all subsequent decisions. But, though a fatal blow was given to the doctrine that such insanity only as is attended by total deprivation of memory and understanding, can be admitted in excuse for crime, the test of responsibility offered by Erskine was altogether too simple and too philosophical, to be readily adopted by minds that delighted in subtleties and technicalities.

§ 16. In the case of Bellingham, for instance,[2] tried for the murder of the Hon. Spencer Percival, in 1812, it appeared from the history of the accused, from his own account of the transactions that led to the fatal act, and from the testimony of several witnesses, that he labored under many of those

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[1] It is surprising and perfectly unaccountable that Mr. Erskine, in adverting to the case of Arnold (§ 10), should have declared "that his counsel could not show, that any morbid delusion had overshadowed his understanding!" If it were no delusion in Arnold to believe that Lord Onslow was the cause of all the turmoils and troubles in the country — that he bewitched him in particular by getting into his belly and bosom, and sending his devils and imps into his room to prevent his rest; it surely was none for Hadfield to imagine that he had constant intercourse with God — that the world was about to come to an end — and that he was to sacrifice himself for its salvation, by taking away the life of another. Either the able advocate, in his zeal for his client, must have egregiously deceived himself respecting the facts of Arnold's case, or have attached some ideas to *delusion*, which have never entered into the ordinary conceptions of that kind of belief.

[2] 1 Collinson on Lunacy, 650.

strange delusions that find a place only in the brain of a madman. His fixed belief that his own private grievances were national wrongs; that his country's diplomatic agents in a foreign land neglected to hear his complaints and assist him in his troubles, though they had in reality done more than could reasonably have been expected of them; his conviction, in which he was firm almost to the last, that his losses would be made good by the government, even after he had been repeatedly told, in consequence of repeated applications in various quarters, that the government would not interfere in his affairs; and his determination, on the failure of all other means to bring his affairs before the country, to effect this purpose by assassinating the head of the government, by which he would have an opportunity of making a public statement of his grievances and obtaining a triumph, which he never doubted, over the attorney-general; these were all delusions, as wild and strange as those of seven-eighths of the inmates of any lunatic asylum in the land. And so obvious were they, that though they had not the aid of an Erskine to press them upon the attention of the jury, and though he himself denied the imputation of insanity, the government, as if virtually acknowledging their existence, contended for his responsibility on very different grounds. Several other tests of this condition were dwelt upon with unusual earnestness, and unhesitating confidence in their value, and as they have generally made their appearance, on occasions of this kind, since that time, it may be well to examine them critically, in order to ascertain to how much weight they are really entitled, in settling the question of criminal responsibility.

§ 17. In the trial of Arnold, already noticed (§ 10), the jury were directed to settle it in their own minds, whether the accused was capable of distinguishing right from wrong, good from evil, and if they concluded that he was, that they must return a verdict of guilty. In Bellingham's case, the attorney-general declared, "upon the authority of the first sages in the country, and upon the authority of the established law in all times, which law has never been questioned,

that although a man may be incapable of conducting his own affairs, he may still be answerable for his criminal acts, if he possess a mind capable of distinguishing right from wrong."[1] Lord Chief Justice Mansfield who tried the case, echoed the same doctrine in his charge to the jury. In speaking of a species of insanity, in which the patient fancies the existence of injury, and seeks an opportunity of gratifying revenge by some hostile act, he says, "if such a person were capable, in other respects, of distinguishing right from wrong, there was no excuse for any act of atrocity, which he might commit under this description of derangement."[2] Mr. Russell, in his work on criminal law, includes inability to distinguish right from wrong among the characters of that grade of insanity which exempts from the punishment of crime.[3]

§ 18. That the insane mind is not entirely deprived of this power of moral discernment, but on many subjects is perfectly rational and displays the exercise of a sound and well-balanced mind, is one of those facts now so well established, that to question it would only betray the height of ignorance and presumption. The first result, therefore, to which the doctrine leads, is, that no man can ever successfully plead insanity in defence of crime, because it can be said of no one who would have occasion for such a defence, that he was unable in any case to distinguish right from wrong. To show the full merits of the question, however, it is necessary to examine more particularly, how far this moral sentiment is affected by, and what relation it bears to insanity. By that partial possession of the reasoning powers, which has been spoken of as being enjoyed by maniacs generally, is meant to be implied the undiminished power of the mind, to contemplate some objects or ideas in their cus-

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[1] Collinson on Lunacy, 657.

[2] This opinion was delivered scarcely a dozen years after the absurdity of its principles had been so happily exposed in a few words, by Mr. Erskine, on the trial of Hadfield. What a comment on the progress of improvement in the medical jurisprudence of insanity!

[3] Russell on Crimes and Misdemeanors, 12.

tomary relations, among which are those pertaining to their right or wrong, their good or evil tendency; and it must comprise the whole of these relations, else the individual is not sane on these points. A person may regard his child with the feelings natural to the paternal bosom, at the very moment he believes himself commanded by a voice from heaven to sacrifice this child, in order to secure its eternal happiness, than which, of course, he could not accomplish a greater good. Our belief in a maniac's soundness, on certain subjects, is founded in part on the moral aspect in which he views those subjects; for it would be folly to consider a person rational in reference to his parents and children, while he entertains the idea that it would be doing God service to kill them; though he may talk rationally of their characters, dispositions, and habits of life, their chances of success in their occupations, their past circumstances, and the feelings of affection which he has always cherished towards them. Before, therefore, an individual can be accounted sane on a particular subject, it must appear that he regards it correctly, in all its relations to right and wrong. The slightest acquaintance with the insane will convince any one of the truth of this position. In no school of logic, in no assembly of the just, can we listen to closer and shrewder argumentation, to warmer exhortations to duty, to more glowing descriptions of the beauty of virtue, or more indignant denunciations of evil-doing, than in the hospitals and asylums for the insane. And yet many of these very people may make no secret of entertaining notions utterly subversive of all moral propriety; and, perhaps, are only waiting a favorable opportunity to execute some project of wild and cruel violence. The purest minds cannot express greater horror and loathing of various crimes than madmen often do, and from precisely the same causes. Their abstract conceptions of crime, not being perverted by the influence of disease, present its hideous outlines as strongly defined, as they ever were in the healthiest condition; and the disapprobation they express at the sight arises from sincere and honest convictions. The *particular* criminal act, however, becomes

divorced in their minds from its relations to crime in the *abstract;* and, being regarded only in connection with some favorite object which it may help to obtain, and which they see no reason to refrain from pursuing, is viewed, in fact, as of a highly laudable and meritorious nature. Herein, then, consists their insanity, not in preferring vice to virtue, in applauding crime and deriding justice, but in being unable to discern the essential identity of nature between a particular crime and all other crimes, whereby they are led to approve what, in general terms, they have already condemned. It is a fact, not calculated to increase our faith in the march of intellect, that the very trait peculiarly characteristic of insanity, has been seized upon as a conclusive proof of sanity in doubtful cases; and thus the infirmity that entitles one to protection, is tortured into a good and sufficient reason for completing his ruin.

§ 19. If this power of distinguishing right from wrong do really indicate soundness of mind, it may be justly complained, that the question of its existence is never agitated in any but criminal cases, while it certainly should be whenever the rights and liberties of the insane are to be invaded. If it is proper to make those who possess this power responsible for their criminal acts, how unjust and absurd is it to deprive them of their liberty and seclude them from their customary scenes and enjoyments, before they have violated a single human law. Undoubtedly, this measure is conducive to their good, by taking from them effectually the opportunity of injuring the persons or property of themselves or others; and so it would be for every other unprincipled and reckless individual who bids fair to be a pest to society. But if it is alleged, that the latter are morally free, and, therefore, personally free, until the commission of some overt act, it may be replied, that the former, on the hypothesis of the law, which makes moral freedom consist in the power of distinguishing right from wrong, have the same claim to immunity from personal restraint. This preposterous distinction between civil and criminal cases, gives rise in practice to one of the most curious and startling inconsistencies that human

legislation ever presented. While the mental impairment is yet slight, comparatively, and the patient is quiet and peaceable, the law considers him incapable of managing himself or his worldly affairs, and provides him with a guardian and a place in the wards of a hospital; but when the disorder has proceeded to such a height as to deprive the maniac of all moral restraint, and precipitate him on some deed of violence, he is to be considered as most capable of perceiving moral distinctions, and, consequently, most responsible for his actions!

§ 20. Of late years, this test of responsibility has been promulgated with some important qualifications. A disposition to disregard the old landmarks on this point was first clearly manifested, not long since, by Lord Lyndhurst, in the case of *Rex* v. *Offord*, 1831, when he directed the jury to acquit the prisoner, if satisfied, "that he did not know, when he committed the act, what the effect of it, if fatal, would be with reference to the crime of murder;"[1] in other words, they were to satisfy themselves before acquitting him, that he did not know that the act would be essentially murder, — that crime which in the abstract is equally abhorred by the sane and the insane. Still, however, this is not sufficient, for he might, like Hadfield and many others, have recognized the wrong and illegality of the act, and been perfectly conscious of its consequences to himself, while he felt impelled to its execution by a voice from heaven, or by a strong conviction of certain great ends which it was to promote, and thus have acted the part, if the expression may be

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[1] 5 Carrington and Payne, 168. The defendant, in this case, was tried for murder. It appeared that he entertained the notion, that the person whom he shot and many others were desirous of depriving him of his liberty, and had accordingly conspired together to accomplish their purpose, and, under the influence of this delusion, he would abuse people whom he met in the streets, though wholly unacquainted with them. In his pocket was found a paper purporting to be "a List of Hadleigh Conspirators against my Life," in which he had enrolled the names of the deceased and his family. Several medical witnesses who heard the evidence, deposed that the prisoner was affected with *monomania*.

allowed, of an insane Abraham or Brutus. This principle, therefore, is far from being universally applicable, though if it had been admitted in the case of Bellingham, it would have produced the acquittal of that unfortunate man. The criminal act which he committed was not viewed by him at all as one of murder, any more than the killing of a brute for the same purpose, but merely as a disagreeable though justifiable method of bringing his affairs before the country, and obtaining redress for his manifold wrongs and sufferings. And yet Lord Lyndhurst, in this very case, expressed his approbation of the doctrines laid down by Lord Chief Justice Mansfield on the trial of Bellingham, — doctrines which he had found it necessary here to modify, in order that they might afford to an innocent man the protection to which he was entitled! Mr. Chitty seems inclined to proceed a step further on this point. "The substantial question presented to the jury," he observes, "is, whether, at the time the alleged criminal act was committed, the prisoner was incapable of judging between right and wrong, and did not *then* know he was committing an offence against the law of God and of nature."[1] By some late Scotch writers on criminal law, this test of responsibility has been disapproved of, in still more explicit terms. Baron Hume disposes of it in the following language: "Would he have answered on the question, that it is wrong to kill a fellow-creature? this is hardly to be considered a just criterion of such a state of mind as ought to make him answer to the law for his acts. Because a person may happen to answer in this way, who is yet so absolutely insane as to have lost all power of observation of facts, all discernment of the good or bad intentions of those who are about him, or even the knowledge of their persons. Besides, the question is put in another and a more special sense, as relative to the act done by the panel, and his knowledge of the place in which he did it. Did he at that moment understand the evil of what he did? Was he impressed

[1] Medical Jurisprudence, 354.

with the consciousness of guilt and fear of punishment? — it is then a pertinent and a material question, but one which cannot be rightly answered, without taking into consideration the whole circumstances of the situation. Every judgment in the matter of right and wrong supposes a case, or state of facts to which it applies. And though the person may have that vestige of reason which may enable him to answer in the general, that murder is a crime, yet if he cannot distinguish a friend from an enemy, or a benefit from an injury, but conceives every thing about him to be the reverse of what it really is, and mistakes the ideas of his fancy in that respect for realities, those remains of intellect are of no sort of service to him in the government of his actions, in enabling him to form a judgment as to what is right or wrong on any particular occasion."[1] From all this, Hume draws the broad conclusion, that the judgment of right and wrong has nothing to do with the question of responsibility.

§ 21. Mr. Alison lays down the principle, that "to amount to a complete bar to punishment, the insanity, either at the time of committing the crime, or of the trial, must have been of such a kind as entirely deprived the accused of the use of reason, *as applied to the act in question*, and the knowledge that he was doing wrong in committing it."[2] He very justly disapproves of the law as laid down by Chief Justice Mansfield, in Bellingham's case, viz.; that the prisoner was accountable, because he could distinguish good from evil, and knew that murder was a crime; but his remark respecting it betrays an ignorance of insanity, that would be surprising, were it not so common in discussions upon this subject. "On this case," says he, "it may be observed, that unquestionably the mere fancying a series of injuries to have been received will not serve as an excuse for murder, for this plain reason, that, supposing it true, that such injuries had been received, they would have furnished no excuse for the shed-

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[1] Commentaries on the Law of Scotland respecting Crimes, i. 36.

[2] Commentaries on the Law of Scotland, etc., 645.

ding of blood; but, on the other hand, such an illusion as deprives the panel of the sense that what he did was wrong, amounts to legal insanity, though he was perfectly aware that murder in general was a crime; and, therefore, the law appears to have been more correctly laid down, in the cases of Hadfield and Bowler, than in this instance." Whether the insane belief have reference to a matter of fact, or to views of right and wrong, it ought equally to be regarded as annulling legal responsibility. If a single step in the reasoning which leads to the commission of a criminal act be the offspring of insanity, the conclusion must necessarily be vitiated thereby. If this be the law by which maniacs are to be tried, few will escape punishment for criminal acts; for, in by far the greater proportion, such acts have been committed in consequence of a fancying of injuries received. One man kills his neighbor whom he insanely fancies to have joined a conspiracy to defraud him of his property or his liberty; or for having insulted and exposed him to scorn and derision; or for standing in the way of his attaining certain honors or estates; yet the insanity is not to excuse him, unless it deprived him of the consciousness that he was doing a wrong act. The existence of the delusion is obvious and cannot be mistaken; but what may be the views of the maniac respecting the moral character of the criminal acts which he commits under its influence, can never be exactly known; and, therefore, they ought not to be made the criterion of responsibility. Even if the party himself acknowledge that he knew he was doing wrong, the very fact of his insanity destroys the value of his confession which is no more entitled to notice than his most incoherent ravings. But it is known, that one of the most striking and characteristic effects of insanity on the mental operations is, to destroy the relations between end and means, — between the object in view and the course necessary to pursue in order to obtain it, — between, as in the cases just instanced, the fancied injury and the measure of punishment it deserves. It was in accordance with these views, that Lord Erskine pronounced *delusion* to be the true test of such insanity as

exempts from punishment, and that the correctness of the principle was recognized by the Court. It is impossible, therefore, to divine why Mr. Alison should say, that the law was more correctly laid down in Hadfield's case, when it is in direct conflict with his own opinions. Thus, as if frightened by their own temerity in overthrowing one ancient landmark on the domain of error, it would seem as if these writers were anxious to compound with their fears, by adhering with unusual pertinacity to all the rest. The radical fault of this test of responsibility lies in the metaphysical error of always looking on right and wrong in the abstract, — as things having a positive and independent existence, and not as they practically are, mere terms expressing the relations that exist between actions and certain faculties of our moral nature. That they express the same relations in nearly all men, is because nearly all men possess the same faculties; but when these faculties are absent, as in idiots, or when their action is perverted by disease, as in the insane, the relations of right and wrong are widely different.

§ 22. Another trait, which has been greatly relied on as a criterion in doubtful cases, is the design or contrivance that has been manifested in the commission of the criminal act. That it should ever have been viewed in this light, is an additional proof, if more were wanting, of the deplorable ignorance that characterizes the jurisprudence of insanity; for the slightest practical acquaintance with the disease would have prevented this pernicious mistake. The source of this error is probably to be found in the fact, "that, among the vulgar, some are for reckoning madmen, those only who are frantic or violent to some degree;"[1] the violence being supposed to preclude every attempt at design, or plan of operations. In the trial of Bellingham, the attorney-general declared that, "if even insanity in all his other acts had been manifest, yet the *systematic correctness*, with which the prisoner contrived the murder, showed that he

[1] Sir John Nicholl, in *Dew* v. *Clark*, 3 Addams, 441.

possessed a mind, at the time, capable of distinguishing right from wrong."[1] In Arnold's case (§ 10), great stress was laid on the circumstance of his having purchased shot of a much larger size, than he usually did when he went out to shoot, with the design then formed of committing the murder he afterwards attempted. Mr. Russell[2] recognizes the correctness of the principle, and lays it down as part of the law of the land. If, however, the power of design is really not incompatible with the existence of insanity, this pretended test must be as fallacious as that already adverted to. What must be thought of the attainments of those learned authorities, in the study of madness, who see in the power of systematic design a disproof of the existence of insanity when, from the humblest menial in the service of a lunatic asylum, they might have heard of the ingenuity of contrivance and adroitness of execution, that characterize the plans of the insane? If the mind continues rational on some subjects, it is no more than what might be expected, that this rationality should embrace the power of design, since a person could not properly be called rational on any point, in regard to which he had lost his customary ability to form his plans and designs for the future. These views are abundantly confirmed by every day's observation. The sentiment of cunning, too, which is necessary to the successful execution of one's projects, holds but a low place in the scale of the mental faculties — being a merely animal instinct — and is oftentimes observed to be rendered more active by insanity, so as to require the utmost vigilance to detect and defeat its wiles. One who is not practically acquainted with the habits of the insane, can scarcely conceive of the cunning which they will practise, when bent on accomplishing a favorite object. Those, for instance, whose madness takes a suicidal direction, are known to employ wonderful address in procuring and concealing the means of self-destruction; pretending to

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[1] Collinson on Lunacy, 657.

[2] Russell, on Crimes and Misdemeanors, 13.

have seen the folly of their designs, and to have renounced them entirely, sending away their attendants after thus lulling them into security, and, when least expected, renewing their suicidal attempts. When desirous of leaving their confinement, also, the consummate tact with which they will set suspicion at rest, the forecast with which they make their preparations for escape, and the sagacity with which they choose the time and place of action, would do infinite credit to the conceptions of the most sound and intelligent minds. Mr. Haslam has related a case so strikingly illustrative of this trait, that it is well worth extracting in this connection. An Essex farmer, after having so well counterfeited recovery as to produce his liberation, and having been sent back, immediately became tranquil, and remonstrated on the injustice of his confinement. "Having once deceived me, he wished much that my opinion should be taken respecting the state of his intellect, and assured his friends that he would submit to my determination. I had taken care to be well prepared for this interview, by obtaining an accurate account of the manner in which he had conducted himself. At this examination, he managed himself with admirable address. He spoke of the treatment he had received from the persons under whose care he was then placed, as most kind and fatherly: he also expressed himself as particularly fortunate in being under my care, and bestowed many handsome compliments on my skill in treating this disorder, and expatiated on my sagacity in perceiving the slightest tinges of insanity. When I wished him to explain certain parts of his conduct, and particularly some extravagant opinions, respecting certain persons and circumstances, he disclaimed all knowledge of such circumstances, and felt himself hurt that my mind should have been poisoned so much to his prejudice. He displayed equal subtlety on three other occasions when I visited him; although, by protracting the conversation, he let fall sufficient to satisfy my mind that he was a madman. In a short time he was removed to the hospital, where he expressed great satisfaction in being under my inspection. The private madhouse which he had formerly so much com-

mended, now became the subject of severe animadversion; he said that he had there been treated with extreme cruelty, that he had been nearly starved, and eaten up by vermin of various descriptions. On inquiring of some convalescent patients, I found (as I had suspected), that I was as much the subject of abuse when absent, as any of his supposed enemies, although to my face he was courteous and respectful. More than a month had elapsed since his admission into the hospital, before he pressed me for my opinion; probably confiding in his address, and hoping to deceive me. At length he appealed to my decision, and urged the correctness of his conduct during confinement as an argument for his liberation. But when I informed him of circumstances he supposed me unacquainted with, and assured him that he was a proper subject for the asylum which he then inhabited, he suddenly poured forth a torrent of abuse; talked in the most incoherent manner; insisted on the truth of what he formerly denied; breathed vengeance against his family and friends; and became so outrageous that it was necessary to order him to be strictly confined. He continued in a state of unceasing fury for more than fifteen months."[1] Even the purely intellectual power of combining a series of acts that shall accomplish or eventuate in certain results, when properly carried into execution, seems to be not only less frequently involved in the mental derangement, but often to have received a preternatural degree of strength and activity. Pinel speaks of a maniac who endeavored to discover the perpetual motion, and, in the course of his attempts, constructed some very curious machines. Esquirol has given the case of a mad general, who, though laboring under great mental excitement and disorder, conceived of an improvement in the construction of a military weapon, and made a drawing of the same. Having expressed a desire to have a model of it cast, and given his word of honor that he would go only to the founder's and return peaceably, he was permitted to go. He went on foot

[1] Observations on Madness, 53.

to the founder's, gave him the drawing, requested him to cast a model of it, and passed an hour in the shop, without the founder's once suspecting that he was dealing with a maniac. On leaving, he remarked that he would return in eight days, as he did, although a period of great excitement intervened during that time. On the second visit, he found the model executed, and gave an order for fifty thousand to be cast, which was the only circumstance that led the founder to suspect the general's disease. It is observed that the weapon thus improved was subsequently adopted in the army.[1] The plans which the brain of a maniac, who imagines himself a monarch, is perpetually hatching for the management of his kingdom, will bear to be compared with the political schemes of some rulers who are supposed to have the advantage of sanity on their side.

§ 23. If, then, the knowledge of good and evil, of right and wrong, and the power of design, are to be considered as fallacious tests of responsibility, notwithstanding they have proved the death warrant of many a wretched maniac, let us come back to that proposed by Erskine — *delusion* — and see if that will bear a more rigid scrutiny, when viewed by the light of modern discovery.[2] Now, if it were a fact, that the reason, or to speak more definitely, the intellectual powers, are exclusively liable to derangement, this test would be unobjectionable, and would furnish an easy and satisfactory

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[1] Des Maladies Mentales, ii. 190.

[2] The use of this test of irresponsible insanity has been sanctioned by the high authority of Sir John Nicholl, in the case of *Dew* v. *Clark*, 3 Addams, 79. "The true criterion," says he, "the true test, of the absence or presence of insanity, I take to be the absence or presence of what, used in a *certain* sense of it, is comprisable in a single term, namely, *delusion*." "In short, I look upon delusion in this sense of it, and insanity to be, almost, if not altogether, convertible terms." "On the contrary, in the absence of any such delusion, with whatever extravagances a supposed lunatic may be justly chargeable, and how like soever to a real madman he may either think or act on some one, or on all subjects; still, in the absence, I repeat, of any thing in the nature of *delusion*, so understood as above, the *supposed* lunatic is, in my judgment, not properly, or essentially insane."

clew to the elucidation of doubtful cases.[1] But it must not be forgotten, that the Author of our being has also endowed us with certain moral faculties, comprising the various sentiments, propensities, and affections, which, like the intellect, being connected with the brain, are necessarily affected by pathological actions in that organism. The abnormal condition thus produced may exert an astonishing influence on the conduct, changing the peaceable and retiring individual into a demon of fury, or, at the least, turning him from the calm and quiet of his lawful and innocent occupations, into a career of shameless dissipation and debauchery, while the intellectual perceptions seem to have lost none of their ordinary soundness and vigor. The existence of this form of insanity is now too well established, to be questioned by those who have any scientific reputation to lose. In this the most deplorable condition to which a human being can be reduced, where the wretched patient finds himself urged, perhaps, to the commission of every outrage, and, though perfectly conscious of what he is doing, unable to offer the slightest resistance to the overwhelming power that impels him, the responsibility is to be considered as not affected,

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[1] Even Mr. Erskine himself has furnished an exception to his own rule, in a case he has related of a young woman indicted for murder, who was acquitted on the ground of insanity, though it was not pretended that she labored under any delusion whatever. "It must be a consolation," he says, "to those who prosecuted her, that she was acquitted, as she is at this time in a most undoubted and deplorable state of insanity; but I confess, if I had been upon the jury who tried her, I should have entertained great doubts and difficulties; for, although this unhappy woman had before exhibited strong marks of insanity arising from grief and disappointment; yet she acted upon facts and circumstances which had an *existence*, and which were calculated, upon the ordinary principles of human action, to produce the most violent resentment. Mr. Errington having just cast her off, and married another woman, or taken her under his protection, her jealousy was excited to such a pitch, as occasionally to overpower her understanding; but when she went to Mr. Errington's house where she shot him, she went with the express and deliberate purpose of shooting him." "She did not act under a delusion, that he had deserted her when he had not, but took revenge upon him for an actual desertion." Erskine's Speeches.

because no *delusion* is present to disturb and distort the mental vision! In short, the very character that renders this mental disorder more terrible than all others, is also that which is made to steel the heart against the claims of humanity in behalf of its miserable victim.

§ 24. It appears, then, that as a test of responsibility, delusion is no better than those before mentioned. The truth is, there is no single character which is not equally liable to objection. Jurists who have been so anxious to obtain some definition of insanity, which shall furnish a rule for the determination of responsibility, should understand, that such a wish is chimerical from the very nature of things. Insanity is a disease, and, as is the case with all other diseases, the fact of its existence is never established by a single diagnostic symptom, but by the whole body of symptoms, no particular one of which is present in every case. To distinguish the manifestations of health from those of disease, requires the exercise of special learning and judgment; and, if no one doubts this proposition, when stated in reference to the bowels, the lungs, the heart, the liver, the kidneys, etc., what sufficient or even plausible reason is there, why it should be doubted when predicated of the brain? The functions of those organs proceed with the regularity and sameness of clock-work, compared with the ever-varying and unequal phenomena of this; and yet there are persons who assume a magisterial tone in writing or talking of the latter, who would defer to a tyro's judgment, in whatever concerns the others. If, when anxious to know all we can, respecting a disease of the lungs or stomach, we repair to those who have a high and well-founded reputation, in the pathology of these parts, why adopt the converse of this rule in regard to diseases of the brain? No reasonable person would desire to set up an insuperable barrier between the domain of professional knowledge and that of common sense and common information; but it is not too much to insist, that facts established by men of undoubted competence and good faith, should be rejected for better reasons than the charge of "groundless theory."

§ 25. In the passage taken from Lord Hale (§ 8), it will be observed, that he considers all crime to be the offspring of partial insanity, and the inference he meant should be drawn from it is, that partial insanity furnishes no excuse for crime. It is a curious fact, that many benevolent people, in their desire to palliate the sins of criminals, have inculcated the same principle, for the purpose of drawing from it a very different inference. Says the former: crime must be punished; but all crime proceeds from madness, therefore madness furnishes no exemption from punishment. Say the latter: madmen are not responsible for their criminal acts; but madness is the source of all crime, therefore madmen and criminals are equally irresponsible and exempt from punishment. Which of these two precious specimens of human subtlety can claim the triumph of absurdity, it would not be easy to determine. Crime is not necessarily the result of madness, not even when perpetrated under the excitement of fierce and violent passions; in the true sense of the word, it is never so, but is always actuated by motives; insufficient it may be, but still rational motives, having reference to definite and real objects. The misfortune which the criminal is going to avert, the interest which he is going to subserve, the revenge he is about to gratify, the insult or injury he is about to repay, are *real* injuries and insults and interests, however much they may be exaggerated, or however disproportionately small they may be to the crime they provoke; and, the ends to be obtained by the criminal act, are real and have an appreciable value. In the most violent transports of passion, he never wholly loses his knowledge of the true relations of things. The person whom he considers his enemy, or the author of the insult, is really such, or at least, he has some ground for believing him such; and with the absence of the object of his passion, disappears the intention to offend. Violent passions may weaken the judgment, and diminish its power of control, but they do not vitiate the perceptions, nor deprive the mind of its powers of comparison. All this is very different in mental derangement. The causes which urge the insane to deeds of violence are gen-

erally illusory — the hallucinations of a diseased brain — or they may act from no motive at all, solely in obedience to a blind impulse, with no end to obtain, nor wish to gratify. Madness, too, is more or less independent of the exciting causes that have given rise to it, and exists long after those causes have been removed, and after the paramount wish or object has been obtained. In short, madness is the result of a certain pathological condition of the brain, while the criminal effects of violent passions merely indicate unusual strength of those passions, or a deficient education of those higher faculties that furnish the necessary restraint upon their power. It is admitted, that strong passions do deprive the individual of the power of calmly deliberating, and perceiving the terrible consequences of his fury; and legislators have wisely distinguished homicide committed under their influence, from deliberate, premeditated homicide, by visiting it with a minor degree of punishment. In drunkenness the same effect is sometimes produced to such a degree as to amount to temporary insanity; but neither does this any more than strong passions exempt from all punishment; for the plain reason, that, in both cases, the impairment of moral liberty is the voluntary act of the individual himself, and must be imputed to him as a fault. If the remarks on this point may seem to be unnecessarily prolix, it can only be observed, by way of excuse, that where opinions are handed down, as they are in law, from one generation to another, they attain much the same kind of value that is possessed by established facts in natural science, and exert an influence that demands for them a degree of consideration which their intrinsic merits do not deserve.

§ 26. Enough has been said, it is believed, to convince every unprejudiced reader that, in Great Britain, the law of insanity, especially that relative to criminal cases, is still loose, vacillating, and greatly behind the present state of our knowledge of that disease. If we carefully examine the cases tried within the last hundred years, as they are brought together in the various treatises on lunacy and on criminal law, the utmost respect for authority will not prevent us from

observing the want of any definite principle as the ground of the difference of their results. Amid the mass of theoretical and discordant speculations on the psychological effects of insanity, and of crude and fanciful tests for detecting its presence, which these trials have elicited, the student who turns to them for the purpose of informing his mind on this branch of his profession, finds himself completely disheartened and bewildered. Instead of inquiring into the effect produced by the peculiar delusions of the accused on his ordinary conduct and conversation, and especially of their connection with the criminal act in question, the courts, in these cases, have been contented with laying down metaphysical dogmas on the consciousness of right and wrong, of good and evil, and the measure of understanding still possessed by the accused. One principle after another has been successively abandoned and resumed, either with the strangest disregard of consistency, or the most extraordinary ignorance of previous decisions. Thus, the old maxim that insanity does not annul criminal responsibility in one who retains the power of distinguishing right from wrong, was abandoned in the case of Hadfield, reaffirmed in that of Bellingham (1812), again abandoned in the trial of Martin (1831),[1] modified though approved of in the same year by Lord Lyndhurst (1828),[2] and again, in the year (1837), a jury, holding in their hands the life of a fellow man, are told by Mr. Justice Park, that, as regards the effect of insanity on responsibility for crime, "it is merely necessary that the party should have sufficient knowledge and reason to discriminate between *right* and *wrong*."[3] Three years afterwards, on the trial of Oxford for shooting at the Queen, Lord Chief Justice Denman told the jury, "that the question for them to decide was, whether the prisoner was laboring under that species of insanity which

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[1] Report of the trial of Jonathan Martin for setting fire to the York Minster.

[2] *Rex* v. *Offord*, 5 Car. & Payne, 168.

[3] Trial of Greensmith, noticed in Medico-Chirurg. Review, vol. xxviii. 86, N. S.

satisfied them that he was quite unaware of the nature, character, and consequences of the act he was committing, or, in other words, whether he was under the influence of a diseased mind, and was really unconscious at the time he was committing the act, that it was a crime." [1] Three years later, in *Regina* v. *Higginson* (1843), Mr. Justice Maule said to the jury, "If you are satisfied that the prisoner, at the time of committing the offence, was so insane that he did not know right from wrong, he should be acquitted on that ground. But if you think he did know right from wrong, he is responsible for his acts, although of weak intellect." [2] The test was again held up, in its original nakedness, in *Regina* v. *Stokes* (1848), where the court, Baron Rolfe, said that "every man is held responsible for his acts by the laws of his country, if he can discern right from wrong." [3]

§ 27. In the spring of 1843, a Scotchman named McNaughton, met in one of the streets of London, Mr. Drummond, the private secretary of Sir Robert Peel, and shot him dead with a pistol. For some time previous, he had entertained the delusion that he was pursued by enemies who followed him everywhere, blasting his fame, disturbing his peace, and filling him with intolerable inquietude; and fancying his victim to be one of the crew, he determined to sacrifice him. His insanity was not obvious at sight, he had recently transacted business, he viewed some of his relations in their true light, and behaved with much propriety in the ordinary intercourse with men. He was defended by able and zealous counsel who brought before the jury the more sound and humane views of insanity which have resulted from modern inquiry, and the court readily favored his acquittal. The community, however, were far from being satisfied with this result, for it beheld only two facts in the case, — a worthy man had been shot down in broad day, and without provocation, by one who could transact business, discourse correctly, and who showed no very obvious symp-

[1] 9 Carrington & Payne, 525. [2] 1 Car. & Kir. 129.
[3] 3 Car. & Kir. 185.

toms of insanity. Participating in the popular feeling, the house of lords propounded to the law-judges certain queries relative to the law of England on the subject of insanity as a defence in criminal actions. The queries implied a doubt of the correctness of the doctrine, that delusion, in and of itself alone, is necessarily an exculpatory plea, and seemed to suggest the idea that, to have this effect, it must be accompanied by some other mental disability. They were intended, no doubt, to obtain an authoritative exposition of the law that should settle its principles and regulate the future practice of courts. They wished, indeed, to obtain from the judges collectively what had eluded their grasp individually, — a general expression of the law capable of embracing every possible case, and working injustice to none. We shall see whether the attempt of the judges fulfils this high object.

§ 28. The first query is, "What is the law respecting alleged crimes committed by persons afflicted with insane delusions in respect of one or more particular subjects or persons; as, for instance, where, at the time of the commission of the alleged crime, the accused knew he was acting contrary to law, but did the act complained of with a view, under the influence of insane delusion, of redressing or avenging some supposed grievance or injury, or of producing some supposed public benefit?" To this the judges reply that, assuming the inquiry "to be confined to those persons who labor under such partial delusions only, and are not in other respects insane, they are of the opinion, that notwithstanding the party accused did the act complained of, with a view, under the influence of insane delusion, of redressing or avenging some supposed grievance or injury, or of producing some public benefit, he is nevertheless punishable, according to the nature of the crime committed, if he knew, at the time of committing such crime, that he was acting contrary to law, by which expression they understand their Lordships to mean, the law of the land."

§ 29. Had the principle here laid down, been always strictly followed, it is very certain that many a one who has

been acquitted on the ground of insanity, would have met the fate of ordinary criminals. Hadfield knew — so far as a man in his condition may be said to *know* any thing — that in shooting at the king, he was doing an illegal act, because, when apprehended, he declared that his life was forfeited, and that he did the deed for this very purpose, in order that by his own death, he might fulfil some great end to which he fancied himself to have been called. Martin, who burnt the York minster, in obedience to a command of God, expected to be punished. The mental disability of the insane may be evinced, not in failing to recognize the illegality of their acts, but in considering themselves as absolved from the obligations of the law. An act which they know to be forbidden, they may feel constrained to commit by reasons that transcend all law. They move in a sphere beyond the reach of the ordinary motives of human conduct, and are a law unto themselves. It is certainly very unreasonable for any one to believe, that, to revenge a private grievance, or secure a public benefit, he may set aside all law and take any and every extreme measure that may seem to him necessary for the purpose. But shall we be guilty of the absurdity of expecting an insane person to act *reasonably* in reference to his delusions?

§ 30. The second and third queries are, "What are the proper questions to be submitted to the jury, when a person, alleged to be afflicted with insane delusion respecting one or more particular subjects or persons, is charged with the commission of a crime (murder, for example), and insanity is set up as a defence? In what terms ought the question to be left to the jury, as to the prisoner's state of mind at the time when the act was committed?"

§ 31. The judges state that these two questions can be more conveniently answered together, and their reply is, that, "to establish a defence on the ground of insanity, it must be clearly proved, that at the time of committing the act, the party accused was laboring under such a defect of reason from disease of the mind, as not to know the nature and quality of the act he was doing, or, if he did know it, that he

did not know he was doing what was wrong." They add, that the question of right and wrong should be put in reference to the particular act with which he is charged.

§ 32. The principle of responsibility here laid down, manifestly conflicts with that promulgated in the answer to the first query. An insane person may do an act he knows to be contrary to law, because he thinks the peculiar circumstances of the case render it *right* for him to disregard the law. We have just seen that Hadfield admitted that he had violated the law, but believed he was right in so doing, for the sake of the end which it would enable him to accomplish. Tried by the former test, he would have been convicted, while by the latter he would have been acquitted. Without mentioning all the objections to which this test of responsibility is liable, it is enough to say that it furnishes no protection to that large class of the insane who entertain no specific delusion, but act from momentary irresistible impulses, or diseased moral perceptions.

§ 33. The fourth query is, "If a person, under an insane delusion as to existing facts, commits an offence in consequence thereof, is he thereby excused?" To this the judges reply, that, on the assumption "that he labors under partial delusion only, and is not in other respects insane, he must be considered in the same situation as to responsibility, as if the facts, with respect to which the delusion exists, were real. For example, if under the influence of delusion, he supposes another man to be in the act of attempting to take away his life, and he kills that man, as he supposes, in self-defence, he would be exempt from punishment. If his delusion was, that the deceased had inflicted a serious injury to his character and fortune, and he killed him in revenge for such supposed injury, he would be liable to punishment."

§ 34. Such a remarkable doctrine as this can have sprung from only the most deplorable ignorance of the mental operations of the insane. If the insane person really believe that his neighbor is engaged in a conspiracy to take his life, he may anticipate the blow by killing him; but if he merely believes that the said neighbor has inflicted a serious injury

on his character or fortune, the law will not hold him guiltless if he hurt a hair of his head! This is certainly very plain, and it must be the fault of the lunatic, if he do not understand it. It is very reasonable, too, *if insane men would but listen to reason.* This doctrine of the English judges seems to be essentially that of Hoffbauer, who says that the acts of the accused should be judged, precisely as if he were really in the circumstances he imagined. That is, if he fancies there is a design to take his life, *he* may take life; if he fancies that he is only insulted or railed at, *he* may insult or rail in turn; if he fancies his neighbor is defrauding him, *he* may say hard things about him (taking care to utter no matter libellous), or bring against him a suit at law. This is virtually saying to a man, "You are allowed to be insane; the disease is a visitation of Providence, and you cannot help it; but have a care how you manifest your insanity; there must be method in your madness. Having once adopted your delusion, all the subsequent steps connected with it, must be conformed to the strictest requirements of reason and propriety. If you are caught tripping in your logic; if in the disturbance of your moral and intellectual perceptions you take a step for which a sane man would be punished, insanity will be no bar to your punishment. In short, having become fairly enveloped in the clouds of mental disorder, the law expects you will move as discreetly and circumspectly as if the undimmed light of reason were shining upon your path."

§ 35. The principle in question is not supported by our knowledge of the psychological effects of insanity, and cannot be followed out without working great injustice. McNaughton did not suppose that Mr. Drummond or any one else was seeking his life, but that his fancied enemies followed him about, traducing his reputation and disturbing his peace. There was no proof that he apprehended any deadly injury, and yet he was acquitted with the approbation of the judge, *by whom this principle was not once mentioned,* — the very Chief Justice Tindall who read the answers of the judges to the Lords, and probably had the principal share in

framing them. Oxford, too, who shot at the queen, did not imagine that he had sustained any personal wrong from her or any one else, but that killing the queen was necessary in order to accomplish some great public benefit. Yet he was acquitted with the approbation of the court, Lord Denman, who said nothing of this principle in his charge to the jury, though he joined in the reply to the queries of the Lords.

§ 36. It is beyond our power to conceive how this principle can be reconciled with that conveyed in reply to the second and third queries. Most if not all those lunatics who, like McNaughton, take life in order to revenge some supposed injury to their character or fortune, have a strong belief that they are doing right. Nothing is more common than for the insane to be guilty of the utmost violence towards persons from whom they fancy they have received only some trivial offence, while their views of law and right on this point, are so confused and perverted, that they might as well, for any good influence they exert, be obliterated altogether. And it is because their mental perceptions are so dull and distorted, that they do not proportion their measures of retaliation by the same rules that govern sane men. But now, it seems, the state of the person's mind, the extent of the morbid influence of the disease over his perceptions of truth and right, and propriety, and the degree to which it has consigned him to the dominion of delusion and passion, are no longer to be considered in settling the extent of his legal responsibility, — we are to look only to his acts, and these are to be judged of as if committed by perfectly sane men.

§ 37. In the debate which sprung up in the house of Lords,[1] on the occasion of McNaughton's trial, the distinguished law-Lords Lyndhurst, Brougham, Cottenham, and Campbell, expressed their views on the general question, furnishing a signal illustration of the inconsistency and contradiction which we have charged upon the opinions of courts. Lyndhurst, in referring to the Hadfield case, quotes

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[1] Hansard, lvii. 714.

the following, as the exposition of the law made by Erskine and adopted by the court. "When a man is laboring under a delusion, if you are satisfied that a delusion existed at the time of the committal of the offence — that the act was done under its influence — then he cannot be considered as guilty of any crime." Subsequently, he restates the principle in the following words of his own: "If the man who committed a crime was insane at the time he committed it, that is to say, was laboring under such disease of the mind as not to know whether he were doing right or wrong, in that case, he was not a subject for a criminal trial." The fact is, that Erskine neither adopted nor approved the criterion furnished by knowing right from wrong. It is not once mentioned in the whole course of his speech on that occasion, for the simple reason that it was his design to establish a very different criterion, or test, — a point of which the speaker seems to have had not the slightest conception. Lord Brougham said, "he could conceive the case of a human being, of a weakly constituted mind, who might, by long brooding over real or fancied wrongs, work up so perverted a feeling of hatred against an individual, that danger might occur. He might not be deluded as to the actual existence of injuries he had received, but he might grievously and grossly exaggerate them, and they might so operate on a weakly framed mind and intellect as to produce crime. He could conceive that the Maker of that man, in his infinite mercy, having regard to the object of his creation, might deem him not an object for punishment. But that man was accountable to human tribunals in a totally different sense. Man punished crime for the purpose of practically deterring others from offending by committing a repetition of the like act. It was in that sense only that he had any thing to do with the doctrine of accountable and not accountable. He could conceive a person whom Deity might not deem accountable, but who might be perfectly accountable to human laws." He thought that the later tests of responsibility, such as knowing good from evil, or what was proper or wicked, were not preferable to the old one, of knowing right from wrong; and yet he

immediately remarks, that sane people differ in their views of right and wrong, and though he knew what the learned judges meant by right and wrong, he was not sure that the public at large did, especially juries. He blamed the court for refusing to postpone Bellingham's trial, in order that his friends might procure evidence respecting his mental condition. He says, "affidavits had been made of the prisoner's family having been tainted with insanity. Affidavits had been produced from those who had known him from infancy of his having been insane. Affidavits were offered, showing a *prima facie* case of mental alienation." But he adds with wonderful coolness, "no man doubted that the result of the trial would have been precisely the same, had the evidence been adduced." His Lordship cautions courts against urging the conviction of persons who entertain delusions, and yet he approves of the conviction of Bellingham, of whose delusions he furnishes additional evidence not before published. He says, on the authority of Mr. Stephens and Mr. Wilberforce who saw him after the trial, that "Bellingham had no conception that he had done any thing wrong; he lamented the death of Mr. Percival; spoke of him with the greatest respect, and even esteem for his character; said that no man could more lament that such a thing should have befallen that gentleman, than he did; that nothing could be more hard, both to his family and the public and society at large; and that it was greatly to be lamented. 'Then,' he was asked, 'why did you do the deed?' 'Oh, do it,' he answered, 'that was perfectly inevitable; there was no wrong at all in doing it; he could not help that.'" Lords Lyndhurst and Brougham were of the opinion, that from the time of Hadfield's case to the present day, the law had been laid down by successive courts with great uniformity. Lord Campbell said of the same cases, that "there was a wide difference both in meaning and in words, in their description of the law." He therefore thought that an authoritative statement of the law was desirable, though he had just before declared that "the law of England on this subject admitted of no alteration." To say that a thing is so correct as to admit of no

alteration, and, in the next breath to add, that there is needed an authoritative statement of what that thing is, indicates a confusion of ideas not uncommon in discussions on this subject.

§ 38. Nothing can more clearly show how completely the authoritative statement of the English judges has failed to accomplish its purpose, than the fact that in subsequent trials, the result seems to have been, as much as ever, a matter of accident or caprice, rather than of principles well-settled and clearly understood. Several have been convicted and executed, in spite of the plea of insanity, in whom the manifestations of disease were far more abundant than in some who were acquitted under the same plea. As they involve no new principle, it would be inconsistent with our present purpose, to bestow upon them a particular notice. Another writer who has given them some attention, thinks they indicate both uncertainty and injustice in the operation of the criminal law. "Either some individuals," he says, "are most improperly acquitted on the plea of insanity, or others are most unjustly executed."[1] A more correct expression of the actual fact, could not be given. We have no means of knowing, however, how far the verdict of the jury reflects the opinion of the court, and therefore must remain in doubt whether this remarkable want of uniformity is to be attributed to the growing independence of the former, or a more lenient construction of the principles which have hitherto governed the latter. Some of it is, probably, owing to an increasing disposition to heed the opinions of experts, and a commendable reluctance to convict a man declared by competent authority to be insane, merely on the strength of some metaphysical tests of responsibility laid down by the courts. Referring to the cases of McNaughton, Rogers, Baker, Freeman, Pate, and a multitude of others, all of which have occurred within fifteen years of the present writing, (1859), Dr. Beck declares with an honest plainness that looks a little

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[1] Taylor, Medical Jurisprudence, 3d Am. Ed. p. 642.

like sarcasm, that "each case would seem to be tried as an individual one, without establishing or strengthening any great or leading principles. In one instance, the judge stops the trial; in another, the jury disregard his directions; now, the testimony of physicians is taken without comment, and the verdict is given accordingly; then again, the physician is told that he is encroaching on the judge and jury. In some instances, the doctrine of moral insanity rules preëminent; in others, the English law as it existed in the time of Sir Matthew Hale, is the rule." [1]

§ 39. Notwithstanding the occasional instances of amelioration in the English law, the old principle that some insane men are proper objects of punishment, is as binding at this moment, as it was in the time of Lord Hale. It seems to be almost impossible for those who have not a professional knowledge of insanity, to view the subject in the true light. The popular feeling, mixed unquestionably with some truth, was strongly expressed by Lord Brougham, in the debate to which we have already referred. "If," says he, "the perpetrator knew what he was doing, if he had taken his precautions to accomplish his purpose, if he knew, at the time of doing the desperate act, that it was forbidden by the law, that was his test of sanity; he cared not what judge gave another test; he should go to his grave in the belief that it was the real, sound, and consistent test." That some insane persons know very well, that, in committing their offences, they are guilty of a moral and legal wrong, and that they may be more or less deterred by the fear of punishment, are propositions that cannot be denied. The fallacy of which the courts are guilty, consists in supposing that these abstract propositions may be safely applied to particular cases by means of certain criteria. It has been shown that these criteria are insufficient for the purpose, because they do not cover the whole ground, and are, at the best, but a begging of the question. For admitting that the person knew he was

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[1] Medical Jurisprudence, i. 783 [Tenth Edition].

doing wrong and contrary to law, it remains to be proved that this knowledge embraces all the elements of responsibility. The real question at issue is, why, with this knowledge, he should commit acts incompatible with his natural character and disposition, and the only rational answer is to say, that the action of the mental powers is disturbed by the presence of disease. Whatever degree of intelligence or self-control may be left, there still remains this disturbing element, the precise influence of which never can be safely estimated. It is a monstrous doctrine to put forth in a civilized age, that a man hitherto of irreproachable conduct and conversation, shall be punished for any criminal act he may commit, while admitted to be laboring under a morbid condition, the tendency of which is to distort the moral perceptions and destroy the healthy balance of the mental faculties. Whether Bellingham and McNaughton knew they were doing an act forbidden by the law, when they shot down unoffending men, in open day, is a question entirely irrelevant to the purpose. What we want to know is, whether they would have committed the outrage, if they had not been prompted by delusions which were the effect of disease. To inflict upon such men the ordinary consequences of crime, is virtually to punish them for being diseased, and the utmost ingenuity of logic or metaphysics can make nothing else of it. Lord Brougham intimates that he had been much annoyed, if not frightened, by a class of persons with deranged intellects, who hover around the courts in search of redress for their real or fancied wrongs, and he believes that the fear of punishment is necessary in order to deter them from actual mischief. Now, in whatever aspect we consider the case, we can find no support for such a doctrine. The punishment of one insane person would not deter another insane person from committing a criminal act, for the simple reason that the latter, not regarding himself as insane, sees in it no application to him who, as he believes, is in a state of perfect health, pursuing a right and lawful object. He either thinks that his case is an exception to the general rule, and that he is about to do something that will receive universal approbation; or that he

is bound by solemn obligation to do the act, whatever may be the consequences. Nothing can more strongly illustrate the popular ignorance respecting insanity than the proposition, equally objectionable in its humanity and its logic, that the insane should be punished for criminal acts, in order to deter other insane persons from doing the same thing. It supposes that an insane man, McNaughton, for instance, while meditating homicide, would say to himself, "true, I am insane, but nevertheless, if I do this thing, I shall be tried, convicted and executed, like Bowler and Bellingham and other insane men, therefore I shall refrain from it." The absurdity of an insane person's recognizing his own insanity, forming rules for his conduct, and acting upon them, would seem too gross to be deliberately uttered by learned dignitaries of the law, had we not abundant proof to the contrary. In point of fact, it may be safely said that not an instance can be produced, of an insane person being deterred from the commission of a criminal act by the punishment of some other insane person for a similar act, or encouraged to commit it by an example of an opposite kind.

§ 40. The proper remedy for the evil complained of by Lord Brougham, is to be sought for in suitable measures of prevention, and society is guilty of a great wrong when it punishes the individual for the consequences of its own neglect. The management of the insane in hospitals where they are excited to behave with propriety by the promise of reward, and deterred from wrong doing by the fear of being deprived of some privilege or indulgence, is confidently appealed to in support of this idea. It is unquestionably the practice in such institutions to present to the insane motives for maintaining their self-control, but it is not the fact that when such motives fail to produce the end in view, they are punished. They are deprived of a privilege or indulgence, not as a punishment, but because they have shown themselves incapable of enjoying it. The anecdote is often related for the same purpose, respecting the conversation that occurred among the inmates of a lunatic asylum on the case of Martin who was then waiting his trial for setting fire to the York Minster.

"He will not be hanged," said one of them, "They cannot hang him, because he is mad — he is one of ourselves." It is not very obvious how this anecdote which, by the way, has the appearance of a little embellishment, affords any support to the doctrine that some insane men should be punished, while others may be properly acquitted. If it indicates any thing on this point, it is that every insane man who commits a criminal act, even though he may escape from an asylum for the purpose, is a proper object of punishment.

§ 41. Criminal trials, in which insanity was pleaded in defence, have been generally so little known beyond the place of their occurrence, that it is difficult to ascertain on what particular principles of the common law the decisions of American courts have been founded, though from all that can be gathered, it appears that their practice, like that of the British, has been diverse and fluctuating. In the trial of Lawrence, at Washington, in 1835, for shooting at president Jackson, the jury were advised by the court to regulate their verdict by the principles laid down in the case of Hadfield, which had been stated to them by the district-attorney.[1] In the case of Theodore Wilson, tried in York county, Maine, in 1836, for the murder of his wife in a paroxysm of insanity, the court charged the jury that if they were satisfied the prisoner was not of *sound memory* and *discretion* at the time of committing the act, they were bound to return a verdict of acquittal. This is all that could be wished; and considering that two highly respectable physicians had given their opinion in evidence that the prisoner had some consciousness of right and wrong, and that the attorney-general, though he admitted the existence of insanity in some degree, denied that it was of sufficient extent to exempt him from punishment, supporting his assertion on the authority of the leading English cases relating to insanity, this decision indicates an advance in the criminal jurisprudence of insanity that does credit to the humanity and intelligence of that court. In the

[1] Niles's Register, xlviii. 119.

trial of Cory, for murdering Mrs. Nash, in New Hampshire, 1829, the court, Chief Justice Richardson, stated in his charge to the jury that the only question for them to settle was, "whether he was of sane mind when the deed was done?" The same language was used by the same court on the trial of Prescott, for the murder of Mrs. Cochran, in 1834. In *State of Connecticut* v. *Abbot* (1841), the jury were instructed to acquit the prisoner if they found "that he was insane — had not sufficient understanding to distinguish right from wrong, and did not know that the murder of his wife was an offence against the laws of God and nature." In *Commonwealth of Massachusetts* v. *Rogers* (1843), the court, Chief Justice Shaw, thus stated the rule of law. "A man is not to be excused from responsibility, if he has capacity and reason sufficient to enable him to distinguish between right and wrong, as to the particular act he is then doing, and a knowledge and consciousness that the act he is doing is wrong and criminal, and will subject him to punishment. In order to be responsible, he must have sufficient power of memory to recollect the relation in which he stands to others, and in which others stand to him; that the act he is doing is contrary to the plain dictates of justice and right, injurious to others, and a violation of the dictates of duty." "The question is whether the disease existed to so high a degree, that for the time being, it overwhelmed the reason, conscience, and judgment, and whether the prisoner in committing the homicide acted from an irresistible and uncontrollable impulse."[1] In *People* v. *Kleim*, New York (1846), the court, Judge Edmonds, said that, to establish a defence on the ground of insanity, it must be clearly proved that the party accused was laboring under such a defect of reason from disease of the mind as not to know the nature and quality of the act he was doing, or if he did know it, that he did not know he was doing what was wrong. Also, if he have not intelligence and capacity enough to have a criminal intent and purpose, and if his moral or

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[1] Trial of Abner Rogers, etc. By Bigelow & Bemis, 275.

intellectual powers are either so deficient that he has not sufficient will, conscience, or controlling mental power, or if, through the overwhelming violence of mental disease, his intellectual power is for the time obliterated, he is not a responsible moral agent.[1] In *State* v. *Spencer*, New Jersey (1846), the court, Chief Justice Hornblower, declared that "if the prisoner, at the time of committing the act, was conscious that he ought not to do it, the law holds him responsible, and he cannot be exculpated on the ground of insanity, although on some subjects he may have been insane at the time."[2] In *People* v. *Freeman*, New York (1847), it was held that the prisoner was responsible if capable of perceiving that the act was contrary to law.[3] In *State* v. *Bender*, Pennsylvania (1850), the court said that the prisoner, to be acquitted on the ground of insanity, should have been so deranged that he could not appreciate the nature or consequences of the act he was committing; his mind must have been disturbed by disease, or other natural cause, to an extent to deprive him of the power of reasoning on the subject of the act he was about to commit; and had not mind enough to reflect, think and know the difference between right and wrong. In *State* v. *Knepley*, Pennsylvania (1850), the court said, that before any man can be exempted or relieved from responsibility for crime, he must have such alienation of mind as to entirely destroy his perception of right and wrong in regard to the particular act, or be laboring under such delusion or hallucination as controls his will and renders the commission of his offence, in his opinion, a matter of duty or necessity. In *State* v. *Windsor*, Delaware (1851), the court instructed the jury that the question before them was, whether the prisoner was under the influence of a diseased mind, and was really unconscious at the time he was committing the act that it was a crime. In *State* v. *Clark*, Connecticut (1855), it was held that the prisoner was

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[1] American Journal of Insanity, ii. 264.

[2] 1 Zabriskie, 196.

[3] 4 Denio, 29.

not accountable, if he had not capacity and reason enough to enable him to distinguish between right and wrong in this instance, to understand the nature, character, and consequences of the act, and to apply his knowledge to this case, not being overcome by an irresistible impulse arising from disease. In *State* v. *Smith*, Pennsylvania (1858), the court held that the prisoner was irresponsible, if he were governed by an uncontrollable impulse, his will were no longer in subjection to his reason, owing to the excited and continued impetuosity of his thoughts, and the confusion of a mind impelled by disease and goaded by a sense of grievous wrongs. In *People* v. *Thurston*, New York (1851), *People* v. *Fyler*, New York (1855), *State* v. *Sloo*, Illinois (1857), *United States* v. *Holmes*, Maine (1858), the law as expounded by Chief Justice Shaw, in *Commonwealth* v. *Rogers*, was adopted. In *State* v. *Mosler*, Pennsylvania (1846), the court, Chief Justice Gibson, said that insanity, in order to exempt a person from punishment for criminal acts, must be so great in its extent or degree, as to blind him to the nature and consequences of his moral duty, and entirely destroy his perception of right and wrong.[1] In *United States* v. *McGlue*, Massachusetts (1851), the court, Mr. Justice Curtis, instructed the jury that the question for them to settle was, whether the prisoner understood the nature of the act, and knew he was doing wrong and would deserve punishment.[2]

§ 42. The loose, vague, and contradictory tests of that kind of insanity which alone can be regarded as a sufficient excuse for criminal acts, are strongly illustrated in this summary of American decisions. The cause of this curious fact will be sufficiently apparent on a little reflection. If metaphysicians

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[1] 4 Barr, 266.

[2] 1 Curtis, 9. Where no authority is given for the cases here mentioned, our information has been derived from newspapers and pamphlets containing reports of the trials. Decisions like these, or any others at *nisi prius*, can hardly be considered as authority strictly speaking, but they sufficiently answer the present purpose, which is to show what has been the practice in American courts.

who have made the rational mind their special study, widely differ in their accounts of its operations, could it be expected that men who have given little or no attention to the phenomena of insanity, should be more successful in ascertaining the character and connection of the thoughts and emotions which occupy the irrational mind? It is not strange that every step in their analysis of motives and impulses should be marked by hesitation and distrust, and that tests of responsibility once set up with the strongest confidence, should be either utterly abandoned, one after another, or limited by some indefinite qualification. To this course our courts have been driven, more easily, perhaps, than the English, because their sense of justice has been less controlled by authority and prescription. They see the miserable victim of disease before them; they hear the story of his freaks and fancies from the lips of friends and neighbors, and the testimony in his favor of distinguished experts, with whom perhaps they may be personally acquainted. Thus the conviction of his insanity becomes irresistible, and they feel constrained to construe the law in such a manner as to afford him its protection; and yet such a construction might not have been thought of, had the general features only of the case been presented to them in their chambers. In this country as in England, the insufficiency of the old tests of responsibility has been generally recognized, and here all harmony of opinion ends. What the true test really is, remains as far from being settled as ever. The actual question in such cases is, how far the various elements of responsibility have been affected by the presence of disease. To answer it correctly, there is implied, not only some knowledge of the constitution of the mind in its normal condition, but also a thorough and accurate knowledge of its manifestations while under the influence of disease. The former might be expected, in some degree, at least, in most men of a liberal culture, but the latter must necessarily be confined to persons who have made insanity their special study. It is, in fact, as strictly a professional matter as the effect of malaria on the nervous system; and equally unfit to be presented for inves-

tigation to a bench of judges. Here lies the fundamental error of the courts, in supposing that the question of responsibility may be settled without the aid of scientific research and observation, — in supposing that men who, never in their lives, perhaps, observed very closely a single case of insanity; who know nothing of its various forms, nor of the laws which govern their origin and progress, are qualified to lay down general principles touching the measure of responsibility which is left after reason has been driven from her throne, or reduced to share a divided empire with the caprices and impulses of disease.[1] The results of this error are painfully exhibited in the summary of decisions given in the preceding sections. The loose and indefinite phraseology where terms should be precise and well-defined; the frequent recurrence to the same point, as if fearful of saying too much or too little; the conflicting tests and the qualifications attached to them, — all this inspires no confidence, and, consequently, leads to no uniformity of opinion. It is a truth which no assumption of superior wisdom, no blind conservatism can destroy, that, with hardly a single exception, these "rules of law" on the subject of insanity, are in conflict with the well-settled facts of mental disease. They would never have been made, we are quite sure, by persons practically acquainted with the operations of the insane mind. To such

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[1] As if to heighten the absurdity of the matter, some of these judicial dignitaries who arrive at their conclusions on the subject of insanity in the retirement of their chambers, exhibit a lofty distrust of the views of men who have spent the best portion of their lives in the company of the insane, and stigmatize them as "crude and visionary," if not unsafe and mischievous. In the trial of James Gibson before the high court of justiciary, Edinburgh (1845), reported in Cormac's Monthly Journal of Medical Science, February, 1845, the Lord Justice Clerk (Hope), told the jury "they were not to consider insanity according to the definitions of medical men — especially such fantastic and shadowy definitions as are to be found in Ray, whose work was quoted by the counsel for the panel, and in many other medical works on the subject." "Any thing more varying, or inconsistent, or unsatisfactory, than the definitions of insanity given by Ray and many other medical writers, cannot be conceived."

it is well known, that in every hospital for the insane are patients capable of distinguishing between right and wrong, knowing well enough how to appreciate the nature and legal consequences of their acts, acknowledging the sanctions of religion, and never acting from irresistible impulses, but deliberately and shrewdly. Is all this to be utterly ignored in courts of justice?

§ 43. The frequency with which insanity is pleaded in defence of crime, the magnitude of its consequences to the parties concerned, and the perplexity in which the discussions it occasions involve the minds of judges and jurors, are ample reasons why the law relative to insanity should be simple and easily understood — a result that can only be obtained by direct legislative enactments. It is time for the legislature to determine what, amid the mass of conflicting opinions on this subject, shall be the law of the land; and thus no longer permit the lives and liberties of people to be suspended on the dicta of men, whose knowledge of insanity was exceedingly imperfect, and which have not even the merit of uniformity and consistency. It may be well, therefore, to see what has been the legislation of various enlightened nations, in reference to this subject, inasmuch as it may furnish valuable hints for our own. In some, the legislator has been contented with indicating, by some popular, general phrase, that condition of mind which the judge may consider as freeing from responsibility. The Bavarian code (1813), follows this course, as well as the code of Basle, promulgated in 1835. In the latter, we find the following words: "Minors, and those laboring under general mania, or hallucination, cannot be punished as criminals, nor, generally speaking, can any others be punished, who have committed a crime while deprived of the use of their minds." Art. 2. Very nearly the same language is used in describing such as are exempted from punishment by reason of mental disorders, in the code of Turin (1835), Art. 63, and in the proposed Hanoverian code, Art. 83. In other codes, general terms alone are used, in describing the mental condition of such as are irresponsible. Thus, in the Saxon code, we find these words:

"Responsibility is annulled in persons who are deprived of the use of reason by mental disease." Art. 65. It is a sufficient objection to such enactments that, in any particular trial, no two persons could be found to agree respecting the practical application of such terms as, *deprived of the use of reason*, *bereft of understanding*, &c.; and how many judges and juries would see, in the unfortunate monomaniac before them, — who, though stained with the blood of a fellow man whom some wild delusion had prompted him to kill, is still correct and coherent in his discourse, staid and dignified in his demeanor, ready and shrewd in his replies, — a being deprived of the use of his reason, or bereft of his understanding? We have seen too often the deplorable failure of such general terms to protect the miserable subjects of disease, under the operation of the English common law, to recommend their use to the legislator. In some codes an attempt is made to avoid this objection to general terms, by mentioning various mental diseases as illustrations of the meaning they are to convey.[1] Thus, the proposed Wurtemburg code contains the following provision: "An illegal act is exempt from punishment, if committed in a state of mind in which the use of reason is taken away; to this state belong, chiefly, general mania, general and partial hallucination, entire imbecility, and complete confusion of the senses, or understanding." Art. 91. In the code of the grand duchy of Hesse, proposed in 1836, we find the following provision: "By reason of their impaired responsibility, punishment cannot be inflicted on those who commit penal acts in a state of sleep, of somnambulism, of general mania, of hallucination, of imbecility, or of any other mental disorder, which either takes away all consciousness respecting the act generally and its relation to penal law, or in conjunction with some peculiar bodily condition, irresistibly impels him, while completely unconscious, to violent acts." Art. 29. In the code of the grand duchy of Baden, it is enacted as follows: "Responsibility is annulled

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[1] J. C. Mittermaier: De principio imputationis alienationum mentis, p. 24.

in that condition, in which, either a consciousness of the criminality of the offence, or the free will of the offender is taken away." Art. 65. "To the condition which annuls responsibility on the strength of the 65th Art. belong chiefly, imbecility, hallucination, general mania, distraction, and complete confusion of the senses, or understanding." Art. 69. Somewhat similar is the phraseology used by the code of Lucerne, in Switzerland. This method is liable to precisely the same objection as the former, for the difficulty will be as great in the one as in the other, of settling the exact meaning of the particular terms. Many a case will occur, that will not be unanimously referred to some one of the above-mentioned affections. To avoid the difficulties incumbent on the use of such terms, and to bring the wretched subjects of mental disease under the protection of the law, without discrimination, the legislator has, in some instances, made the single fact of the presence of disease, sufficient to annul criminal responsibility. In Livingston's code, it is provided that—"No act done by a person in a state of insanity can be punished as an offence." The revised statutes of the State of New York contain the same words.[1] The revised statutes of Arkansas provide that a lunatic, or insane person, without lucid intervals, shall not be found guilty of any crime or misdemeanor with which he may be charged.[2] The French penal code is equally simple. "There can be no crime nor offence, if the accused were in a state of madness at the time of the act."[3] If we insert after the word insanity, the following words, *or any other condition of mind in which the person is involuntarily deprived of the consciousness of the true nature of his acts*, in order to protect him from the consequences of acts committed in a state of sleep or somnambulism, it may be doubted whether any other provision would better promote the purposes of justice, than that of Livingston's code. Under this law, when strictly applied, if the existence of in-

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[1] Vol. II. p. 697.
[2] Revised Statutes of Arkansas, 236.
[3] Art. 64.

sanity is once established, the responsibility of the party is taken away; and all nice discussions concerning the effect of this or that kind or degree of mental derangement, and the exact measure of reason that has been left or taken away, are thus effectually precluded. It cannot be denied that an insane person may be actually guilty of a criminal act, his insanity being very partial, and the act not within the range of its operation, while by the letter of the law, he must be acquitted. The only way of avoiding this evil, would be to add something like the following: — *unless, it can be proved that the act was not the offspring of the insanity.* True, the fact of insanity would be left, as it now is, with the jury to decide; but as they would no longer be puzzled with metaphysical distinctions between total and partial insanity, and engaged in nice estimates of the knowledge of good and evil, of right and wrong, and of the power of design possessed by the accused, their inquiries would be narrowed down to the single fact of mental impairment on a certain point — a duty much less remote from the train of their ordinary habits and pursuits. Thus a great object would be gained, for the more that is provided by statute and the less that is left to judicial discretion, the greater is the benefit afforded by law.

§ 44. As the conclusions of the jury, relative to the existence of insanity, must necessarily be founded on the testimony offered by the parties, it is a subject of the utmost importance, by whom and in what manner, this testimony shall be given. If the decision of this point were purely a matter of facts, the only duty of the jury would be to see that they were sufficient for the purpose, and proceeded from authentic sources; but, on the contrary, it is a matter of inference to be drawn from certain data, and this is a duty for which our juries, as at present constituted, are manifestly unfit. That a body of men, taken promiscuously from the common walks of life, should be required to decide, whether or not certain opinions and facts in evidence prove derangement of mind, or, in other words, to decide a professional question of a most delicate nature and involving some of the highest interests of man, is an idea so preposterous that one

finds it difficult, at first sight, to believe that it ever was seriously entertained. Such, however, is made their business, and, in the performance of it, there is but one alternative for them to follow; — either to receive with the utmost deference the opinions of those who have a professional acquaintance with the subject, or to slight them altogether, and rely solely on their own judgment of the facts. The latter course has sometimes been adopted, though no one, probably, personally concerned in the issue of the case, would congratulate himself on their choice, unless specially anxious to become a victim of ignorance and obstinacy. But, in the larger proportion of cases, the medical testimony, which is given in the shape of opinions, though rather an anomaly in evidence that courts have been sorely puzzled at times whether to admit or reject, is mostly relied on, and determines the verdict of the jury. It is, perhaps, of little consequence, who testifies to a simple fact, that it requires only eyes to see, or ears to hear; but it is all very different with the delivery of opinions that are to shape the final decision. As this requires an exercise of judgment as well as observation, there ought to be some kind of qualification on the part of those who render such opinions, not required of one who testifies to mere facts. The understanding certainly is, that their habits, pursuits, and talents, have rendered them peculiarly competent for this high duty, for, in spite of the power of cross-examination, these constitute the only pledge that can be had of its correct and faithful performance. But as the law makes no exclusion, and the witnesses' stand is open to any one whom the parties may choose to call, it frequently happens, that the witness has nothing but his professional character to rely on, to give his opinions the authority they ought to possess. And even when he may have been preceded by the shadow of a great reputation, the jury may not know, nor be able to discover, how much of that reputation is factitious; and, in consequence, may be induced to confide in opinions which, from a different quarter, they would have listened to with feelings of doubt and distrust. It is true, the law requires that such opinions should be founded on facts, but

who is to decide whether the fact is a sufficient foundation for the opinion, or, indeed, has any relation to it at all?

§ 45. It is not enough, that the standing of the medical witness is deservedly high in his profession, unless it is founded on extraordinary knowledge and skill relative to the particular disease, insanity. Lunatic asylums have so multiplied in our country, that patients of this class are almost entirely taken away from the management of the private physician, and consigned to the more skilful conductors of these institutions; so that many a medical man may spend a life of full practice, without having been intrusted with the care of a dozen insane persons. To such, therefore, a practical knowledge of the disease is out of the question, and thus the principal inducement is wanting, to become acquainted with the labors of those, who have enjoyed better opportunities. If a particular class of men only are thought capable of managing the treatment of the insane, it would seem to follow, as a matter of course, that such only are capable of giving opinions in judicial proceedings relative to insanity. True, in important cases, the testimony of one or more of this class is generally given; but it may be contradicted by that of others utterly destitute of any knowledge of the subject on which they tender their opinions with arrogant confidence, and the jury is seldom a proper tribunal for distinguishing the true from the false, and fixing on each its rightful value. An enlightened and conscientious jury, when required to decide in a case of doubtful insanity, which is to determine the weal or woe of a fellow being, fully alive to the delicacy and responsibility of their situation, and of their own incompetence unaided by the counsels of others, will be satisfied with nothing less than the opinions of those who have possessed unusual opportunities for studying the character and conduct of the insane, and have the qualities of mind necessary to enable them to profit by their observations. If they are obliged to decide on professional subjects, it would seem but just, and the dictate of common sense, that they should have the benefit of the best professional advice. This, however, they do not always have; and, consequently,

the ends of justice are too often defeated by the high-sounding assumptions of ignorance and vanity.

§ 46. It may, at first sight, be thought impossible to remedy this defect, without what would seem to be an ingraftment upon our judicial system of practices not in perfect harmony with it; but the difficulty, after all, may not be found utterly intractable, if names are not allowed to usurp in our minds the place of things. Instead of the unqualified and irresponsible witnesses now too often brought forward to enlighten the minds of jurymen on medical subjects, it would be far better, if we had a class of men more or less like that of the *experts*[1] of the French, peculiarly fitted for the duty by a course of studies expressly directed to this end. They might be appointed by the government, in numbers adapted to the wants and circumstances of the population, and should be always ready, at the call of courts, to examine the health of criminals, draw up reports touching the same,

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[1] The term *experts* is used in the French law to designate certain persons, appointed in the course of a judicial proceeding, either by the court or by the agreement of the parties, to make inquiry under oath, in reference to certain facts, and to report thereon to the court. They are not examined as witnesses; nor have they the power of deciding the cause, like arbitrators; their functions are more analogous to those of a master in chancery, according to our laws. The following extract from Pothier's Treatise on Civil Procedure (Part I. chap. III. art. III. § I.), will give an idea of the functions of these officers.

"The decision of a cause frequently depends on some fact contested between the parties, which can only be established by a visit to the thing which makes the object of the contestation; for example, the buyer of a horse brings a *redhibitory* action against the seller, to compel the latter to take back the horse, on account of some pretended defect, which the former alleges entitles him to a return; if the seller denies the existence of the defect, this fact, upon which the decision of the cause depends, can only be ascertained by an examination of the horse by *experts;* and the judge, therefore, before rendering a definitive judgment, must order the animal to be examined by *experts*, who shall report whether he labors under the said defect or not. In like manner, if I make a bargain with a workman to do certain work upon a house, and when the latter demands the agreed price of me, I object that the work is badly done, and therefore not receivable, there must be an order for an examination by experts."

and deliver opinions. When the courts see the minds of jurors perplexed and confounded by the contradictory opinions of medical witnesses, and with no means of satisfying themselves as to what is really true, it should be their duty to submit the accused to the examination of *experts*, who should report at a subsequent period. Something like this is often done in France and Germany, and ought to be provided for in the criminal procedure of every country.[1] Thus, in the case of Henriette Cornier, in Paris, for murdering a neighbor's child, November 4, 1825, the court, at the request of the prisoner's counsel, made shortly before the trial, which was ordered to take place February 27, 1826, appointed a committee of three distinguished physicians to report, after due examination, whether or not she was a fit subject for trial. Their reports not being satisfactory to the avocat-général (attorney-general), the trial, at his request, was postponed to another session, and the prisoner was again subjected to the examination of the committee, who reported three months afterwards.[2] What a contrast does this calm and deliberate inquiry present, to the indecent haste with which the legal proceedings were precipitated against Bellingham, who committed his offence, was indicted, tried, hanged, and dissected, all within the space of eight days. In this case, there was a strong disinclination manifested by the

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[1] Foderè (De medicine legale, I., Introd. p. xlii.), relates with the most naïve astonishment, that, in a question of survivorship, arising out of the accouchement of Mrs. Fischer in England, the opinion of the celebrated Denman was rejected by a jury, that yielded implicit belief in the testimony of one Dallas, who was not a physician, and of two ignorant women, who spoke only from memory, after the expiration of fourteen years. Many readers may recollect that, in the case of Donellan, tried in 1781 (see Beck's Medical Jurisprudence, tenth edition, ii. 792), for the murder of Sir Theodosius Boughton, by poisoning, the opinions of three or four physicians, as unknown to fame as the science they professed to understand seems to have been unknown to them, far outweighed with the court that of John Hunter, though illustrated by his various learning and supported by his reputation for unrivalled talents and original research.

[2] Georget, Discussion médico-légale sur la Folie, 71.

court to listen to the plea of insanity; as if it were a fiction set up by counsel, in the absence of any other ground of defence; and the earnest request of his counsel for a little delay, that he might obtain witnesses from the part of the country where the accused had lived and was well known, who would substantiate the fact of his insanity, of which there was already more than suspicion, was disregarded. Few, it is believed, at this period, unbiased by the political prejudices of the times, and examining the event as a point of history, will read the report of Bellingham's trial without being forced to the conclusion, that he was really mad, or, at the very least, that the little evidence which did appear relative to his state of mind, was strong enough to have entitled him to a deliberate and thorough investigation of his case. Mr. Simpson,[1] after mentioning the case of Howison, who was tried and executed for the murder of the widow Geddes, in which the evidence of his insanity was so strong, that it is almost impossible to conceive what additional evidence could make it stronger, states, that "application was made without success to the secretary of state, by Howison's law-agent, for time to obtain further evidence of his insanity. To this that gentleman was emboldened, by receiving the concurring opinions of some of the first medical men in Edinburgh, who had not been cited, that even the evidence adduced on the trial was sufficient; but that, when several post-judicial facts were added, there could be no doubt that the unhappy man was not a fit subject for punishment."

§ 47. Cases like these ought to convince us, that the feelings of horror and vengeance excited by the bloody deeds of the insane, completely unfit the popular mind for a careful and impartial investigation of the plea of insanity, and that the mental condition of the accused should be examined by men who have become fitted for such duties by a peculiar course of study and experience. Is it necessary to go into a labored argument to prove that this method of determining the grave

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[1] Homicidal Insanity, 222.

and delicate question of insanity must be infinitely more satisfactory, than that of summoning medical witnesses to the trial — most of whom have but very imperfect notions of the disease, and probably have not had the least communication with the accused, — and forcing out their evidence, amid the embarrassment produced by the queries of ingenious counsel, bent on puzzling and distracting their minds? If a physician, after listening to divers vague and rambling details concerning a person's ill-health, and looking at him across the apartment, without being permitted to address to him a single word, or lay a finger on his person, should then be required, to say on his oath, whether or not the individual in question were laboring under inflammation of the lungs, bowels, or kidneys, he would scarcely restrain a smile at the stupidity which should expect a satisfactory answer. And yet, absurd and foolish as such a course would be considered in the abstract, it is the only one recognized by our laws, when the disease, whose existence is to be established, happens to be insanity. Besides, where mental derangement is suspected, there are many physical symptoms and numerous other circumstances that cannot be investigated in an hour or a day, but require a course of diligent observation that may occupy weeks or months, before the suspicion can be confirmed or disproved. From these considerations, the general conclusion is, that in criminal cases where insanity is pleaded in defence, the ends of justice would be best promoted by the appointment of a special commission, consisting of men who possess a well-earned reputation in the knowledge and management of mental derangement, who should proceed to the examination of the accused with the coolness and impartiality proper to scientific inquiries.[1]

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[1] It may be proper, perhaps, to inform the reader that the exclusive competence of medical men to give opinions, as experts, in cases of doubtful condition of mind, has, at different times, been warmly disputed. The celebrated Kant, by whom the dispute was begun, contended that such cases ought more properly to be submitted to the Philosophical Faculty. (*Anthropologie*, § 41.) His arguments were satisfactorily answered by Metzger (*Gerichtl*

§ 48. To facilitate the inquiries of such a commission, there is needed some suitable provision for the examination of the accused. Indeed, with every disposition to arrive at the truth, it is generally impossible under the present arrangements. In jails, where prisoners accused of crime are confined, proper opportunities are not afforded for investigating their mental condition. In the few formal interviews to which the observation of the prisoner is confined, it may often happen that the real condition of the mind will not be discovered. If really insane, he will be likely to control his movements, and to discourse and appear very differently from what he would when left to himself and unconscious of being observed. Many insane, as we have already shown, manifest their aberration only under certain circumstances and on particular occasions, and appear quite correct at all other times. Many, too, whose insanity is recognized by everybody who knows them, never evince it in their discourse, but solely in their ways and habits. If, on the other hand, the prisoner is feigning insanity, he will summon all

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medic. Abhand. s. 74), Hoffbauer (*Die Psycologie in ihren Anwendungen auf die Rechtspflege*, § 1, *not.* 3), and others, and the controversy was set at rest until the trial of Henriette Cornier, at Paris, which led to its revival with renewed vigor. Coste, a French physician (*Journ. univer. des Scien. med. t.* 43, *p.* 53), and Regnault, a Parisian advocate, who wrote a book on the subject (*Du degrée de competence des médicins dans les questions rélatives aux aliénation mentale*, 1828), have hotly contended that any tolerably sensible, well-informed man is as competent as a Pinel or an Esquirol, to form opinions for judicial purposes, relative to cases of doubtful condition of mind. The arguments — or, more properly speaking, the assumptions and declamation — of these writers, have been severely handled by their opponents (*Georget, Nouvelle Discussion médico légale sur la folie*, p. 20; *North American Medical and Surgical Journal, April*, 1828, p. 457; *Friedreich, Handbuch der gericht. Psycologie; Leuret, Annals, d'Hygiene*, i. 281; *Royer-Collard Journ. hebd.* ii. 181), and the controversy may be considered as once more at rest, precisely where it was found. We have not thought it worth while to discuss this question, for the simple reason that the objections against receiving the opinions of physicians, as experts, are altogether founded in gross ignorance, misconception, and prejudice, without even a plausible show of support.

his powers to produce the requisite impression at these interviews, which being short and few, the difficulty of his task is much lessened. To ascertain satisfactorily the mental condition of a prisoner suspected of being insane, he should be placed where the expert may be able to see him often, and at times when he is not aware of being observed. His words, and acts, and movements, his manners and habits should be systematically watched, and a single day of such observation would often throw more light on the case than many formal interviews. We see no difficulty in so changing our modes of criminal procedure, that when the court shall be satisfied that there are reasonable doubts of the prisoner's sanity, it may be authorized to postpone the trial, and place him, in the mean time, in the charge of an expert — for which our hospitals for the insane furnish a convenient and suitable opportunity — whose report shall be received in evidence at the trial. This is substantially the course adopted in France, and nothing short of its adoption with us, will render the plea of insanity powerless for evil, and remove the suspicions of the community on this point.

§ 49. If the above hasty review of the judicial opinions and practices that have hitherto prevailed relative to insanity, have left the impression, that this disease is as yet but imperfectly understood, as well in the medical profession as out of it, an explanation of this fact may perhaps be demanded; but as it would be hardly relevant to the present purpose to enter largely into a discussion of this point, nothing more will be attempted than merely to indicate what seems to have had the principal share in producing it. To explain the little progress, comparatively speaking, that has been made by medical men in the knowledge of insanity, it is too much the fashion to allege, that they have neglected the study of mental philosophy, or that of mind in the healthy state, which is indispensable to correct notions on the disordered condition of mind. So far, however, is the fact here indicated from being true, generally, that one cannot hesitate to say, that the result in question has been owing to the undue account that physicians have made of the popular phi-

losophy of mind, in explaining the phenomena of insanity, and that they have failed in consequence of studying metaphysics too much instead of too little. While it is admitted that the knowledge of healthy structure and functions is necessary to a thorough understanding of diseased structure and functions, there is every reason to believe, that the converse of the proposition is equally true; neither can be successfully studied independently of the other. In the prosecution of psychological science, this latter truth has been almost entirely disregarded, and therefore it is, that we see the metaphysician looking for his facts and his theories in the healthy manifestations of the mind, and directed in his course solely by his own self-consciousness, while the student of insanity, after collecting his facts with commendable diligence and discrimination, amid the disorder and irregularity of disease, resorts to the theories of the former, for the purpose of generalizing his results, instead of building upon them a philosophy of his own. Metaphysics, in its present condition, is utterly incompetent to furnish a satisfactory explanation of the phenomena of insanity, and a more deplorable waste of ingenuity can hardly be imagined, than is witnessed in the modern attempts to reconcile the facts of the one with the speculations of the other. In proof of the truth of these assertions, it is enough barely to mention, that the existence of monomania, as a distinct form of mental derangement, was denied, and declared to be a fiction of medical men, long after it had taken its place among the established truths of science; because, probably, it was a condition of mind not described by metaphysical writers. All this, however, is in accordance with a well-known law of the human mind, which resists important innovations upon the common modes of thinking till long after they shall have been required by the general progress of knowledge. The dominant philosophy has prevailed so long and so extensively, and has become so firmly rooted in men's minds that they who refuse to take it on trust and who seriously inquire into its foundations, and after finding them too narrow and imperfect, are bold enough to endeavor to remedy its defects

by laying foundations of their own, are stigmatized as visionaries, and overwhelmed with ridicule and censure. The only metaphysical system of modern times which professes to be founded on the observation of nature, and which really does explain the phenomena of insanity with a clearness and versimilitude that strongly corroborate its proofs, was so far from being joyfully welcomed, that it is still confined to a sect, and is regarded, by the world at large, as one of those strange vagaries in which the human mind has sometimes loved to indulge. So true it is, that, in theory, all mankind are agreed in encouraging and applauding the humblest attempt to enlarge the sphere of our ideas, while, in practice, it often seems as if they were no less agreed to crush them by means of every weapon that wit, argument, and calumny can furnish. In the course of this work, the reader will have frequent occasions to see how the popular misconceptions, — which are too much adopted by professional men — of the nature of various forms of mental derangement, have been produced and fostered by the current metaphysical doctrines, and thus may have some means of judging for himself, how far the imperfect notions of insanity, that are yet prevalent, may be attributed to the cause above assigned.

CHAPTER I.

MENTAL DISEASES IN GENERAL.

§ 50. Correct ideas of the pathology of insanity are not unessential to the progress of enlightened views respecting its legal relations. If it be considered as withdrawn from the influence of the common laws of nature in the production of disease, and attributed to the direct visitation of God; if the existence of physical changes be overlooked or denied, and be referred exclusively to some mysterious affection of the immaterial spirit for its cause; then is it in vain to hope, that such a condition can ever be the object of discriminating, salutary legislation. In the prevalence of such views in past times, however, we may look for the cause of much of the error and absurdity that pervade the law of insanity, and that are equally at variance with the principles of science and the dictates of humanity. It is an undoubted truth, that the manifestations of the intellect, and those of the sentiments, propensities, and passions, or generally, of the intellectual and affective powers, are connected with and dependent upon the brain. It follows, then, that abnormal conditions of these powers are equally connected with abnormal conditions of the brain; but this is not merely a matter of inference. The dissections of many eminent observers, among whom it is enough to mention the names of Greding, Gall, and Spurzheim, Calmeil, Foville, Falret, Bayle, Esquirol, and Georget, have placed it beyond a doubt; and no pathological fact is better established — though its correctness was for a long while doubted — than that deviations from the healthy structure are generally presented in the brains of insane subjects. In the few cases where such ap-

pearances have not been observed, it is justly concluded that death took place before the deviation was sufficiently great to be perceptible, — a phenomenon not rare in affections of other organs.

§ 51. These pathological changes are not sufficiently definite to admit of classification, or of practical application in the treatment of the various kinds of insanity; but we learn from them, that changes of structure may proceed in the brain, as in other organs, to an incurable degree, without giving rise to much, if any, very perceptible disturbance of its functions, until some striking and unexpected act leads the enlightened physician to suspect its existence, and draws down upon the unfortunate subject the restraints and penalties of the law.

§ 52. A natural classification of the various forms of insanity, though of secondary importance in regard to its medical treatment, will be of eminent service to the legal inquirer, by enlarging his notions of its phenomena, and enabling him to discriminate, where discrimination is necessary to the attainment of important ends. The deplorable consequences of knowing but one kind of insanity, and of erecting that into a standard, whereby every other is to be compared and tested, are too common in the records of criminal jurisprudence; and it is time that it were well understood, that the philosophy of such a method is no better than would be that of the physician who should recognize no diseases of the stomach, for instance, but such as proceeds from inflammation, and reject all others as anomalous and unworthy of attention. The various diseases included in the general term insanity, or mental derangement, may be conveniently arranged under two divisions, founded on two very different conditions of the brain; the first being a want of its ordinary development, and the second, some lesion of its structure subsequent to its development. In the former of these divisions, we have IDIOCY and IMBECILITY, differing from each other only in degree. The various affections embraced in the latter general division may be arranged under two subdivisions, MANIA and DEMENTIA, distinguished by the contrast

they present in the energy and tone of the mental manifestations. Mania is characterized by unnatural exaltation or depression of the faculties, and may be chiefly confined to the intellectual or to the affective powers, or it may involve them both; and these powers may be generally or partially deranged. Dementia depends on a more or less complete enfeeblement of the faculties, and may be consecutive to injury of the brain, to mania, or to some other disease; or it may be connected with the decay of old age. These divisions will be more conveniently exhibited in the following tabular view.

- Insanity.
  - Defective development of the faculties.
    - Idiocy.
      1. Resulting from congenital defect.
      2. Resulting from an obstacle to the development of the faculties, supervening in infancy.
    - Imbecility.
      1. Resulting from congenital defect.
      2. Resulting from an obstacle to the development of the faculties, supervening in infancy.
  - Lesion of the faculties subsequent to their development.
    - Mania.
      - Intellectual.
        1. General.
        2. Partial.
      - Affective.
        1. General.
        2. Partial.
    - Dementia.
      1. Consecutive to mania, or injuries of the brain.
      2. Senile, peculiar to old age.

§ 53. It is not pretended that any classification can be rigorously correct; for such divisions have not been made by nature, and cannot be observed in practice. Diseases are naturally associated into some general groups only; and if these be ascertained and brought into view, the great end of classification is accomplished. We shall often find them running into one another, and be puzzled to assign to a particular disease its proper place; but since such is the order of nature, we must make the most of the good it presents, and remedy its evils in the best manner we can. The above arrangement, with the exception of some slight modifications, is that adopted by Esquirol, and has this advantage

over some others, that it preserves the divisions made by nature, and will thus be serviceable to our present purpose. Several other conditions of mind in which moral freedom is impaired, will also be considered, though they cannot be strictly called insanity.

CHAPTER II.

IDIOCY.

§ 54. IDIOCY is that condition of mind, in which the reflective, and all or a part of the affective powers, are either entirely wanting, or are manifested to the slightest possible extent. As the organic defects on which idiocy depends, are various in kind and degree, and also as it regards the parts of the brain affected, we should be led to expect, what observation shows is actually the case, considerable variety in the manifestations of this condition. The individual may hardly rise to the level of some of the brutes, his movements being confined to the necessities of the automatic life; or he may be capable of performing some useful services, of exercising some talent, or of displaying some of the higher moral sentiments. In short, there is even more diversity in the characters of the idiotic and imbecile, than in those of the sound, and this truth must not be forgotten, if we would avoid the flagrant error of regulating judicial decisions by rules, which, though perfectly correct in regard to one case or set of cases, may be wholly incorrect in regard to others.

§ 55. No particular physical trait can be considered as inseparable from idiocy, although after the period of infancy, the physical organization never fails to give notice of its presence. In a small number of cases, the head presents no deviation from the normal form and size, but with this exception, the head is either too large or too small; the tables of the skull being thin and distended with water, or thick, indurated, and uneven. In the former class, the forehead, though

prominent, is always depressed, and the posterior part of the head is apparently of the regular size, while the middle region is more or less distended, either laterally or upwards. In the latter class, the depression is equally destitute of uniformity. Sometimes it affects principally the superior and anterior parts of the head, producing a narrow and retreating forehead; in other instances, it affects the posterior or occipital parts, the occipital curve being reduced to an almost straight line; in others, the lower parts of the skull are tolerably regular, while the upper appear to be diminished and flattened; in others, finally, the two sides of the skull are exceedingly unequal. In all these cases, the head is found, by measurement, below the ordinary size. The circumference, measured immediately over the orbitar arch and the most prominent part of the occiput, is fixed by Gall at between eleven and one third and fourteen and a half inches, the brain, consequently, equalling that of a new-born infant, that is, about one fourth, one fifth, or one sixth of the cerebral mass of an adult. The senses of idiots are more or less imperfect, if not entirely wanting. Some are blind, and in nearly all who see, the eye is either in constant motion, unable to fix its regards on any particular object, or unnaturally fixed and not easily changing its look from one point to another. Many are entirely deaf, and many more are incapable of listening. Many are mute, and many utter only wild, inarticulate cries. Some speak slowly and with difficulty, others tolerably well. The sense of touch frequently exhibits an excess or defect of sensibility. Many are incapable of perceiving odors, and have so little taste as to show no discrimination in their choice of food, swallowing whatever comes to hand. Their movements are constrained and awkward; they walk badly, easily falling down; and are constantly dropping whatever is placed in their hands. Sometimes the limbs are crooked and feeble, and limited in their motions. Idiots are often affected with rickets, epilepsy, scrofula, or paralysis, their whole physical economy indicating a depraved and defective constitution.

§ 56. In reasoning power, many idiots are below the brute.

Unable to compare two ideas together, nothing leads them to act but the faint impressions of the moment, and these are often insufficient to induce them to gratify even their instinctive wants. It frequently happens, however, that some one or more of the intellectual faculties, always excepting the reflective, are manifested in more or less perfection. Among the moral sentiments, it is not uncommon to find self-esteem, love of approbation, religious veneration, and benevolence, bearing a prominent part, if not constituting the entire character, and thus producing a slight approximation to humanity. Rush[1] speaks of one who was remarkable for kindness and affection, and spent his life in acts of benevolence, though he showed no one mark of reason. Dr. Combe[2] saw two who, though differing much in other respects, agreed in evincing a strong predilection for religious worship, and for listening to sermons and prayers. Some can recollect names, numbers, or historical facts; some are capable of repeating what they have frequently heard; others are able to sing a few airs, and even to play on musical instruments. Gall[3] saw one at Hamburg, sixteen years old, who learned names, dates, numbers, history, and repeated them all mechanically, but was destitute of all power of combining and comparing his ideas, and was incapable of being engaged in any employment. Various propensities, such as amativeness, cunning, and destructiveness, they often manifest in an inordinate degree of vigor and activity.

§ 57. It has been reserved for our own times to prove, on a large scale, that these defective beings are not beyond the reach of education. Under the united efforts of science and philanthropy, the lowest have been raised some steps in the scale of being, and those less unhappily endowed have showed an improvement in their personal habits, in the number of their ideas, and their capacity for useful employ-

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[1] Medical Inquiries.

[2] Observations on Mental Derangement, 243.

[3] Sur les Fonctions, i. 193.

ment, that would once have appeared quite incredible. It is not supposed that education can ever efface the distinction between them and ordinary men, but small as its results may be comparatively, they are enough to be of some medico-legal importance.

§ 58. In that form of idiocy called cretinism, which is endemic in the Alps, and some other mountainous countries, opportunities of observing its phenomena are offered on a grand scale. The difference in the degrees of this affection has led to its division into three classes, namely, cretinism, semi-cretinism, and cretinism of the third degree. In the first, life seems to be almost entirely automatic; most of its subjects are unable to speak, their senses are dull, if not altogether wanting, and nothing but the most urgent calls of nature excite their attention. To good or to bad treatment they are equally insensible. The semi-cretins show some glimmering of a higher nature; they note what passes around; they remember simple events; and make use of language to express their wants. They are capable of little else, however, for they have no idea of numbers, and, though taught to repeat certain passages, they learn nothing of their meaning. The actions of those of the third kind indicate a still higher degree of intellect; they have a stronger memory of events, and they learn to read and write, though with scarcely any conception of the purposes of either. Particular talents are often displayed by them in a very respectable degree. Music, drawing, painting machinery, etc., have each had its followers in a humble way, among these cretins. In the construction of some parts of a watch, they are often employed in Geneva, and their work is characterized by neatness. Others have executed drawings of some merit, and some have even studied several languages, in which their acquisitions were by no means insignificant; while others have even attempted poetry, though succeeding in nothing but the rhyme. Though, in all degrees of idiocy, the intellectual powers are so deficient as hardly to be recognized, and therefore these distinctions can be of little practical

importance, yet they may serve to teach us how independent of one another are the various moral and intellectual faculties, and lead us to be cautious how we infer the soundness or capacity of the whole mind, from the perfection manifested by one or two of its faculties.

CHAPTER III.

IMBECILITY.

§ 59. By imbecility is meant an abnormal deficiency either in those faculties that acquaint us with the qualities and ordinary relations of things, or in those which furnish us with the moral motives that regulate our relations and conduct towards our fellow men; and frequently attended with excessive activity of one or more of the animal propensities. In imbecility the development of the moral and intellectual powers is arrested at an early period of existence. It differs from idiocy in the circumstance, that while in the latter there is an almost utter destitution of every thing like reason, the subjects of the former possess some intellectual capacity, though far less than is possessed by the great mass of mankind. Imbeciles can never attain that degree of knowledge which is common among people of their own rank and opportunities, though it is very certain that they are not entirely unsusceptible of the influences of education. They are capable of forming a few simple ideas and of expressing them in language; they have some memory and a sense of the conveniences and proprieties of life. Many of them learn to read, write, and count, and make some progress in music, though, for the most part, they are untaught and employed in the coarsest and rudest labors. Their moral and intellectual character presents the same infinite variety that is witnessed in the normal state of the mind. While some are changing their plans and resolutions with the fickleness of the winds, others have some favorite project which they are bent on accomplishing. While nothing can arrest the attention of some for a moment, others pertinaciously retain some

crotchet that occupies nearly all their thoughts. Some engage in certain occupations, and manage to take care of themselves and their property, though frequently obliged to resort to others for advice and assistance. They talk but little, and will answer questions correctly, provided they are not without the circle of their customary thoughts and habits, and are not required to follow a conversation. They are particularly deficient in forethought and in strong and durable affections, and they generally labor under a certain uneasiness and restlessness of disposition that unfit them for steady employment. They are thus easily induced by bad men to assist in the execution of their criminal enterprises. It is also worthy of notice that the same physical imperfections and a tendency to the same diseases which accompany idiocy, are generally observed, though in a less degree, in imbecility.

§ 60. Much as the moral and intellectual powers vary in the different cases, but little has been done towards distinguishing the various degrees of imbecility, by a system of classification, though it must be obvious at first sight, that something of this kind is absolutely necessary before its legal relations can be determined with much correctness or consistency. Hoffbauer[1] alone has made an attempt to supply this want, and though perhaps not perfectly satisfactory, as might have been expected from the nature of the subject, yet it evinces such a correct appreciation of mental diversities, and so much ability in the analysis of deficient understandings, that it would be doing injustice to the subject, to neglect giving some account of his views in this place.

§ 61. Mental deficiency is manifested under two different forms which Hoffbauer designates by the terms imbecility (*Blödsinn*), and stupidity (*Dumheit*). The former consists in a defect of the *intensity*, the latter in a defect of the *extensity*, necessary to a sound and healthy mind. By intensity

[1] Die Psychologie in ihren Hauptanwendungen auf die Rechtspflege, §§ 26–46.

is meant the power of the mind to examine the data presented to it by the senses, and therefrom to deduce correct judgments; by its extensity, the mind perceives and embraces these data, and suffers none to escape, — one, it may be added, is the *reflective;* the other, the *perceptive* power.

§ 62. "In reference to the faculty of judgment, it may be observed, that the stupid person is more liable than the imbecile to form erroneous decisions; the latter experiences great difficulty in bringing himself to any conclusion. Secondly, the stupid person sometimes judges very correctly on subjects to which his attention has been strongly applied; occasionally he surpasses, in this respect, those of superior intelligence. When he judges wrongly, it is through neglect of some of the considerations which ought to have formed the groundwork of his judgment, and he will say, in order to excuse himself, that 'he never should have dreamed of this or that circumstance.' To the imbecile, on the contrary, the most simple act of judgment is difficult. A lady, for instance, who said she was twenty-five years of age, and had been married six years, could not, after many efforts, tell how old she was at the period of her wedding; at one time calling it twenty, at another, twenty-two. Thirdly, the stupid man may often be induced to correct his mistake; some simple reason, or particular circumstance being suggested to him which leads to its detection. The imbecile man can scarcely rectify his errors, being unable sufficiently to concentrate his attention on any particular subject. Fourthly, the stupid man, in recovering from his error, frequently falls into the opposite extreme, passing from the blindest confidence to the most jealous distrust, because he views every subject on one side only, and is embarrassed by every complex idea.

§ 63. "In relation also to memory, there is a decided difference between the stupid and the imbecile. The latter appear to be almost entirely deficient in this faculty, while the former recollect after a long interval of time, and with tolerable accuracy, some insulated circumstances.

§ 64. "Weakness of intellect is displayed in both these classes, when their defect is excessive, by a propensity to talk

to themselves. This is mostly observable when the individual is alone, or supposes himself alone. In reality, we employ words, not merely for purposes of intercourse, but as an instrument of thought; and when the mind is morbidly enfeebled, the silent and unperceived, or mental employment of words is insufficient; they must be repeated more or less audibly. This practice is not uncommon with imbecile and stupid people, but when in company, they generally perceive its incongruity and abstain from it. If, however, such individuals talk to themselves, knowing that they are in the presence of company, it is a proof of greater deficiency.

§ 65. "Another distinction between the imbecile and the stupid person is, that the latter imagines himself equal, if not superior, to other men in intelligence; whereas the former is sensible of his defect, and even exaggerates it. Hence results another difference between the stupid and the imbecile person. The former acts precipitately and without reflection; the latter never can make up his mind, even on the simplest affair, from the fear that there may be consequences which he is incapable of foreseeing. The imbecile is frequently timid, and even misanthropic; not only because he is conscious of his deficiency, but because he has a disagreeable experience of the superiority of others. When this is the cause of his jealous distrust, we observe, first, that he reposes unlimited confidence in those whose benevolence he has experienced; secondly, that when his condition in society places him beyond the reach of injury, he has none of this misanthropy of which we speak, and is at peace with all the world. The pusillanimity and misanthropy of the imbecile lead them to a species of devotion, if such it may be called; for it is natural that, on seeing themselves repulsed, or ill-treated by men, they should apply to the deity for support. The stupid, more confident in themselves, fancy that they acquire merit by their devotions, or confer an honor on the divinity."

§ 66. Hoffbauer, while he acknowledges the various and almost imperceptible shades of difference between one case of imbecility and another, has reduced its numberless grada-

tions to five degrees, and those of stupidity to three. To these, as described and explained by him, he looks for the means of a consistent and rational application of the legal principles that should regulate their civil and criminal relations.

§ 67. "The *first* degree of imbecility manifests itself in the inability to form a judgment respecting any new object, even when the necessary data are furnished, and the question is one which, in itself, presents no difficulties. In this degree of the affection, the individual can very well judge respecting objects to which he is daily accustomed, and in familiarity with which he may be said to have grown up. In the pursuit of his daily concerns, he often shows a minute exactness that appears to him a matter of absolute necessity. His memory is very limited; not that he loses absolutely the remembrance of things, but because he cannot apply his recollections according to his wishes. He scrupulously observes whatever he thinks becoming in his situation, because he fears to offend by neglecting it. When he gives himself up to avarice, there is observed in him rather an apprehension of losing than a desire of accumulating. The propensity to talk to himself, and the species of devotion to which we have alluded, is seldom to be met with in this instance; the former, because the routine of daily occupations, above which the individual seldom raises himself, makes but small demands on his intelligence; the latter, because his infirmity is not so remarkable in ordinary society as to render it a subject of general observation, and entail upon him frequent annoyance, and thus make him feel the necessity of seeking support elsewhere. He is very subject to gusts of passion, which, nevertheless, are as easily appeased as they are excited."

The description of the *second* degree of imbecility applies to the subjects of dementia, which will be considered in another place; and it may therefore be omitted here.

§ 68. "A person affected with imbecility in the *third* degree, is unfitted for all matters that require more than a mechanical mode of action; but he preserves sufficient in-

telligence to be aware of his weakness and of the intellectual superiority of others. We may likewise remark in him that propensity to devotion and misanthropy of which we have spoken above. His mind is not completely inactive, although it cannot raise itself to any elevated views; hence he has the propensity to talk to himself. He has not the power of seizing an idea so clearly as to impress it on his mind; hence a very marked defect of memory and a great propensity to pass rapidly from one topic to another. He is very irritable and suspicious, fancies a design to insult him where it is impossible, because his state yet permits him to feel and resent injuries — of which susceptibility those about him often take advantage in order to annoy him.

§ 69. "The *fourth* degree of imbecility is marked by a clouded state of the understanding and memory, with a great insensibility, which nevertheless leaves the patient a confused idea of his weakness. He eagerly seeks excitement by various stimuli."

§ 70. The *fifth* degree of imbecility, as described by Hoffbauer, corresponds to the last stage of dementia, or the fatuity which results from some cerebral diseases, and therefore does not belong to this condition of mind according to the arrangement above adopted.

§ 71. Stupidity, generally speaking, is a defect less severe than imbecility, according to the definition given of each. The slightest degree of imbecility, however, indicates an imperfection of the intellectual powers, less severe than the greatest degree of stupidity.

§ 72. "In the *first* degree of stupidity, the individual is only incapable of judging and deciding, when it is necessary to weigh opposing motives. Then he feels his incapacity, and resorts to the intelligence of others, unless too proud, which often happens. If he acts absurdly, it is often because he applies to his actions a rule good in itself, but the application of which requires other considerations.

§ 73. "The subject of the *second* degree of stupidity judges accurately and sometimes even promptly, respecting things by which he is habitually surrounded; but he com-

mits serious errors whenever it is necessary to exert a certain vigor of judgment. He is embarrassed in any train of reasoning, however simple it may be. His memory is, perhaps, faithful, but it is slow; he cannot, without great difficulty, express a complex idea, if it is the result of his own reflections, and has not been received from another. When his faculties have been somewhat developed by education, he is an obstinate partisan of any thing which is, as we say, good in theory, but useless in practice; because he cannot observe the circumstances that distinguish particular cases, and appreciate them according to their just value. These two conditions are indispensable, however, to the proper application of general rules.

§ 74. "In the *highest* degree of stupidity the individual cannot go beyond one single idea; and he must completely lose that one before he can pass to another. Hence he is less capable of judging than the imbecile, because the comparison of several ideas is necessary to form a judgment. Individuals who are affected with stupidity in the third degree, often express themselves in half-uttered words, return incessantly to the same subject, make known their ideas by sentences, short, incoherent, and unfinished, like children who can retain words but do not know how to connect them together; they often express the subject and the attribute without connecting the one to the other by the affirmative or negative. If they wish to say 'the rose is beautiful,' they will say, 'rose beautiful,' or only 'rose,' or 'beautiful,' according as the subject or attribute strikes them most. Often they reverse the natural order of words, and say, for example, 'rose beautiful is;' and when they perceive an omission which they wish to repair, they become still more perplexed."

§ 75. It does not need the high authority of Esquirol to convince us, that these distinctions are drawn with a minuteness and show of accuracy that savor more of the labors of the closet than of the rigid and faithful observation of nature. This objection, however, which might not have been unsuspected by the author himself, does not entirely destroy the utility of his attempt, so long as it is admitted to be an

approximation to the truth; for, with all its defects, it establishes the important fact that mental deficiency is distinguished by various grades of intensity, instead of being invariably the same condition, and therefore that it cannot properly be always subjected to the same legal regulations. It is a material defect in the above descriptions, that the state of the moral faculties is seldom adverted to, though their deviations from the normal condition are no less striking than those which the intellectual powers exhibit. Whatever may be their character, it is obvious that their ordinary relations to the intellect must be affected, and thus the idea is forced upon us, that, as accountable beings, the subjects of mental deficiency must be viewed in a very different light from that in which we are accustomed to regard those of sound and well-developed minds. The observations of Georget on the moral faculties of imbeciles, partially supply this defect in Hoffbauer's descriptions, and therefore are worthy of notice in this connection.

§ 76. "In hospitals for the insane," says he, "there is always a certain number of imbeciles who do the coarser work of the house, or serve as domestics and assistants to the regular officers. They become sufficiently intelligent, at last, to perform their duties well, to sweep the courts, carry burdens, move machines, execute simple commissions, know the use of money, and procure various enjoyments. But they have no idea, or a very imperfect one, of society, laws, morality, courts, and trials; and though they may have the idea of property, they have no conception of the consequences of theft. They may have been taught to refrain from injuring others, but they are ignorant of what would be done to them if guilty of incendiarism or murder. Indeed, it is well known how common theft is among imbeciles and idiots, and for a very obvious reason. Some of them have no conception of property, nor of the distinctions of *meum* and *tuum;* their conduct is actuated solely by the fear of punishment, when capable of experiencing this sentiment, and by their own desires. Others have some notions of property, but neither a sense of morality, nor a fear of pun-

ishment furnishes motives sufficiently powerful to prevent them from stealing. The sentiment of cunning, too, may be very much developed, while the other faculties are more or less deficient. Among the lower orders of society are many imbeciles a little more intelligent than these, and not considered as utterly devoid of understanding, who, nevertheless, have but vague and imperfect notions of social duties and of justice. They engage in occupations that require no great extent of intellect, and even in the simplest of the mechanic arts. If they do not pass among their acquaintances for imbeciles, they are at least regarded as singular beings with feeble understandings, and are teazed and tormented in innumerable ways. Many of them, for want of some powerfully restraining motive, indulge in drinking, and become lazy, drunken, and dissipated, and finally fall into the hands of justice in greater numbers than is generally suspected. They steal adroitly, and hence are considered as very intelligent; they recommence their offences the moment they are released from confinement, and thus are believed to be obstinately perverse; they are violent and passionate, and the slightest motive is sufficient to plunge them into deeds of incendiarism and murder. Those who have strong sexual propensities, soon become guilty of outrages on female chastity. I have had occasion to see many examples of this class in prisons, who had been judicially decided to be rational, but whose demi-imbecility was manifest enough to me."[1]

If this is a correct representation of the moral character of the lesser grades of imbecility — and the accuracy and good faith of Georget are not to be doubted — it may be easily imagined, without the help of further description, what it must be in the higher degrees.

§ 77. By imbecility is ordinarily understood a deficiency of intellect; but it has been seen above (§ 59) that its signification is here extended, in order to include that class of

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[1] Discussion médico-légale sur la Folie, 140; and Des maladies mentales, considérées dans leurs rapports avec la legislation civile et criminelle, 8.

subjects in whom the mental defect consists in a great deficiency, if not utter destitution of the higher *moral* faculties, the intellectual, perhaps, not being sensibly affected. The following case will illustrate this form of the disorder.

§ 78. E. S., aged thirty-four, who had been ten years an inmate of the Richmond Lunatic Asylum in Dublin, was brought before Mr. George Combe, during a visit to that institution, on the 20th of April, 1829, to be subjected, with several others, to a phrenological examination. A few months after, Dr. Crawford, the physician of the asylum, addressed a letter to Mr. Combe respecting this patient, from which the following description is taken. "You observe in your notes, 'I am surprised he was not executed before he became insane.' This would lead to the supposition that he had been afflicted with some form of insanity, in addition to a naturally depraved character. Such, however, is by no means the case; he never was different from what he now is; he has never evinced the slightest mental incoherence on any one point, nor any kind of hallucination. It is one of those cases where there is great difficulty in drawing the line between extreme moral depravity and insanity, and in deciding at what point an individual should cease to be considered as a responsible moral agent, and amenable to the laws. The governors and medical gentlemen of the asylum have often had doubts whether they were justified in keeping E. S. as a *lunatic*, thinking him a more fit subject for a Bridewell. He appears, however, so totally callous with regard to every moral principle and feeling — so thoroughly unconscious of ever having done any thing wrong — so completely destitute of all sense of shame or remorse when reproved for his vices or crimes — and has proved himself utterly incorrigible throughout life, that it is almost certain that any jury before whom he might be brought would satisfy their doubts by returning him *insane*, which, in such a case, is the most humane line to pursue. He was dismissed several times from the asylum, and sent there the last time for attempting to poison his father; and it seems fit he should be kept there for life as a *moral lunatic;* but there has never been the least

symptom of *diseased* action of the brain, which is the general concomitant of what is usually understood as *insanity*."[1]

§ 79. Nothing can be more certain than that this individual was denied by nature the possession of those moral faculties, the due development and exercise of which constitute an essential element of responsibility. By the aid of kind and intelligent friends, he was secluded from scenes in which he was unfitted to mingle; but if, on the contrary, he had been suffered to go at large, with his animal propensities uncontrolled by the higher powers of our moral nature, and constantly meeting with opportunities for indulgence, what else could have been expected but some deed of violence that would have brought upon him the tender mercies of the law? Dr. Crawford is altogether too sanguine in believing that a jury would have pronounced E. S. insane; for the melancholy termination of the cases above given, teaches how little we can here rely on the intelligence of courts and juries. Had he committed a capital crime, he would probably have been condemned and executed, while the intelligent and the educated, the philosopher and the man of the world would, for the most part, have joined the unthinking populace, in thanking God, that a monster of wickedness had fallen beneath the arm of the law.

§ 80. A striking illustration of this form of mental deficiency occurs in a recent publication. "This person, aged twenty-one, was the son of a very respectable farmer, well grown, and in good general health. When I saw him he exhibited in his general appearance nothing noticeable, except a coarse and sullen expression of countenance. I learnt, from his relations and a family friend, whose testimony bore strong internal evidence of truth, that he had been a singular child, with obstinate fancies — such for instance, as refusing to be dressed in the morning without some absurd condition being granted. By five years old he was a confirmed liar, as well as a believer in his own marvellous assertions. By four-

[1] Edinburgh Phrenological Journal, vi. 147.

teen he had run away from school, and was domesticated at home, under careful, but ineffectual, surveillance. He would, I was told, at that time obtain, if he could, any article that struck his fancy, upon credit; then promptly throw it away or give it without judgment. As an instance of defective intelligence, the following detail was quaintly given me: 'He paid a visit to his grandfather, and during it, behaved remarkably well. But, then starting home on his pony, he went several miles in an opposite direction, and visited his old schoolmaster, to whom he told a false, but plausible tale, without any apparent purpose; thence, to another town, equally without an object; there he did nothing but sit in an inn; then turning towards home, he was found in a lane crying, and brought back to his father's house, where he appears to have always been treated with great kindness and no want of discretion.' Of all the above freaks, he gives no explanation. His conduct darkened as he grew older; after turning into money other people's property as well as his own, he proceeded to forge checks of his father, absconding with the cash. These matters having been arranged, he was sent on a voyage to Calcutta; and after having behaved well at first, dropped into a series of scrapes similar to the former. Subsequently, he enlisted as a common soldier; then became a cabman, always rejoicing in the lowest company, but without indulging to excess in drink; habitually defrauding when he could, his near relatives, and in his other conduct towards them equally remote from affectionateness when kindly treated, and from malignity when thwarted. No advice had, at any time, the slightest effect on him. The leading moral elements in this young man were a love of acquisition, and a love of change. His intellect was limited; and though his powers of acquiring knowledge were not obviously below par, it could by no means modify, direct, or restrain the above tendencies."[1]

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[1] Mayo. Medical Testimony and Evidence in Cases of Lunacy, p. 102. By this writer, who gives no countenance to the doctrine of moral insanity, the above case is referred to a form of mental disorder, which he calls *unsoundness of mind*. What is gained by substituting this designation for that

§ 81. The following case, which occurred under my own observation, belongs to the same type as the last. This lad, though belonging to a family in the easier walks of life, and surrounded by good moral influences, was undutiful and disobedient from early boyhood, and soon entered upon a shameless career of vice and low pleasure. He stuck at no means of raising money, one of which was to make out bills against his father's customers in distant places and represent himself as authorized to collect them. By the age of fifteen he had made the acquaintance of every haunt of infamy, and of every blackguard and blackleg in his native city as well as in some others. At last, when seventeen years old, becoming very troublesome, his father placed him in a hospital for the insane. Here he soon began to manifest a heartless, mischievous disposition, enjoying nothing so much as to teaze and worry his associates. No opportunity of this kind was neglected. A favorite occupation was to recount his peculiar experience without the slightest manifestation of shame or compunction. According to his own account he was familiar with every form of vice, but though bad enough, no doubt, he was too inveterate a liar to narrate even his own disgraces without a touch of fiction. Intellectually, he was rather deficient, and though at the best schools, scarcely acquired the rudiments of learning, owing as much probably to idleness as inability. In his adventures there was often a lack of method and purpose, such as we frequently witness with the insane. Once, while at school, he ran away of a cold night, half clad, though he had clothes, and time enough to put them on. Once, he went off with the horse and carriage of his landlord, without leave, and before getting anywhere abandoned them by the roadside. He manifested considerable adroitness in escaping from the hospital, which he did, several times. On his first return, having been absent three or four weeks, it was evident that he had been taking lessons in lock-picking, for no kind of lock was proof against his arts.

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of *moral insanity*, is not very obvious. The thing itself, certainly, is not affected by the change of name.

It is a significant fact, in connection with this lad's psychological condition, that one of his sisters is idiotic, and one or two more have evinced some curious moral obliquities.

§ 82. In a class of cases by no means unfrequent, this moral imbecility is particularly manifested in a morbid activity of the destructive propensity. An interesting case of this kind is related at length by Parent Duchatelet.[1] The subject of it was a little girl fourteen years old, who lived with her grandmother, a very respectable and religious woman, till the age of seven, when she returned to the charge of her parents. At this time, she is described as never playing, nor crying, nor laughing. She had been taught to read, sew, and knit, though quite averse to all instruction. Her mother being sick, she expressed regret that she was not dead, because in that case she would inherit her mother's clothes which she would alter so as to wear them herself. She declared that she would have killed her while sick if she could have evaded the observation of the attendants, and told her mother, who asked how she would have accomplished her purpose, that she would have plunged a poignard into her bosom. She said she was aware her father would put her in prison, but that would not deter her. A few months afterwards, on the occasion of the murder of a child, she told her mother that if she had killed her with a knife she would have got blood on her clothes, which would have led to discovery, and therefore she would have taken care to undress, before committing the act. Subsequently she said, she would use poison, in order to kill her mother. She frequently declared that she never loved her father, nor mother, nor grandmother. It appears that from the age of four years she was addicted to the practice of self-abuse, and no precautions nor persuasions could deter her from this dreadful habit. Such was the moral state of this child, now eight years old, when she was examined by a commissary of the police, and sent to a convent. At the age of fourteen, she appears to have

[1] Annales d Hygiene, vii. 173.

abandoned her murderous designs, but continued dejected and silent.

§ 83. This form of insanity which is above denominated moral imbecility, in order to distinguish it from that in which the intellect is affected, is not very rare in receptacles for the insane, and is more common in society than is generally suppected. It is seldom regarded in its true light, and when its subjects have occupied a high place in society, and thus been enabled to indulge more freely their mischievous propensities, they have often been consigned by the historian to the eternal execrations of mankind. Count Charolais, brother of the duke de Bourbon Condé, whose sanguinary character has been commemorated by Lacretelle, was undoubtedly a case of this kind. He manifested an instinct of cruelty in the very sports of his childhood. He took a pleasure in torturing animals, and committing the most ferocious acts of violence against his domestics. He would stand at his window and shoot the artizans at work upon the neighboring buildings, merely for the pleasure of seeing them tumble from the roofs and ladders. It is said that he loved to stain even his debaucheries with blood, and committed many murders from no motive of interest or anger.[1] Dr. Rush says that in the course of his life he had been consulted in three cases of moral imbecility; and nothing can better express the true characters of their physiology, than his remark respecting them. "In all these cases," he observes, "there is probably an original defective organization in those parts of the body which are occupied by the moral faculties of the mind,"[2] — an explanation that will receive but little countenance in an age that derives its ideas of the mental phenomena from the exclusive observation of mind in a state of acknowledged health and vigor. To understand these cases properly, requires a knowledge of our moral and intellectual constitution, to be obtained only by a practical acquaintance with the innumerable phases of the mind, as presented in its vari-

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[1] Histoire de France, ii. 59.

[2] Diseases of the Mind, 357.

ous degrees of strength and weakness, of health and disease, amid all its transitions from a state of brutish idiocy to that of the most commanding intellect.

§ 84. The prevalent error of looking at mind in the abstract, as a unique principle endowed with a certain appreciable measure of strength and activity, has been the cause of much dispute and discrepancy of opinion, in cases where the acts of persons affected with Hoffbauer's first degree of imbecility, have been made the object of judicial investigation. One witness has observed a range and tenacity of memory which he could not square with his notions of mental weakness; another, perhaps, has seen the party whose acts are in question conducting himself with the utmost propriety, and observing the social usages proper to his station, and this he has deemed incompatible with imbecility of mind; while another has heard him replying to questions on common place subjects, readily and appropriately, and he also draws similar conclusions. On the other hand, he is seen engaging in occupations and amusements, and associating with company, seemingly below the dignity of his age or station, by one who desires no further proof of an imbecile mind; or he may be so extravagantly vain of some personal accomplishments, as to impress another with the idea, that his understanding has scarcely the strength of a child. And it is worthy of notice, that oftentimes the very fact which furnishes undoubted proof of imbecility to one observer, conveys an unshaken conviction of mental soundness to another. Few, indeed, are capable of sounding the depths of another's intelligence, because few are aware of the necessity, or have the ability if they were, of scrutinizing, not one act or trait of character alone, but every intellectual manifestation as it appears in the conduct, conversation, and manners, as the only means of obtaining an insight into his real, mental capacity. Scarcely a case comes up in which the understanding of an imbecile is judicially investigated, that does not furnish striking illustrations of this fact, as might be shown by numerous instances in point. The following, however, the first of which was adjudicated in 1832, may serve as examples.

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§ 85. "Miss Bagster was a young lady of fortune, and perpetrated a runaway-match with Mr. Newton. An application was made by her family to dissolve the marriage, on the ground that she was of unsound mind. The facts urged against her before the commissioners were, that she had been a violent, self-willed, and passionate child; that this continued till she grew up; that she was totally ignorant of arithmetic, and therefore incapable of taking care of her property; that she had evinced a great fondness for matrimony, having engaged herself to several persons; and that, in many respects, she evinced little of the delicacy becoming her sex. Dr. Sutherland had visited her four times, and came to the conclusion that she was incapable of taking care of herself or of her property. She had memory, but neither judgment nor reasoning power. Dr. Gordon did not consider her capacity to exceed that of a child of seven years of age. Several non-medical witnesses, who had known her from infancy, spoke of her extremely passionate and occasionally indelicate conduct. On her examination, however, before the commissioners, her answers were pertinent and in a proper manner. No indelicate remark escaped from her. Drs. Morrison and Haslam had both visited her, and were not disposed to consider her imbecile or idiotic. She confessed and lamented her ignorance of arithmetic, but said that her grandfather sent excuses when she was at school, and begged that she might not be pressed. Her conversation generally impressed these gentlemen in a favorable manner as to her sanity. The jury brought in a verdict, that Miss Bagster had been of unsound mind since November 1, 1830, and the marriage was consequently dissolved."[1]

§ 86. There would seem to have been no doubt as to the existence of some degree of mental deficiency in this young lady; the question was, whether it was constitutional, or merely the result of a neglected education and misplaced indulgences, and consequently capable of being remedied.

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[1] Beck, Medical Jurisprudence, i. 752.

In proof of its constitutional nature, we have the opinion of a respectable physician that she was incapable of taking care of herself or of her property; and of another, that her capacity did not exceed that of a child seven years old, which opinion is corroborated by the facts in evidence, that she was extremely passionate, and often indelicate in her conduct; that her mind ran greatly upon matrimony; and that she had not made the most ordinary attainments in knowledge. On the other hand, it appears that her education was unquestionably neglected; that, before the commissioners, her answers were pertinent and in a proper manner; and that two eminent physicians were not disposed to consider her idiotic or imbecile. It is obvious, that in cases like this, the opinions of the medical witnesses will depend very much, if not altogether, on the extent of their previous acquaintance with the manifestations of the mind, both in its normal and abnormal conditions. Hence it is that a trait by no means incompatible with imbecility was considered, in this case, as indicative of a proper soundness of mind. Persons laboring under far more imbecility than Miss Bagster, are capable, on occasions, of controlling themselves and concealing their more prominent faults to such a degree that a stranger finds it difficult to believe, that in point of understanding, they are much below the level of ordinary people. It should be recollected that imbecility is manifested in the conduct and manners, as well as the thoughts and language; and when it is considered that persons like Miss Bagster are confessedly of narrow understandings, and often of defective education, it could not be expected that strong indications of imbecility would be observed in their conversation alone. Her answers, it seems, were pertinent, and properly delivered, as they might well have been, if they related to things in which she was particularly interested, and were not beyond her powers of comprehension, and she still have been imbecile or stupid. In the description of the first degree of imbecility, already quoted (§ 67), Hoffbauer expressly says that "the individual can very well judge respecting objects to which he is daily accustomed, and in familiarity with which

he may be said to have grown up." It may be also added, that their answers are sometimes not only pertinent, but characterized by considerable pith and shrewdness. Miss Bagster's education was, no doubt, grossly neglected, but this circumstance could not have produced so much mental deficiency as to have impressed a careful and intelligent observer with the conviction that her capacity did not exceed that of a child seven years old. Neglected or vicious education is a cause of ignorance, but can never degrade the mind into a state of imbecility or stupidity, which are always either congenital or the effect of disease. Dr. Morrison indeed stated under oath, that he would undertake to teach her, in six months, arithmetic and the use of money, but his success would have been far from disproving the existence of imbecility. It is not doubted that in this condition of mind, there is some susceptibility of education, and the cases are not unfrequent where, in regard to one or two particular powers, the individual is quite on a level with his more happily-endowed fellow men.[1]

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[1] I regret that the drift of these remarks on Miss Bagster's case has been entirely misunderstood. In a notice of this work in the British and Foreign Medical Review (July, 1840), they are pronounced to be in contradiction with the views subsequently expressed in the chapter on Interdiction, and charged with favoring legal oppression. This case was quoted for the purpose of illustrating that discrepancy of opinion and irrelevancy of facts so often witnessed in medico-legal investigations of cases of mental imbecility which is the subject of the preceding paragraph. In the comments which follow, my object was merely to examine the value of certain evidence, and show how far it proved or disproved mental imbecility generally. I contend that certain facts alleged in disproof of imbecility, are not incompatible with that condition, and it may be inferred, no doubt, from my remarks, that I considered Miss B. as laboring under some degree of imbecility, a point which the reviewer himself admits. Whether the imbecility were of such a kind as to incapacitate her from being a party to the marriage contract, is a question very different from that of imbecility in the abstract, and one which I did not pretend to discuss. For any thing I have said to the contrary, it may have been the height of injustice to annul this marriage. What foundation, then, has the reviewer for his assertion, that the author "comes to the conclusion that the verdict was correct, and that this lady was really

§ 87. In the case of *Portsmouth* v. *Portsmouth*, which was a suit of nullity of marriage, on the ground of the mental unsoundness (which was, in fact, imbecility in the first degree) of the husband, the Earl of Portsmouth, numerous facts were deposed to by witnesses, in proof that he possessed a capacity and understanding fully equal to the ordinary transactions of life. It appeared that when at school he evinced a very good memory, and made respectable proficiency in arithmetic and the languages; and that, after coming of age, he settled accounts with his agents; attended public meetings and committees; prosecuted an offender, and was examined as a witness; and that his friends had failed in making him the object of a commission of lunacy. In regard to these circumstances, the court, Sir John Nicholl, observed in substance, that the capacity for instruction and improvement is possessed even by the brute creation, and therefore did not of itself disprove the fact of imbecility; that when he appeared as a witness in a court of justice, it was only a simple fact he had to state, requiring little, if any thing, more than memory, and that his cross-examination could require nothing more than the recollection of facts — not any considerable exercise of the understanding and of the reasoning powers; that his behavior in company, and his few observations on the state of the weather, horses, and farming, were not incompatible with great imbecility of mind, because, under the restraints produced by formal company and by the sense of being observed, the more prominent features of imbecility would be shaded, and the indi-

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imbecile to a degree requiring legal interference?" A closer examination of my remarks on this case would have satisfied the reviewer, I think, that they are nowise contradictory to the general principle prominently set forth in various parts of this work, — that the legal consequences of the various forms of insanity, are to be determined by no general arbitrary rule, but always in reference to the particular act in question. I have since carefully read the report of this case in the Medical Gazette, vol. x., and have no hesitation in concluding that the verdict was correct, and that this lady was really imbecile to a degree requiring legal interference.

vidual might pass as possessing a considerable degree of understanding. On the contrary, it was satisfactorily proved that he had always been treated by his family as one of feeble capacity, and by a family arrangement, he was married, when thirty-two years of age, to a lady of forty-seven, evidently for the purpose of saving him from improper connections, and obtaining for him suitable care and protection. It appeared that his servants were his play-fellows, and that he played all sorts of tricks with them; that he was fond of driving a team, and that his wife so far indulged him, as to have a team of horses kept for his amusement as a toy and a plaything, with which he carted dung, timber, and hay; that he had a propensity for bell-ringing, was fond of slaughtering cattle, and indulged in wanton cruelty towards man and beast, never expressing regret, but merely observing, "serves him right," on his own acts of cruelty. It also appeared that a medical man was taken into the family to assist in superintending the earl, and that he obtained complete ascendency over him, the mention of his name being sufficient to intimidate him and exact his obedience. This gentleman at last thought it prudent to deliver up his charge to the earl's trustees in London, one of whom, within one week after, married him to his own daughter. This marriage was declared by the court null and void.[1] In the above statement a few facts only have been selected from a mass of evidence given by one hundred and twenty-four witnesses; but this is sufficient to illustrate the general principle that proof of imbecility is not to be found in a few isolated facts, but in an investigation of the whole character and conduct of the party.

§ 88. A similar diversity of views on the value of evidence respecting mental imbecility, was strikingly displayed in the

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[1] 1 Haggard, 359. The reader who wishes to extend his inquiries further, will find in the judgment of Sir John Nicholl, in *Ingram* v. *Wyatt*, 1 Haggard, 384, some excellent observations on the characters of imbecility, besides a masterly analysis of evidence relative to this condition, ranging through a life of seventy-four years.

Lispenard case which was finally decided in the New York Court of Errors in 1841. It arose out of the refusal of the Surrogate of New York to approve the will of Alice Lispenard, on the ground of mental incompetence. This woman was born in 1781; her father died in 1806, leaving her an annuity of $500; her brother died in 1808, leaving her, as one of his heirs at law, considerable property; and in 1834 she made her will, whereby she gave all her estate to A. L. Stewart, her sister's husband, and appointed him sole executor. In 1836 she died. The probate of the will having been refused by the Surrogate, an appeal was made, first to the circuit judge, and from him to the chancellor, both of whom sustained his decision. The case was then carried into the Court of Errors, by which these decisions were overruled, and probate of the will decreed.

§ 89. It appeared in evidence that the devisor was always regarded by her family as mentally deficient, and that her father left her only an annuity of $500, because, as he states in his will, "it hath pleased Almighty God that my daughter Alice should have such imbecility of mind as to render her incapable of managing or taking care of property." By several persons who lived or were intimate in the family, it was testified that she was washed, nursed, and put to bed the same as a child, until she was twenty-two years old; that she had a vacant expression of countenance, and a silly laugh when spoken to; that she dribbled at the mouth; had an awkward and unnatural carriage of the body and a violent temper; that she was not permitted to see company like the other children, but was kept out of sight; that no one thought of entering into conversation with her; and that all attempts to teach her beyond spelling short words of two syllables, were abandoned as impracticable. While at board, which was from 1817 to 1827, she was washed, dressed, and put to bed like a child; cried when the children of the family refused to share their cake and candy with her; ate her food voraciously; would strike those around her when in a rage, which was not seldom; and could not be taught the Lord's prayer. Although placed in the charge of a teacher at home, she

was found incapable of being taught to read, and forty years afterwards, when the attempt was renewed by her sister, it met with no better success. One witness stated, that when sixteen or eighteen years of age, she preferred a sixpence to a dollar. Another could not teach her to distinguish a two shilling piece from a half dollar. Once she was found choking a child six years old, until he was black in the face. In the selection of boarding-places she was never consulted, and it appeared that the families with whom she was placed, were in humble and narrow circumstances, without those conveniences and accommodations which she had a right to expect. Even when under the kind and judicious management of her sister, she submitted to be imprisoned in her room whenever it was ordered, and was frequently subjected to confinement as a punishment for misbehavior.

§ 90. On the other hand, it was stated that much of her deficiency might be attributed to the excessive indulgence of her parents, and especially to habits of intemperate drinking they had allowed her to contract. It appeared that she carried simple messages from one part of the establishment to another, and that she performed the duty of delivering out clothes for the wash, and soap, candles, starch, &c., to the servants. By her sister she was taught to perform some little offices about her own person and clothes, and to distinguish small pieces of money. Another witness had seen her washing cups and saucers. Another stated that when she wanted any thing she asked for it, and if medicine was given to her she would take it. On a very cold day when somebody was to be baptized, she said she would not be a baptist, to be baptized on such a day, and asked if they dip them as they dip candles. She also told the witness that when her sister died, they put her into a coffin with a silver plate having her name and age upon it, and that when she (Alice) died, she would like to be put into such a coffin and laid in the same room. It was stated that while living in her brother's family, which was during the last fifteen years of her life, she had charge of the clothes that were sent to the wash, would give the necessary directions, and correct mistakes when they were re-

turned; that she took charge of her own clothes, was very careful of them, and would send them to the sempstress if they needed repairing. In the absence of other members of the family, she would give directions to masons and carpenters employed in making repairs and alterations about the house, who obeyed her, and invariably found that her directions were approved. She sent messages by the servants, kept an eye upon them, and reported their misconduct. She recognized persons whom she had known in her youth, but had not seen for many years, called them by name, made inquiries respecting particular members of their families, and recurred to the scenes and amusements of her youth. She would inquire of visitors as to the health of particular members of their families with whom she was acquainted. Several other facts of similar importance were also related by the same witness. Another stated that when the children played school, Alice would act the mistress, and punish the others if they did not know their lesson. A clergyman who was somewhat acquainted with her, thought well of her understanding, on the score of her religious attainments. "Her confession of guilt," he says, "might have implied a knowledge of the depravity of nature, the necessity of forgiveness, and the ability of God to forgive in any circumstances, and might (when instruction had been received, as was the fact in her case) imply a knowledge of the atonement of Jesus Christ. Prayer is a means by which we receive the influence of the Holy Spirit; and as she said she constantly prayed, it may naturally be inferred that it was for that influence." This opinion is hardly corroborated by the statement of another witness who said that when she read the Bible to her, "she would ask the meaning of Christ, and ask who Christ was. She would then turn round and laugh, and say, 'Oh, you devil;' and would then go down stairs laughing, and perhaps she would laugh till she got down to her room." A physician who was also one of the subscribing witnesses of the will, and had often conversed with the testator, thought her natural powers were sufficiently good for any transaction requiring memory or judgment; and that if her education

had been carefully attended to, she would have become a highly useful member of society. On cross-examination, he stated that he did not regard her of ordinary understanding; he believed her to be a weak woman, but whether capable of buying or selling, could not answer, not knowing that the duty was ever put upon her. Another physician, who entertained a similar opinion of her capacity, in answer to the question whether she could read, replied that he did not know and did not inquire; he would have thought it an insult to ask her.

§ 91. It did not appear that she had any idea of the nature and extent of her property, or even called her brother-in-law, who had charge of it, to an account. Neither did it appear that she gave any instructions for the will, which was prepared by the executor himself. At the time of the execution, however, and previously at different times, she declared her intention to give all her property to the executor, to the exclusion of all other members of the family.

§ 92. That there was great mental deficiency in this woman was not questioned, and it is not easy to perceive from the published statement of the evidence, how any one can believe that the will in question was her will, and not wholly and exclusively the will of the executor. If by means of any considerations, legal, medical, or psychological, the validity of such an act could be established, the decision of the court of appeals might be justified. It is worthy of especial notice that the ground of this decision was a technical construction of the phrase *unsoundness of mind*, if the views of the court were fairly represented by the two senators who expressed their opinions. The law of the State permits every male person eighteen years old, and every female (not married) sixteen years old, of *sound mind and memory*, to give and bequeathe his or her personal estate by will or testament. Now, the mental deficiency of the testator, not being embraced in either of the kinds of unsoundness as defined by Coke (§ 3), it follows that she was not incapacitated by law from making her testament. Her mind was weak, but not unsound, and courts cannot measure the extent of peo-

ple's understanding or capacities, however feeble they may be without being positively unsound.[1] Such a distinction, however tolerable in the plea of an advocate laboring under the difficulties of a weak cause, could hardly have been expected in a judicial decision.

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[1] 26 Wendell, 256. *Stewart executor* v. *Lispenard.*

CHAPTER IV.

LEGAL CONSEQUENCES OF MENTAL DEFICIENCY.

§ 93. The general principles that determine the legal relations of idiocy are so obvious, and the fact of its existence so easily established, that little occasion has been afforded for doubt or diversity of opinion. The maxims of the law have sprung from the suggestions of common sense, and its provisions have equal reference to the best interests of its wretched subjects and of those who are about them. It may be mentioned as a curious fact, however, that while the idiot is denied the enjoyment of most of the civil rights, he is quietly left by the constitutions of the several States of the union, in possession of one of those political rights, that of suffrage, the very essence of which is the deliberate and unbiased exercise of a rational will. How this anomaly has arisen, it is not easy to conceive. A natural jealousy of any attempt to encroach upon the popular right, might suggest evils to this institution in allowing the mental qualifications of voters to be too closely scrutinized; but such fears could hardly have been expected in view of the unlimited control maintained by the law over the property and personal liberty of idiots.

§ 94. The little indulgence shown to imbecility in criminal courts, sufficiently indicates that either the psychological nature of this condition of mind is very imperfectly understood, or the true ground on which the idea of responsibility reposes is not clearly perceived. Whichever it may be, it may no doubt be attributed to the prevalent habit of studying the moral and intellectual phenomena in sound and healthy minds only, without a suspicion, apparently, of the

great modifications they present, when the development of the cerebral organism is interrupted by disease. It will be necessary, therefore, before coming to any positive conclusions relative to the legal accountability of imbeciles, to bring into view some considerations on this point, which have been too much, if not altogether, overlooked.

§ 95. Our moral and intellectual constitution is constructed in harmony with the external world, on which it acts and by which it is acted upon; the result of this mutual action being the happiness and spiritual advancement of an immortal being. Thus endowed with the powers of performing the part allotted us, and placed in a situation suitable for exercising and developing them, we become accountable for the manner in which they are used, — to our Maker, under all circumstances; to our fellow men, when the institutions of society are injured. All legal responsibility, therefore, is founded on this principle of adaptation, and ceases whenever either of its elements is taken away. The intellect must not only be sufficiently developed to acquaint the individual with the existence of external objects and with some of their relations to him, but the moral powers must be sound enough and strong enough to furnish each its specific incentives, to pursue that course of conduct which the intellect has already approved. It is nothing that the mind is competent to discern some of the most ordinary relations of things, and is sensible of the impropriety of certain actions; for so long as the individual is incapable, by defect of constitution, of feeling the influence of those hopes and fears and of all those sentiments and affections that man naturally possesses, an essential element of legal responsibility is wanting, and he is not fully accountable for his actions.

§ 96. In the normal mind the idea of crime is associated with those of injury and wrong; can we then impute crime when there is neither intention nor consciousness of wrong? For want of the higher and nobler faculties, the actions of the imbecile are contemplated by him solely in relation to himself; not a thought enters his mind respecting their consequences to others. For the same reason that he puts to

death a brute, that of mere personal gratification, he murders a fellow being, and is constitutionally unable to appreciate any difference in the moral character of the two actions. In the latter case, as in the former, he has a selfish object in view, and is restrained from pursuing his purpose by none of the considerations that actuate the sound and well-developed mind. The natural right of every one to the undisturbed possession of his own life, and the sentiment of wrong awakened by the infliction of injury, are things as far beyond the sphere of his contemplations, as the most difficult problem in mathematics; and he merely feels the animal impulse — which to him has the strength of a natural right — to appropriate to himself whatever will conduce to his momentary gratification. The thought of the wounds inflicted on the friends and connections of his victim by his decease, cannot restrain him, because the feelings of benevolence and sympathy which they suppose, are utter strangers to his own bosom; and it would be preposterous to expect him to be influenced by a regard to feelings which he never experienced himself. The sense of future accountability cannot restrain him, for the idea of an Almighty, All-seeing Being, ever witnessing his actions, is too confused and too limited in his mind, to present the slightest check to the indulgence of his caprices and passions. The fear of punishment cannot restrain him, because his intellect can discern no necessary connection between his crime and the penalty attached to it, even if he were aware of the existence of the penalty. To make such a person responsible for his actions to the same degree as one enjoying the full vigor and soundness of the higher faculties, is therefore manifestly unjust; because an essential element of responsibility is a power to refrain from evil-doing, which power is furnished by the exercise of those faculties that are but imperfectly, if at all, developed in the imbecile. The law looks only to the intention, not to the amount of injury committed; and since there can be no criminal intention where there is no consciousness of wrong, it cannot properly reach those wretched objects, who, to use the expression of one of them, whose case will

be shortly noticed, "can see no difference between killing an ox, and killing a man."

§ 97. Many, it is true, find it hard to be convinced that one who labors under no delusion, and enjoys a certain degree, at least, of moral liberty, may still not be responsible for his criminal acts. They see, perhaps, that he has intelligence enough to perform the inferior kinds of employment, and feel assured that observation must have made him acquainted with the consequences of such acts, even though a stranger to that high moral power which instinctively teaches the distinctions of right and wrong. "He *knew* better," is their language, "and therefore justice requires his punishment." The error of this reasoning arises in the vulgar habit of estimating the strength and extent of the moral faculties by the ability to go through certain mechanical duties, and provide for the wants and exigencies of the present moment. Not only has this ability no connection with the moral sentiments, but it is not even an index of the measure of intelligence; any more than the skill of the bee or beaver in erecting their structures, is indicative of great intellectual resources. These degraded specimens of our race are not without the capacity of being educated in a limited degree; and thus like those inferior animals which man has made conducive to his comfort, they are trained to perform some kinds of service with tolerable merit. This, however, no more proceeds from the kind of intelligence that discerns moral truth, than does the isolated talent for music or construction not unfrequently met with in the complete idiot.

§ 98. For the purpose of illustrating and confirming the above views, some account will now be given of a few criminal trials, the subjects of which seem to have been affected with mental imbecility, stating very briefly the facts as they are found recorded, and accompanying them with such reflections as the particular circumstances of the case require. They are well worth the consideration of every honest and unprejudiced inquirer, for he will find in them a kind of information which he can obtain from no other quarter, and he will be able to see for himself, how little of true philoso-

phy has presided over this department of criminal jurisprudence.

§ 99. In November, 1821, John Schmidt, aged 17, was tried at Metz for parricide. He had manifested, from an early age, a proneness to mischief and even cruelty. As soon as he was old enough to run in the streets, he would amuse himself by throwing stones into the rivulet, that ran through the village, in order to spatter and hurt the people who were passing by, many of whom were injured by him. They contented themselves, however, with charging his parents to take care of him, for he was even then considered to be mad.

The first count in the indictment charged him with wounding on the head his sister-in-law, in one of their domestic quarrels. The second charged him with an attempt on the life of one of his cousins, whom he pushed into the water while fishing by the side of a pond, and then laughed at his struggles to extricate himself. When he finally succeeded, Schmidt approached him and asked if he were wet, and if the water had reached his skin; the boy, to show that it had, opened his shirt, when Schmidt plunged a knife in his bosom. Happily, the wound was not severe.

On the night of the parricide, the father was boiling potashes. At four o'clock in the morning he called to his wife to come and assist him in lifting the kettle from the fire, but she refused and ordered John to go. John went in his shirt, and set the kettle on the floor, and while his father was bending over to stir the potashes, he struck him a blow with a hatchet lying near, that felled him senseless to the ground. He then ascended to the garret, where his brother and sister were sleeping, and severely wounded the latter with the hatchet. On being seized by his brother soon after, he asked to see his father, who had just expired; and when gratified in this wish, he uttered these remarkable words: "Ah, my dear father, where are you now? What will become of me? You and my mother are the cause of my misfortunes. I predicted it long ago, and if you had brought me up better, this would not have happened." When asked what had

induced him to commit such an atrocious crime, he replied that the devil undoubtedly instigated him. He also declared that the itch, which he had taken from his sister-in-law, was repelled, and, in consequence, frequently occasioned a mental derangement and fits of fury which impelled him to sacrifice every thing. Several witnesses testified that he had always been remarkable for profound piety and religious habits. He confessed to his counsel that whenever he saw a cutting instrument, such as a hatchet, a knife, etc., he felt the strongest desire to seize it, and wound the first person that came in his way. His counsel unsuccessfully pleaded in his defence mental derangement, though Schmidt interrupted him by declaring that he was not mad. Shortly before the fatal hour, food was brought to him, but observing it to be meat, he refused to eat it, saying that in a few minutes it would be Friday. As he walked barefooted to the place of execution, his confessor asked him if the pavement did not hurt him? "I wish," he replied, "they had made me walk on thorns." When he arrived at the scaffold, they cut off his hand, but he uttered not a word or a cry, and remained firm to the last.

§ 100. Dr. Marechal, of Metz, who communicated this case, observes that he was struck with the smallness of the head, and its singular shape, and that on carefully examining his skull, he found the forehead very narrow and retreating, the sinciput tolerably high, and a marked prominence over the ears. He said it had the same shape as those of all the idiots mentioned by Pinel.

§ 101. In Schmidt we have ample confirmation of the other indications of imbecility, in the physical structure, which speaks a language that cannot deceive. If his cranium were shaped like those of the idiots described by Pinel, what better manifestations of mind or morals could have been expected from one thus stamped by nature with the impress of inferiority? This furnishes an explanation of his early indulgence in brutal propensities, to such a degree, that he was deemed mad; and gives us a clew to the cause of his attempts on life, solely for the momentary gratification they afforded;

of the motiveless and cold-blooded murder of his father; and of that regard of religious observances which had no better foundation than the merest superstition. His inclination to kill on seeing a cutting instrument, shows some morbid action in the brain not uncommon in imbecility, which is also indicated by the paroxysms of fury in which he felt himself urged on to indiscriminate slaughter. These vehement impulses, the slight consciousness of wrong, denoted by his exclamation on seeing the corpse of his father, was totally unable to restrain; and, by a process unknown to himself, and which he could only explain on the popular notion of the instigation of the devil, they would burst forth with fatal violence. His extraordinary proneness to mischief and cruelty, and the early age at which it began to appear, point distinctly to an original defect of constitution, which, though not attended by what is probably called mania, deprived him of all controlling influence over the purely animal propensities. Ferocity of disposition in imbeciles no more implies responsibility for criminal acts, than it does in the brutes; and affords but an indifferent reason for ridding the world of their presence. To conclude, then, we cannot hesitate to believe with MM. Marechal and Georget, that Schmidt was one of those wretched beings who are disgraced by nature from their very birth, and whose vicious propensities are counterbalanced, neither by a sense of justice and morality, nor a fear of punishment.

§ 102. Pierre Joseph Delepine, aged sixteen, was tried at Paris for eight different incendiary acts, committed in the Faubourg St. Antoine, in 1825. The first time, a bird, with burning tow dipped in spirits attached to its tail, was let loose in a garden adjoining that of the accused. At another time, August 17th, a fire broke out in the adjoining garden, two heaps of straw being burnt and a part of the wall destroyed. Three days afterwards, a grange belonging to Delepine's garden was burned, and three days after this, a cousin of his was awakened by a dense smoke, and soon discovered that a chest containing his effects was on fire. The next night, a person passing through the street, observed a heap of

straw in flames at the farther end of the garden which laid on the street. He sprang over into the garden to render assistance, when Delepine and his family rose and finally extinguished the fire. While this was doing, a bucketful of burning charcoal was discovered in the garret, in time, however, to be extinguished. In the morning of the 7th September, a piece of burning canvas was found in a wood-closet under the staircase; and Delepine, who expressed his astonishment, helped to extinguish the flames. Soon after, there was found under the two mattresses in his sister's room, a handful of burning flax by which the bed-furniture had been already set on fire, and some was also discovered in his own chamber, placed under his pillow, and an hour or two afterwards, a heap of straw in a neighboring garden was observed to be on fire. He was also charged with having committed several thefts.

§ 103. On the trial, his father stated that the prisoner's intellectual faculties were not what might have been expected from one of his age; and, in support of his assertion, he adduced the nature of the criminal acts themselves, and the absence of sufficient motives to excite him to so many attempts, both against his own family, and people who were indifferent to him. He also produced a certificate signed by nine of his neighbors, which purported that Delepine's thoughts and feelings were frequently in a disordered condition; that he would often wander in his conduct and conversation; that he would sometimes strip himself naked and run like a madman through his father's garden; that they heard his parents say that in the January previous, he attempted to hang himself, and some time after, to jump into a well. It appears from the evidence that he led an irregular life, was jealous of his brothers and sisters, and caused his father much uneasiness. At various times he had stolen from his parents, and it was for having stolen a horse that he met in the street, without its owner, that he was first arrested by the police.

§ 104. On his trial, Delepine replied to the questions put to him, with calmness; his countenance was devoid of ex-

pression and presented a picture of stupidity. He denied the facts charged in the indictment, and could not conceive how they happened. The newspapers described him as having a low forehead; and all the witnesses who had an opportunity of knowing, agreed in believing that there was some singular defect in his mental organization. His mother testified that for some time previous his parents had had occasion to reprove him for his conduct, and that they had intended to seclude him. She said he was odd, addicted to the strangest tricks, and, in short, showed that "there was something wrong about his head," though he was not mad nor idiotic. This testimony of the mother was confirmed by that of eight or nine other witnesses, who agreed in representing him as having been always very odd and strange in his conduct, and addicted to mischief, though not mad, nor, properly speaking, idiotic. He was, notwithstanding, convicted, and condemned to death; but he heard the sentence as unmoved as he had continued to be during the trial.

§ 105. In a memoir addressed to the king by his counsel, M. Cleveau, he is described as being "weak in body, his face pale, his eye dull, and his mind infirm; as manifesting no disposition for employment, wrapped in silence, and subject to convulsive agitations. He was in the habit of shunning his companions, and when he did incline to join them, he proposed only the most frightful sports. Once, in the middle of the night, he placed baskets on his head, wrapped himself in his bed-clothes, and ran through the garden, uttering the most fearful howlings. On one occasion he kindled a fire in a stove with thirty crackers, and though covered with the ruins, he was not astonished at the result. After the trial, while in prison and in irons, and under the eyes of his keepers, he contrived to place burning coals in his bed, and then laid down upon it while actually on fire. It cannot be doubted that he is enslaved by a passion for conflagrations, incessantly haunted by images of flames, cinders, and ruins, and would not mind perishing himself, provided he could enjoy the sight of them, in the act. He belongs to that class of wretched beings who are doomed from the cradle;

who live without motives, and are cut off without understanding why." In consequence of this memorial, his punishment was commuted to that of imprisonment for life.

§ 106. While in prison he amused himself with scribbling his name in every variety of form on the copy of the indictment that was left with him; by writing on it unmeaning or disconnected words, or words formed by letters put together at random; by drawing on it grotesque figures, and changing the letters in such a manner that some parts of it could scarcely be read. Thus, the words, "Acte d'accusation contre Joseph Delepine," were changed in the following manner: *Dacte deaccusationiss contre Josephu Delapine;* and the first page is filled with ink-spots, and detached and insignificant words, such as, *Marieux*, *meche*, *a mosire non*, *dacculer*, *mosieur je dit*, *bonjour a monsieur leru*, etc. "Can it be conceived," says Georget, "that a person who is conscious of the enormity of his crime, and who cannot be without some anxiety respecting the result of his trial, should be absorbed in such puerilities? that he should read such grave charges, not only without a single emotion of horror, but even with the most perfect indifference, and use the paper containing them for his amusement? Such conduct not only displays insensibility, which is not rare in hardened criminals, but betokens the mind of a child; and in a lad of sixteen, indicates stupidity, silliness, and imbecility." The physical characters attributed to Delepine, and his manners, as described by those who were in the habit of frequently seeing him, clearly indicate a natural deficiency of his moral powers; but though his crimes were the acts of a child five or six years old, his imbecility alone may not be sufficient to account for the particular form his offences assumed. It must be borné in mind that in imbecility, as in other abnormal conditions, there is not only deficiency and irregularity, but also a great tendency to diseased cerebral action, manifesting itself in excessive uncontrollable indulgence of some one or more propensities. In Delepine, it assumed the form of that monomania which consists in a morbid impulse, which the higher powers cannot restrain, to acts of incendiarism. That

the incendiary acts of Delepine arose from diseased action in the brain, and not from mere love of mischief, is abundantly proved by the slightest examination of their nature. To let loose a bird with burning tow attached to it, without knowing or caring where it would alight, is what, perhaps, might have been expected from a low and simple, though sound mind, deliberately bent on mischief; but certainly, nothing less than genuine, unequivocal insanity, can account for his setting his own bed on fire, and then calmly lying down upon it. If, too, he had been actuated by malice or a pure love of mischief, it is absurd to suppose that he would have chosen his own home for its objects, and thus deliberately endeavored to deprive himself of a shelter, as well as those on whom he depended. In short, the fact of imbecility, combined with mania, is so plainly written on the history of this singular case, that it would be hopeless, by any additional comments, to make it more clear to those who cannot read it for themselves.[1]

§ 107. Abraham Prescott was tried at Concord, New Hampshire, in September, 1834, for the murder of Mrs. Sally Cochran.[2] On the morning of June 23d, 1833, he left home with the deceased, who was the wife of his employer, for the purpose of picking strawberries in a neighboring pasture. An hour and a half afterwards, the family heard a whining, moaning sound in the barn, which was found to proceed from Prescott, who, on being asked what was the matter with him, said that "he had struck Sally [Mrs. Cochran] with a stake and killed her." He then went with them and showed them the body, which they found had been dragged a little distance from the place where the murder was committed, and concealed among some bushes. On his way thither he asked the husband if he would hang him; he showed no dis-

[1] The facts in the above cases are taken from Georget's work, already referred to, entitled, Discussion medico-legale sur la Folie, 130, 144.

[2] The facts of this case are derived from the report of the trial, published at Concord, in 1834, and from an article in the Boston Statesman of January 9, 1836, entitled "Execution of Abraham Prescott."

position to escape, though not arrested till several hours afterwards, and slept soundly the succeeding night. He was eighteen years old, had lived three years in Mr. Cochran's family, by which he had been always kindly treated, and his conduct had been uniformly correct and satisfactory. No misunderstanding had occurred between him and any other member of the family, and they reposed unlimited confidence in his fidelity and attachment, though on one occasion it was strongly tried. On the 6th of January, 1833, that is, about six months previously, he arose in the night, procured an axe from the shed, went to the bed where Mr. and Mrs. Cochran were sleeping, and struck each of them some severe blows on the side of the head, which left them senseless. He then went to an adjoining room where Mr. Cochran's mother slept, and told her, he "believed he had killed Mr. and Mrs. Cochran." They recovered, however, and warmly repelled every suspicion of the truth of his own statement that he had committed the act in his sleep, unconsciously though he had never been known to walk in his sleep before. For several months after the murder, he continued to explain his conduct in regard to it, by saying that while in the pasture he had the toothache, that he sat down on a stump, and fell asleep, and that was the last he knew, until he found he had killed Mrs. Cochran. On being much pressed by the coroner and warden to confess the whole truth, for they did not believe that he acted without a motive, and assured by them that he would stand a better chance of being pardoned if he confessed, he told these officers, that he made an insulting proposal to Mrs. Cochran, which she resented, and threatened to tell her husband of and get him punished; that he supposed he should have to go to prison, and thinking he would rather be hanged than go there, he took up a stake and killed her. Subsequently, he stated that he did not make such proposals to Mrs. Cochran, and uniformly denied that he had ever so confessed; but declared that the coroner and warden had troubled him so much that he did not know what he told them. To the keeper of the jail and the clergymen who visited him, he invariably stated, "that he attempt-

ed to kill Mr. Cochran and his wife, in January, 1833, in order to get possession of their property; and that when he found he had not despatched them, he feigned that he had been asleep when he did it. In June, his intentions were, first to kill Mrs. Cochran in the hollow, and then call down Mr. Cochran and kill him."

§ 108. His counsel set up in defence the plea of homicidal insanity, which they supported by quoting numerous cases of this disorder, and citing the opinions of high medical authorities and witnesses; and, in short, nothing was omitted by them that could help to render the defence satisfactory to the jury. Chief Justice Richardson, in his charge, strongly inclined to the belief of his insanity, and observed that if the prisoner "had been all the time sane, his conduct had certainly been most extraordinary. And on the other hand, if he had been otherwise than sane, it was a most extraordinary case of insanity."

§ 109. There certainly are strong reasons for believing that Prescott was utterly unconscious of what he was doing when he murdered Mrs. Cochran, but, on the contrary, a careful examination of all the circumstances of the case presents us with still stronger reasons for thinking that he did know well enough what he was doing. It appears perfectly evident that he belonged to that wretched class of men, in whom mental deficiency is accompanied by more or less perversion of the moral faculties. Upon any other than this view of his mental condition, it is impossible to furnish a satisfactory explanation of his conduct and the circumstances attending it. His original statement that he was unconscious when he committed the murder, is opposed by his subsequent confessions that he was actuated by certain motives; so that we are presented, in the outset, with the very unusual case of a criminal defended on the ground of insanity, who denies that he was insane, and furnishes rational motives for his conduct. There is good ground for believing that his last confession was the true one, first, because he could have had no reason *then* for inculpating himself falsely, while, on the other hand, the hope of escaping punishment was a sufficient reason for his fabricating the story which he told at first; and, secondly,

because it furnished the same motive for the attempt to kill in January, and this establishes a consistent and satisfactory relation between these two acts. To remove the only doubt in his favor, that of his sanity, and confess a fictitious motive for his conduct, is of itself, considering the circumstances of the case, strongly indicative of mental imbecility. We are obliged, therefore, to believe that he was actuated by a motive, and that this motive was a desire of gain; and nothing can more strongly show the imbecility of his mind than the means which he took to obtain his object. It seems that the idea haunted his mind that the death of the Cochrans would put him in possession of their property; and with this view "he thought," as he said, "a thousand times of killing them, along through the fall, before the attempt on their lives in January." When asked if he did not know that the property would descend to the children, he replied, "that he knew it would so descend, but he did not think of it at that moment." In fact he was not even the most distantly related to the Cochrans, and had no reason whatever for supposing that they had made testamentary dispositions in his favor. His imbecility is also strikingly manifested in the feebleness of spirit and want of resolution which characterized his criminal attempts. He kills, as he supposes, both husband and wife in their bed; but when he returns to their room and finds them still living, instead of completing his work by an additional blow, as the cool assassin would have done, he goes and arouses the rest of the family and the neighbors, and tells them what he has done. Again, instead of taking an opportunity when both his victims might be finished together, with some shade of secrecy, he despatches one in open day, almost within call of help, intending to trust to his chance of overpowering the other under similar circumstances. The latter part of this plan — that of calling Mr. Cochran and killing him — he abandons the moment he has murdered the wife; and seems then for the first time to have thought of concealing the body and his own share in the bloody act. This purpose, too, he but half performs, and finally goes and discloses the whole transac-

tion to the very person most interested in knowing it. Such conduct is perfectly inexplicable on the supposition of his possessing a soundly acting mind; but it is a fair specimen of that vacillation of purpose, feebleness of resolution, and capriciousness of design, which are among the most common features of imbecility. Had he belonged to the class of ordinary criminals, he, certainly, after obtaining the object he had in view in committing the murder, would either have fled, or taken some means of turning suspicion from himself, and provided for his escape in this last resort. But he was an imbecile, and because he was an imbecile, he immediately proclaims his own agency in the act, relying for his safety on the very suspicious excuse of being unconscious of what he was doing, — an excuse which, at best, would not have saved him from much tedious, perhaps perpetual confinement, and the ineffaceable stigma of having murdered a fellow-being. Even the motive he assigned to the coroner and warden, and on which the attorney-general rested the burden of his argument against him, supposing it were actually the true one, would only strengthen this view of his mental condition; for none but an imbecile or an idiot would ever have imagined that he would be sent to jail for offering an insulting proposal to a woman, or would have preferred hanging to temporary imprisonment, and then added murder to insult for the purpose of obtaining his preference. Nothing that appears in what is said of him during his confinement, gives any higher idea of his moral and intellectual powers. The utmost efforts of zealous and judicious clergymen failed to impress him with a sense of his awful situation, or inspire him, in the least degree, with those cheering hopes which even the most abandoned criminals often entertain. This did not arise from a spirit of bravado, nor from the utter recklessness sometimes manifested by the hardened victims of the law; but from stupid indifference, or sheer inability to comprehend the simple truths of religion, or imagine any thing, beyond the present, worse than the annoyances to which he was subjected. In short, so obvious was his imbecility, that the writer, from

whose statement the foregoing account is partly taken, observes that "no one who has had any intercourse with Prescott has come to the conclusion that he is or has been insane, but they all consider him to have been deficient in intellect or common sense." [1] The signs of imbecility were not wanting even in his physical constitution. A medical witness, who had been physician of a private asylum for the insane for fifteen years, speaking of his appearance at the bar, said, "the motion of his eye is idiotic, dull, lazy, indifferent; no appearance of fear or anxiety in his countenance. I noticed no agitation, nor anxiety in the prisoner during the examination of the first two government witnesses." It is also worthy of notice, that insanity had been a common disease in the Prescott family; that his mother was fifty-six years old when he was born, and his father but one year younger; and that the prisoner, when a child, had a scrofulous or rickety affection, for which they used cold bathing and some external remedies. Stronger predisposing causes of imbecility than these, when combined, do not exist.

§ 110. Such are the reasons that induce the belief, that Prescott was a subject of imbecility, not mania, — that he belonged to that unfortunate class described by Georget (§ 58) who know no other incentive than the gratification of animal passion; and who are restrained from evil-doing by no higher sentiment than the fear of punishment. This consequence he certainly should have been made to suffer in a limited

[1] It is true, that one witness, with whom the accused lived a year and a half, previous to living with the Cochrans, described him as "intelligent," and another, who had been acquainted with him from a child, said, "he was as intelligent as boys in general;" but when we bear in mind how ill-qualified most persons are to estimate the intellectual capacity of others, and that with them intelligence generally means only manual skill, or a tolerable aptness in performing the coarser labors of the farm and the work-shop, we shall place little reliance on these representations, more especially, too, as they are not sustained by other testimony. The keeper of the jail and his wife, who seem to have been particularly interested in him, and to have had considerable intercourse with him, both testified that they considered him "*not* as intelligent as boys in general."

degree; but to mete it out to him in the same measure that is bestowed on ordinary criminals, was manifestly contrary to the principles of natural justice.

§ 111. On the 14th of May, 1833, a young man, John Barclay, was executed at Glasgow, for the murder of Samuel Neilson, for whom he had previously shown some affection. He took from him three one-pound notes and a watch, to obtain possession of which seems to have been the object of the murder. So little sense had he of having done wrong, or of his own situation, that he hovered about almost without disguise, and, while going to spend part of the money with the first person he spoke to, he dropped first one and then another note at his feet, as a child would have done. He was devoid of natural affection, and evinced no sorrow for what had happened. When questioned, he said he could see no difference between killing a man, and killing an ox, except that he "would never hear him fiddle again;" and so little did he know of the nature of the watch, that he regarded it as an animal, and when it stopped from not having been wound up, believed it had died of cold from the glass being broken. His only idea of God was, that he was a *muckle horse*. He had no idea of time, and did not know the number of days in a week. So obvious was Barclay's mental deficiency, that the court of justiciary before which he was brought, declined proceeding to his trial till it was decided by medical evidence, that he was a fit subject for trial. In his parish, he was familiarly known as "daft Jock Barclay;" and the clergyman, who knew him well, "always regarded him as imbecile, and had never been able to give him any religious instruction, and did not consider him a responsible being." Notwithstanding the fact that Barclay's weakness of mind was recognized by all parties from the judge downwards, and that the jury strongly recommended him to mercy on that account, he was condemned and executed.[1] It appears that much stress was laid on Barclay's

[1] Edinburgh Phrenological Journal, x. 33.

knowing right from wrong, as affording indisputable proof of his being a moral agent. The reader may judge for himself, how extensive and accurate must have been the notions on this point, of one who thought a watch was a live creature, and who could see no difference between killing an ox and killing a man.

In the above case the imbecility was congenital, and resulted from an imperfect development of the cerebral organism. In the following, it was the effect of disease, perverting the normal action of the brain.

§ 112. Louis Lecouffe, aged twenty-four years, was tried at Paris, 11th December, 1823, for the murder of a woman whom he robbed of a quantity of plate. It appears that he was an epileptic from infancy; and those who were in the habit of associating with him always regarded him as an idiot or fool. He had some disease of the head when very young. At fifteen, he showed manifest signs of insanity; and affirmed that God, from time to time, came to visit him. His mother, whom he strongly accused and seriously compromised by his disclosures, declared, even while she stigmatized him as a monster and a villain, that he had always been in bad health, and hardly ever in possession of his senses. At his first examination he denied the charge, but subsequently he confessed, for the following reason. He stated that on the preceding night, while still awake, the spirit of his father appeared to him, with an angel at his right hand, and commanded him to confess his crime; that God immediately after, placed his hand upon his heart, and said to him, "I pardon thee," and ordered him to confess every thing within three days. It appears that his mother, of whom he stood greatly in awe, had refused her consent to a marriage he was anxious to contract; that she refused him again on another occasion, and, according to his confession, she long teased him to commit the murder and robbery, and decided his resolution by promising no longer to oppose his marriage. The plate was pawned for two hundred and thirty francs, of which his mother gave him only forty to defray the expenses of his marriage. He declared that his

victim was fond of him, and that he deserved her good will by having rendered her many little services. On being confronted with his mother, he did not retract his assertions, but only showed some hesitation, saying he was not himself, and experienced a violent nervous attack. He said, next day, that if placed again in the presence of his mother, he would be unable to answer for himself; that she would give him the lie, and he would not have firmness enough to maintain the truth. Her unbounded influence and authority over him, which were deposed to by several witnesses, were such, that he did whatever she ordered him, and absolutely deprived himself of every thing to support her, giving her all his earnings, without daring to retain a single sous. The keeper of the prison testified that he talked incoherently, and that he seemed idiotic and weak-minded. The chief keeper said, that he had often seen the accused with haggard looks, and eyes filled with tears, complaining of headache, but without manifesting any true derangement of mind. During the trial he had very frequent violent attacks of convulsions, and he stated that when he felt vexed, a kind of flame or flash passed before his eyes.[1]

§ 113. The facts here related may seem to some, to establish the imbecility, or mania, or both, of Lecouffe, beyond a reasonable doubt; but not so thought the court or jury, and, accordingly, he was condemned and executed with his mother. Certainly, nothing short of great weakness of mind can account for the entire submission of a man twenty-four years old to the despotic rule of his mother, to whom he yielded the last sous of his earnings, sacrificed his matrimonial scheme, on which he was strongly bent, and from whom he received only forty of the two hundred and thirty francs, for which, at her instigation, he had murdered his benefactress. That this mental weakness amounted to imbecility, is satisfactorily proved by the fear and convulsive agitations which he experienced when brought into her pres-

[1] Georget, Examen des proces crim.

ence; by the common opinion of those who were in the habit of associating with him; and by the well-known effects of this disease on the understanding of its subject. If Lecouffe, after suffering the disease his whole life, had still possessed a sound mind, it would have been a fact almost, if not altogether, without a parallel; but that he did not escape its deteriorating effects, is abundantly proved by the evidence adduced. Occasionally, his mental affection took the form of proper mania, as was indicated by the wildness and disorder of his looks, by talking incoherently to himself, by his groanings and mournful cries in the night, observed by one of the witnesses, by his nocturnal apparitions, and by the testimony of his own mother, that he was almost never in possession of his senses.

§ 114. Against all this array of evidence, the advocate-general had nothing to offer but the idle declamation usually resorted to on such occasions. The attempts of the prisoner's counsel to establish the existence of imbecility and mania, he reprobated in the severest terms, as dangerous to society, subversive of social order, destructive of morality and religion, and affording a direct encouragement to crime. It forms no part of the plan of this work to show the utter groundlessness of these assertions; and they are mentioned here, merely that the reader may see what powerful considerations succeeded in invalidating the evidence in favor of Lecouffe, and consigning him to an ignominious end!

§ 115. If the principles above laid down (§§ 75, 76, 83) are not entirely incorrect, it follows that the persons whose cases have been related, were not fit subjects for criminal punishment — at least, not that of death. The usual treatment of such offenders, it is to be feared, is prompted more by prejudice and excited feelings, than by enlarged views of human nature and of the ends of criminal jurisprudence. While the public feeling has become too refined to tolerate the infliction of blows and stripes on the imbecile and the mad in the institutions where they are confined, and is inclined to discountenance altogether the idea of punishment as applied to the insane, it can still be gratified by gazing

on the dying agonies of a being unable to comprehend the connection between his crime and the penalty attached to it, and utterly insensible of the nature of his awful situation. The voice of reason and humanity which speaks successfully in the first instance, is, in the last, drowned by the more imperious tones of prejudice and passion. When imbeciles are convicted on a charge of great criminal offences, the only rational course to be pursued with them, is that of perpetual confinement, which at once secures society from their future aggressions, and is most conducive to their mental and bodily welfare.

§ 116. It has been already mentioned (§ 75) as an essential defect in Hoffbauer's description of the various grades of imbecility and stupidity, that he has almost entirely left out of view the state of the moral faculties, — an omission that is fatal to the value of the principles which he lays down relative to the legal consequences of this mental condition in connection with crime. The ground above taken (§§ 75, 76) obliges us to consider the principle he has adopted, of graduating criminal responsibility by the strength and extent of the intellect alone, as exceedingly partial and unjust in its operation. The only conditions of culpability which he recognizes are, first, a knowledge that the act is contrary to law; and, secondly, that the act is precisely the one prohibited by the law. In the first degree of imbecility — for in the third all legal culpability is annulled — the absence of these conditions may be alleged in excuse; but only, first, when the violated law neither forms a part of those general relations which concern the offender in common with other members of society, nor belongs to his own particular condition or circumstances; and, secondly, when the action forbidden by the law is not contrary to the law of nature. Accordingly, he considers "that inattention or absence of mind, want of foresight, etc., are not to be received in excuse when they have regard to objects universally known, as to fire, or to those which are familiarly used by the imbecile, as the tools, etc. of his profession." In all other instances his fault loses the degree of culpability that belongs to it, *in*

abstracto, according to the expression of jurists. This is also the case when the act is the result of sudden anger or fear, to which weak persons are prone.[1]

§ 117. In determining the civil responsibilities and relations of the imbecile, Hoffbauer's descriptions are not so unsuitable for practical application; as these must chiefly be determined by the condition of the intellect alone. As his observations, however, have reference in a great measure to the legal regulations of his own country, they will be noticed no further than merely to state his opinion that when imbecility reaches, or approaches the third degree, the party can no longer be considered capable of taking care of his property, or of bequeathing it by will.

§ 118. No cases subjected to legal inquiry are more calculated to puzzle the understandings of courts and juries, to mock the wisdom of the learned, and baffle the acuteness of the shrewd, than those connected with questions of imbecility. Much of the difficulty consists, no doubt, in a want of that practical tact which is obtained by experience, in unravelling their intricacies, and of that knowledge of the psychological nature of this condition of mind, which directs the attention exclusively to the real question at issue, and abstracts whatever is extraneous, or without any direct bearing on its merits. It is impossible to specify any particular rules for ascertaining the mental capacity of imbecile persons; for circumstances, always proper to be taken into the account, are constantly varying with each individual case. The education of the party, the sphere of life in which he has moved, his capacity of acquirement, his exposure to improper influences, and especially the nature of the act in question, — are points which require a close and thorough consideration. In questions of interdiction which present the greatest difficulty, some overt acts of extravagance or indiscretion generally appear in evidence when the party is really incapable of managing his affairs, which will remove

[1] Op. cit. sup. § 58.

the doubts that a direct investigation of his intelligence and capacity may have left behind. It ought to be considered as a general rule, that when no acts of this kind have been committed, notwithstanding the management of his property has been entirely in his own hands, beyond the control of others, the party ought not to be interdicted on the score of imbecility. In all cases it will be indispensably necessary, as Mr. Haslam advises, to investigate his comprehension of numbers, without which the nature of property cannot be understood. But the assertion of this writer, that "if a person were capable of enumerating progressively to the number ten, and knew the force and value of the separate units, he would be fully competent to the management of property,"[1] is by no means to be admitted as true; for it is very certain that a large proportion of those whose mental capacity is unquestionably inadequate to the management of property, have, nevertheless, these arithmetical acquirements. Cases, even, are occasionally met with of imbeciles who possess surprising powers of calculation, but have not the competency of children to manage pecuniary affairs of any extent. No doubt the converse of the proposition, in reference to people of doubtful capacity, comes nearer the truth. When there exists this inability of comprehending the value of numbers, the individual ought to be considered, in all questions of property, as legally *non compos mentis*, notwithstanding we might hesitate to adopt this conclusion, after an investigation of his intellectual capacity in regard to the general nature and relations of property and business transactions.

§ 119. Imbeciles in the third degree are evidently incapable of making wills; but not necessarily so, Hoffbauer thinks,[2] are imbeciles in the first degree, even when subjected to a curator. The purpose of this guardianship is to protect them from the damage they might do themselves if left with

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[1] Medical Jurisprudence, as it relates to Insanity, 347.

[2] Op. cit. sup. § 82.

the administration of their affairs, and to prevent them from entering into engagements which they would find it impossible to perform. But as testamentary dispositions depend on a single arrangement, and one which the testator may have taken some time to think upon and mature, they do not require the same degree of intelligence as the administration of property, and therefore the validity of a will ought not to be considered as necessarily incompatible with the interdiction of the testator. As a general principle, the correctness of Hoffbauer's doctrine may be admitted, because it places no arbitrary restriction on the exercise of a natural right, the abuse of which can be sufficiently prevented by judicial interference; and because, if it be rejected, we may have the curious spectacle of a person debarred from having any voice in the final disposition of his property, — in an act which really comes within the reach of his understanding, — while in the management of his property, a judicious committee is constantly paying all the deference to his wishes and suggestions which their reasonableness deserves. It cannot be denied that the nature and consequences of a testament may be sufficiently understood by many an imbecile who is utterly incapable of discerning the complicated relations that are involved in the management of property. For this reason it is said that, "if a man be of a mean understanding, neither of the wise sort, nor of the foolish, but indifferent as it were, betwixt a wise man and a fool, yea, though he rather incline to the foolish sort, so that for his dull capacity he might worthily be called *grossum caput*, a dull pate, or a dunce; such a one is not prohibited to make a testament." [1] Nothing can be more natural than that he should be attached to those who have rendered him important services, and perhaps have well-founded claims on his bounty; and if anxious to leave some substantial token of his regard, no legal impediment ought to prevent him from bequeathing them a reasonable portion of his property. The

[1] Swinburne on Wills, part 2, s. 4.

danger anticipated from such an exercise of the testamentary power, is probably more imaginary than real; for it can hardly be conceived that testamentary dispositions, which turn the descent of property altogether from its natural channels, to heap it up in the lap of a stranger or a favorite, would not be attended by appearances of fraud or circumvention that would inevitably destroy their validity. All that is required to establish the wills of people of weak understandings is that they should have been capable of comprehending their nature and effect,[1] — a point entirely independent of the accidental circumstance of interdiction. Much injustice, therefore, might be committed by depriving all interdicted imbeciles of the testamentary power, compared with which the temporary inconvenience that would arise from the absence of any statutory provisions on the subject, is hardly to be mentioned. Of course, the slightest appearance of interference, or improper influence, should be closely scrutinized, and as much less evidence required to substantiate its existence, as the party is more likely to have been affected by it. The propriety of the practice here advocated was recognized on the 14th of February, 1808, by the Royal Court of Aix, who confirmed the will of the Sieur Beauquaire, a person of weak understanding (though at the time of making it he was under the surveillance of a curator); for the reasons that the dispositions of the will were rational, and that the mind of the testator was capable of understanding them, though too weak to be intrusted with the management of his property.[2] The French tribunals, ac-

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[1] Shelford on Lunacy, 275.

[2] Sirey, Recueil gen. des lois et des arrêts, viii. 315. In coming to this decision, the Court considered the testator to be one of those persons whose case is contemplated in the following article (499) of the Civil Code, in which the power of making a will is not mentioned among the civil acts, which they are rendered unable to perform. "In rejecting a petition for interdiction, the court may, nevertheless, if circumstances require, decree that the defendant is henceforth incapable of appearing in suits, of making contracts, of borrowing, receiving payment for debts or giving a discharge, alienating, or pledging his property, without the aid of a council which shall be appointed in the same judgment."

cording to Georget, have ever shown themselves the protectors of the right of making wills, taking into consideration the mental condition of the testator and the dispositions of the will itself.

§ 120. It would seem to be reasonable that the validity of the contracts of imbecile persons not under guardianship, should be determined by the same principles as that of their wills. This, however, is not the doctrine of the law, which does not recognize imbecility as a form of insanity. Whatever may be the nature or magnitude of the contract, the question at law is one, not of capacity or incapacity, but of soundness or unsoundness of mind; and on this question, the law "makes no distinction between important and common affairs, large or small property."[1] Courts of law have always refused to invalidate the contracts of imbeciles and others of weak understanding, and courts of equity have declined to interfere, except on the ground of fraud.[2] There is this strong objection to this doctrine, that we have no rule, and cannot have in the nature of things, by which the question of *compos* or *non compos* can be uniformly determined; for one court or jury, for instance, may range through the whole life and conversation of the party, while another may think itself obliged not to go beyond the particular act in question. A surer and safer principle is, that if the imbecile person is capable of comprehending the nature of the particular act, then has he all the capacity which the case requires, and the act should be established; and *vice versa.* Indeed, whether the question be one of capacity or soundness, regard must always be had to the nature of the subject to which the mind is applied, and the utmost respect for technical rules and definitions cannot prevent us from being governed by this rule, in the majority of cases. Nothing can be more unjust than to infer imbecility in general,

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[1] 4 Dane's Abridgment, 561. This point is discussed at some length, in *Jackson* v. *King*, 4 Cowen, 207.

[2] 1 Story, Commentaries on Equity, 238.

from facts that establish its existence merely in regard to certain subjects or relations. No one imagines a general or a statesman to be necessarily *non compos*, because the latter may have shown himself incapable of conducting a campaign, and the former of controlling the destinies of an empire. And nothing can be more absurd, as well as unjust, than to conclude that because a weak-minded person can be shown to have acted shrewdly in small and familiar matters, he must possess a legal capacity for the transaction of the most important and complicated affairs. Many an imbecile is perfectly competent to purchase the necessaries of life, or make contracts relative to personal service, who could not be trusted with the disposal of an estate, or with making an investment of money. We cannot help concluding, therefore, that the universal application of the rule, *compos*, or *non compos*, is repugnant to the most obvious principles of justice.

§ 121. Imbeciles in the third degree, and others of whatever grade under interdiction, are legally incapable of contracting marriage; for since they are presumed to be incapable of transacting business of the smallest amount, they must be equally so of becoming a party to a contract which is not only to affect their pecuniary interests, but their whole future happiness and comfort. When, however, the mental deficiency has not been sufficient to provoke interdiction, though plain enough to be generally recognized, it, very properly, constitutes no legal impediment to marriage, but on proof of fraud or circumvention, the marriage has been pronounced by the courts, null and void.[1] It is obvious that no general rule can be applied to all such cases; for while marriage might conduce to the interests of each party, in one case, in another, it might be equally ruinous to the interests of one or both parties. Every case should be judged on its own merits, and only annulled when the mind of either party is proved to have been operated on by improper influences.

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[1] *Portsmouth* v. *Portsmouth*, 1 Haggard, 355; Miss Bagster's case, ante, § 85.

CHAPTER V.

PATHOLOGY AND SYMPTOMS OF MANIA.

§ 122. While medical literature is far from being deficient in works on Insanity considered as one of the most serious maladies to which man is liable, the popular notions respecting it are peculiarly loose and incorrect. As these, however, are the source of many of the faults in the jurisprudence relating to this affection, it is necessary to enter somewhat into its medical history, and to discuss points which might seem, at first sight, to be of an exclusively professional nature, but a proper understanding of which is absolutely necessary to save us from gross mistakes on this subject. Certainly, no greater absurdity can be imagined than that of fixing the legal relations of persons in a particular state of mind, while entertaining the most imperfect notions of what that state really is, — unless it may be that of pertinaciously clinging to those notions, and discouraging every attempt to correct them, after the progress of scientific knowledge has shown them to be erroneous. Before describing the phenomena of mania, it should be distinctly understood that it is, first, a disease of the brain; and, secondly, that in its various grades and forms, it observes the same laws as diseases of other organs. The importance of these propositions makes it proper to state the grounds on which they rest; for until they are clearly recognized and appreciated, it will be in vain to expect any improvements in the medical jurisprudence of insanity.

§ 123. I. *Mania arises from a morbid affection of the brain.* The progress of pathological anatomy during the present century, has established this fact beyond the reach of a

reasonable doubt. It can hardly be necessary at the present time, to prove the fact of the dependence of the mind on the brain for its external manifestations, — that, in short, the brain is the material organ of the intellectual and affective powers. Whatever opinion may be entertained of the nature of the mind, it is generally admitted — at least by all enlightened physiologists — that it must of necessity be put in connection with matter, and that the brain is the part of the body by means of which this connection is effected. Little as we know beyond this single fact, it is enough to warrant the inference that derangement of the structure, or of the vital actions of the brain, must be followed by abnormal manifestations of the mind; and, consequently, that the presence of the effect indicates the existence of the cause. Whether the morbid action arises in the digestive, or some other system, and is reflected thence to the brain by means of the nervous sympathies; or arises primarily in the brain, the soundness of the above principle is equally untouched. This leads us to the source of the hesitation that has been evinced by pathologists to consider the brain as the seat of insanity.

§ 124. From the fact that organic lesions are not always discoverable after death in the brains of the subjects of insanity, it has been inferred that the brain is not the seat of this disease; though, if this fact were true, — it being also true that no other organ in the body invariably presents marks of organic derangement in insanity, — the only legitimate inference would have been, that, in some cases, it is impossible to discover such lesions by any means in our power. The strangest theoretical error which this apparent soundness of the brain in some cases has occasioned, is that of denying the existence of any material affection at all, and attributing the disease entirely to an affection of the immaterial principle. If the same pathological principles had guided men's reasoning respecting this disease, that they have applied to the investigation of others, this error would never have been committed. It will scarcely be contended, at the present day at least, that the structural changes, found

after death from any disease, are the primary cause of the disturbances manifested by symptoms during life; or that if the interior could be inspected at the beginning of the disease, any of these structural changes would be discovered. It is now a well-recognized principle, that such changes must be preceded by some change in the vital actions of the part where they occur. This vital change is now generally expressed by the term *irritation*, and nothing is implied by it relative to the nature of this change, more than an exaltation of action. Irritation, then, is the initial stage of disease, — the first in the chain of events, of which disorganization is the last, — and, of course, nothing can be more unphilosophical than to attribute disturbances of function exclusively to any structural changes that may take place during the progress of these successive stages. The departure from the normal course of vital action, which is probably as unexceptionable a definition of irritation as can be given, is sufficient to derange the functions of the part in which it occurs, without producing any visible change in its appearance; and hence, we may oftentimes explore the dead body with the utmost minuteness and skill, without being enabled to infer from any thing we find, an adequate cause of death. Before this can be found, the initial stage must have continued more or less time; and though it always tends to pass into the subsequent stages, yet death may take place from various causes, before they are developed and before a trace of their existence can be detected.

§ 125. There is this peculiarity in the pathology of insanity, that while the irritation deranges the mental functions so as to be manifest to every observer, its sympathetic effects upon the rest of the system may be so slight as to contribute but little, comparatively, by their reaction, to develop the stage of inflammation. The consequence is, that cerebral irritation, sufficient to produce insanity, may endure for years, and death occur at last from other causes, without our being able to discover any morbid appearances. Thus, their existence, instead of being essential to the disease, is entirely the result of accidental circumstances. The probability of find-

ing inflammation or any of its products, will depend on the duration of the disease, and the share which it had in causing the death of the patient. If it have existed for a short time only, or death have been occasioned by some other cause, examination will be likely to disclose no traces of morbid action; but, on the contrary, if it have been of long standing and have killed the patient by the constitutional disturbances it has produced, they will generally be found more or less abundantly. From not properly attending to these considerations, pathologists have been led into an egregious error by the absence of morbid changes, — no less a one than that of denying the disease to be an affection of matter, and jumping at the absurd conclusion, that it is the spiritual principle alone that suffers.

§ 126. It is not now denied, however, that the traces of disease, when they do occur, are oftener found in the brain than in any other organ; nor that, in a very large proportion of the whole number of cases, the brain actually does show evident marks of having been diseased. And when we bear in mind the limited knowledge of the cerebral structure which pathologists have possessed till quite lately, and, consequently, the difficulty they must have experienced in detecting changes from the healthy condition, it may well be concluded that the absence of these changes might be attributed, in not a few instances, to the fault of the inquirer rather than to the nature of the disease. Certain it is, that as we have become better acquainted with the anatomy of the brain and with its sensible qualities, and been more thorough and persevering in our examinations, the rarer it has become to find a case of insanity presenting no organic changes after death. The very same observers who once could find nothing satisfactory in their pathological researches in the brains of the insane, have changed their views, as their field of observation has enlarged, and their acquaintance with the whole subject has been increased with time and practice, so that some have examined hundreds of subjects without finding one entirely free from some appreciable change.

§ 127. II. *Insanity observes the same pathological laws as other diseases.* Notwithstanding the air of mystery which ignorance and superstition have thrown around this disease, it cannot be said to present any thing very strange or peculiar; nor are the discussions concerning it involved in the obscurity generally supposed to attend them. It arises from a morbid affection of organic matter, and is just as much, and no more, an event of special providence, as other diseases; and to attribute it to the visitation of God in a peculiar sense, is a questionable proof of true piety as well as of sound philosophy. It follows the same course of incubation, development, and termination in cure or death, as other diseases; sometimes lying dormant for months or even years, obscure to others, and, perhaps, unsuspected by the patient himself; at others, suddenly breaking out with little premonition of its approach; and again, after being repeatedly warded off by precautions and remedies, finally establishing itself in its clearest forms; just as consumption, for instance, sometimes begins its ravages so slowly and insidiously as to be perceptible only to the most practised observer, for years together, while in another class of patients, it proceeds from the beginning with a progress as rapid as it is painfully manifest. But its presence no one thinks of denying in the former case, merely because its victim enjoys a certain degree of health and activity, though it would be no greater error than to deny the existence of insanity while the operations of the mind are not so deeply disturbed as to be perceptible to the casual observer. When fully developed, too, it may, like other diseases, give rise to severe constitutional disturbance, or it may scarcely affect the system at large; as inflammation of the digestive organs may occasion fever and intolerable pain, or lead its victim slowly to the grave, hardly aware of its presence, and in the enjoyment of comparative health. Like other diseases, insanity is made the object of remedial treatment, and often yields to judicious administration of medicines, — a sufficient proof of its material origin, for though the rationale of the operation of bathing, bleeding, and digitalis, is perfectly obvious in cerebral disease, it is not

so clear how they restore the spiritual principle to its natural vigor. It may proceed through its successive stages with a severity ever increasing to the end, or, like many other affections of the nervous system, its progress may be interrupted by periods, more or less long, of relaxation of its ordinary force, — from a mere abatement of the constitutional excitement and mental extravagance, to complete intermission of the disease, when the patient is apparently restored to all his original soundness. In its causes, also, insanity is under the dominion of no extraordinary pathological laws. It never arises in a mysterious way, as if abstracted from the ordinary relations of cause and effect, as it would do, were it an affection of an immaterial principle; but its origin may be readily accounted for in the same way as that of other diseases. Whether proceeding from hereditary predisposition, or maternal influences during gestation; from the cerebral irritation produced by disease in other parts, or by external injuries; from excessive or deficient exercises of the mind; from great predominance or indulgence of some faculties with a small endowment or neglect of the rest; from improper or insufficient nourishment or air; from the unbridled license of the passions; or the habitual use of intoxicating drinks; we see the influence of causes precisely analogous to those which give rise to other diseases. Mania also furnishes an illustration of a well-known pathological law, in its tendency to be affected by remedies, in proportion to the recency of its attack, — a fact which is totally inexplicable on the supposition of the mind itself being idiopathically diseased. In common with other diseases it is benefited by proper air and exercise, cheerful conversation, friendly sympathy and attention, and employments which furnish a healthful play to the actions of the whole system, and abstract the patient from the contemplation of his own condition. In short, throughout the whole history of mania, in its various forms, we clearly discover the evidence of a bodily disease, — of a suffering organ; and in not a fact respecting it can we discover any thing anomalous, or at variance with the principles of diseased action. If this truth be steadily borne in mind,

it will be a faithful light to our steps; and no one at all acquainted with the subject, can question the importance of the influence which it will exert on judicial investigations.

§ 128. Mania, then, being a disease and governed by the same pathological laws as other diseases, it will be incumbent on us to give some account of its symptoms; and, since we consider a well-settled belief in the above views as having an important bearing on the course of legal decisions, no further reason will be necessary for going more fully into this part of the subject than at first blush might seem proper for our purpose. So closely are soundness and unsoundness of mind allied, that we are met at the outset by the difficulty already hinted at, of discriminating in some cases between mental manifestations modified by disease, and those that are peculiar, though natural to the individual. Madness is not indicated so much by any particular extravagance of thought or feeling, as by a well-marked change of character, or departure from the ordinary habits of thinking, feeling, and acting, without any adequate external cause. To lay down, therefore, any particular definition of mania, founded on symptoms, and to consider every person mad who may happen to come within the range of its application, might induce the ridiculous consequence of making a large portion of mankind of unsound mind. Some men's ordinary habits so closely resemble the behavior of the mad, that a stranger would be easily deceived; as in the opposite case, where the confirmed monomaniac, by carefully abstaining from the mention of his hallucinations, has the semblance of a perfectly rational man. Hence, when the sanity of an individual is in question, instead of comparing him with a fancied standard of mental soundness, as is too commonly the custom, his natural character should be diligently investigated, in order to determine whether the apparent indication of madness is not merely the result of the ordinary and healthy constitution of the faculties. In a word, he is to be compared with himself, not with others, and if there have been no departure from his ordinary manifestations, he is to be judged sane; although it cannot be denied that striking

peculiarities of character, such as amount to *eccentricity*, furnish strong ground of suspicion of predisposition to madness.

§ 129. For the first announcement of this great principle, that, in doubtful cases, the mind of the supposed lunatic should be compared with his own when in its natural, habitual state, we are indebted to the late Dr. Gooch;[1] though it has been since developed and illustrated with an ability worthy of its importance, by Dr. Andrew Combe. If the truths contained in the following extract are faithfully considered by the medical student, he may be spared many an awkward mistake, which he might otherwise have committed, and may save many a sound and worthy individual from incalculable pain and annoyance. "In investigating the nature of insanity, the first caution to be observed is, not to confound disorders of mental functions with natural qualities, which sometimes strongly resemble them. Many men in the full enjoyment of health are remarkable for peculiarities and idiosyncrasies of thought and feeling, which contrast strongly with the general tone and usages of society; but they are not on that account to be held as insane, because the singularity for which they are distinguished is with them a natural quality, and not the product of disease; and, from the very unlikeness of their manifestations to the modes of feeling and acting of other men, such persons are, in common language, said to be eccentric. It is true that, on the principle already explained, of excess in size of some organs over the rest being favorable to the production of insanity, eccentricity involves, all other things being equal, a greater than usual susceptibility to mental derangement; but still it is not mere strangeness of conduct or singularity of mind which constitutes its presence. *It is the prolonged departure, without an adequate external cause, from the state of feeling and modes of thinking usual to the individual when in health, that is the true feature of disorder in mind;* and the

[1] London Quarterly Review, xlii. 355.

degree at which this disorder ought to be held as constituting insanity, is a question of another kind, on which we can scarcely hope for unanimity of sentiment and opinion. Let the disorder, however, be ascertained to be morbid in its nature, and the chief point is secured, namely, a firm basis for an accurate diagnosis; because it is impossible that such derangement can occur unless in consequence of, or in connection with, a morbid condition of the organ of mind; and thus the abstract mental states, which are justly held to indicate lunacy in one, may, in another, speaking relatively to health, be the strongest proofs of perfect soundness of mind. A brusque, rough manner, which is natural to one person, indicates nothing but mental health in him; but if another individual, who has always been remarkable for a deferential deportment and habitual politeness, lays these qualities aside, and without provocation or other adequate cause, assumes the unpolished forwardness of the former, we may justly infer, that his mind is either already deranged or on the point of becoming so. Or, if a person who has been noted all his life for prudence, steadiness, regularity, and sobriety, suddenly becomes, without any adequate change in his external situation, rash, unsettled, and dissipated in his habits, or *vice versa*, every one recognizes at once these changes, accompanied as they then are by bodily symptoms, as evidences of the presence of disease affecting the mind, through the instrumentality of its organs. It is, therefore, I repeat, not the abstract act or feeling which constitutes a *symptom;* it is *the departure from the natural and healthy character, temper, and habits, that gives it this meaning;* and, in judging of a man's sanity, it is consequently as essential to know what his habitual manifestations were, as what his present symptoms are."[1] The doctrine here laid down received the sanction of Sir Herbert Jenner Fust, and was allowed to govern his decision in a case of considerable obscurity.[2]

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[1] Observations on Mental Derangement, 196.

[2] *Mudway* v. *Croft*, 3 Curteis, 671 (1843).

§ 130. Mania, under whatever form it may appear, is generally preceded, except when produced by injuries or moral shocks, by a change in the natural condition designated by writers as the period of *incubation*. In the following paragraphs by Georget, we have a most accurate and graphic description of this state. "Sometimes," says he, "the action of the cause is strong and rapid; at other times, more moderate and slow. In the first case, madness breaks out at the end of some hours or some days, after a state of anxiety and uneasiness, with headache, sleeplessness, agitation, or depression, and threatening of cerebral congestion; the patient begins to babble, cry, sing, and becomes agitated and wild. He is then often taken for a person in a state of intoxication, and the mistake becomes apparent only after examining the previous circumstances and the duration of the malady. In the other case, thought only becomes affected gradually, and often very slowly; the patient is generally conscious of some disorder in his intellectual faculties; he is beset by new and odd notions, and by unusual inclinations; he feels himself changing in his affections; but, at the same time, he preserves a consciousness of his condition, is vexed at it, and tries to conceal it; he continues his occupations as much as he can; and lastly, as many people do in the first stage of intoxication, he makes every effort to appear reasonable. Meantime his health continues to give way, and he either sleeps less or loses sleep altogether; the appetite diminishes or disappears; sometimes digestion is difficult, and constipation supervenes; *embonpoint* decreases, the features alter, the monthly discharge becomes irregular, weak, and at last is suspended. At the same time, there is observed something unusual and even extraordinary in the tastes of the patient, in his habits, his affections, his character, and aptitude for business; if he was gay and communicative, he becomes sad, morose, and averse to society; if he was orderly and economical, he becomes confused and prodigal; if he had long abstained from the pleasures of love, he becomes the victim of insatiable desires, and either seeks to associate with the other sex, or has recourse to disgraceful practices;

if he was moderate in his political and religious opinions, he passes to an extreme exaggeration in both; if he was open and candid, he becomes suspicious and jealous; if a wife, she regards her husband and children with indifference; the merchant neglects his business; tears and laughter succeed each other without apparent motive; the exterior of candor and modesty gives place to an air of conceit and assurance, which, especially in women, astonishes us. But all these phenomena are less prominent than they may appear to be here, and unless the individual have been insane before, no one may suspect the nature of the ailment which torments him; all the questions put to him lead to no results, except that of fatiguing and giving him pain, for the ignorance that prevails relative to madness leads the friends to indulge in offensive insinuations, and to charge him with frivolous accusations, from not perceiving that he is under the influence of disease, and not of reason. Sometimes the appetite either remains entire, or is speedily recovered, as well as digestion, nutrition, etc., and it is in these circumstances that the conduct of the patient gives rise to a host of interpretations on the part of his relatives and the public."

§ 131. "This period of incubation of mental alienation, during which the true state of the patient is generally misunderstood, or not appreciated, may last a long time. Pinel relates, that a man who believed his wife to have been ill only six months, the period of the invasion of furious delirium, admitted, after a multiplicity of questions, that the disease must have been going on fifteen years. The same author mentions elsewhere, that in several instances, the maniacal or melancholic state, has begun four, six, ten, or even fifteen or twenty years previously. It is often easy to go back months, or years, in this way; and we finally discover that circumstances, taken for causes by the friends, are, frequently, only the consequences of unobserved disease. In fact, it often happens at that period of the malady, that a slight contradiction, or paroxysm of anger, or some cause equally insignificant to a person in good health, provokes the

immediate and complete subversion of reason, and gives rise to mistakes as to its true cause and duration." [1]

§ 132. No fact in regard to insanity is better established, than this, — that its incubation may not be indicated to the casual observer, the presence of the disease being first made known by some strong and striking manifestations. The patient may possess sufficient self-control to keep his morbid fancies to himself, or his deviations from the ordinary line of thinking and feeling may have been observed only by his family or most intimate friends. I know a gentleman of most estimable character, in whom a severe attack was preceded by a course of petty larcenies extending over several weeks, while creditably discharging the duties of an onerous and responsible office. In another case which came under my observation, the patient, who was a sincerely religious man, holding an office in his church, and supposed by the world to be perfectly sound in mind, on awaking in the morning, would begin to swear terribly to himself, and so continue, until he got to his breakfast. This trait preceded by several months the explosion of the disease. These cases abundantly illustrate the importance of bearing in mind this character of insanity. Great injustice would often be committed by regarding the patient as completely sound and responsible up to the moment when the mental disorder became obvious to the world. In a large proportion of cases it is impossible to fix upon the moment when the patient became unequivocally insane. There is a period during which, though casual acquaintances may observe no change, he evinces to those who know him best, peculiarities of manner, feeling, or conduct, foreign to his normal character and disposition; and the first public intimation of disorder may be some fearful outrage which becomes the subject of legal investigation.

§ 133. Organic diseases of the brain occasionally give rise

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[1] Dictionnaire de Médecine, art. Folie.

to moral or intellectual disturbances, long before the appearance of the more prominent, unequivocal symptoms. The patient loses his memory more or less, or becomes irresolute and feeble, readily allowing others to mould him to their wishes; or presents traits of moral perversion quite foreign to his natural character, or indulges in pursuits unsuitable to his position or means. Dr. Devay, of Lyons, has reported the case of a woman who, though possessing a competence, committed a petty theft. About a year afterwards, she began to feel severe and almost constant pain in her head, though her intellect was clear, and in the course of a couple of years she manifested signs of cerebral softening, — almost entire blindness, inability to walk, mental stupidity. The same gentleman relates that he was visited, one day, by a man of most estimable character, who came to converse with him on subjects not relating to his health. His conversation was clear, but he had complained of inaptitude for work. "While occupied in writing a letter," says the Dr., "I saw him rise, rummage a drawer, and open a note." He subsequently died of cerebral softening. Another, from being very discreet and wary in his speech, became quite free in his assertions, and inclined to exaggerate, and soon after was attacked by what is called general paralysis.[1] A person high in office, says Dr. Brierre de Boismont, had performed the duties of his station up to the time when I was consulted; and yet the details which were furnished to me by his wife, left no doubt that his moral and affective faculties had been for some time impaired. From having been generous and honest, he had, for more than six years, exhibited a degree of sordid avarice and unbridled licentiousness. With the progress of the disease, his avarice was manifested in mean actions; he refused to pay his debts, maintaining that he had already done so; and even purloined objects from the houses of his acquaintances. He also speaks of a retired public officer who commenced a series of thefts eight years before

[1] Gazette Medicale, Jan. 4th and 11th, 1851. Amer. Jour. Ins. vii. 36.

he was attacked with general paralysis.[1] My attention was once called to a gentleman who had been placed in a hospital on account of some irregularities of conduct. His conversation was perfectly correct and intelligent, and neither this nor his letters to his wife, which I afterwards read, indicated the least intellectual disturbance. Yet at this very time, he would obey the calls of nature almost anywhere, and go about, even among ladies, with his trousers not exactly *comme il faut.* The mental affection soon became obvious, and he died, at last, of organic disease of the brain.

§ 134. Sooner or later the disorder of the cerebral functions becomes of a more obvious and positive character. The struggle between the convictions of his sounder reason, and the impulses of this new condition ceases, and the patient, instead of contending any longer against the approaches of disease, or concealing his thoughts, now believes in their reality, and openly and strenuously avows them, except when induced by powerful reasons to pursue a contrary course. The governing principle in the mind is gone; ideas and perceptions occur in the utmost confusion and rapidity, and are connected by unnatural and incongruous relations. The attention is constantly wandering from one idea or object to another; external impressions have lost their ordinary power, being overlooked or disregarded amid the turmoil that prevails within. The individual is excited to action by strange and extraordinary motives, or by impulses that he finds himself unable to resist. His passions are easily aroused, and almost instantly reach their maximum of strength and activity. The higher affections are dormant, while all his relations to his fellow men are viewed through a medium of fear, suspicion, jealousy, and distrust. His friends and relatives, especially, are objects of his suspicion, and nothing can induce him to view them in any other light, than as enemies to his moral and physical

[1] Gaz. Med. 1847, p. 393. Amer. Jour. Ins. vii. 42.

welfare. Maniacs, when they recover, sometimes remember all the scenes and occurrences of their disorder. They can tell what they saw, heard, and felt, and explain the motives that governed their conduct. In some cases, however, the exercise of memory seems to be more or less suspended during the active stage of the disease, and the patient may recover his senses, like one awakening from a deep sleep, unconscious of the lapse of time, and every thing that has happened.

§ 135. The symptoms of physical derangement are also striking and numerous. A febrile excitement pervades the system. The pulse is accelerated, the eye has a wild and glassy look, the sensations have become either more acute or more obscure, besides being frequently erroneous, and the patient sometimes complains of pain in the head, sense of weight, giddiness, ringing in the ears. The countenance greatly changes, and though varying differently in the different forms of insanity, yet in all it generally bears the expression of physical pain, or mental disquiet. A singular insensibility to external impressions is often witnessed in this stage of mania, by means of which, exposure to intense cold, heat, hunger, and thirst, is borne to a wonderful degree, without producing uneasiness, or even consciousness of the fact. The muscular power is sometimes inordinately developed, the waking moments being a scene of almost constant restlessness and agitation; while at others, there is an equally unnatural sluggishness and indisposition to move about. Hunger and thirst are seldom unaffected, the patient either taking immense quantities of food, or scarcely sufficient to supply the wants of nature. The maniacal patient sleeps less, and his slumbers are disturbed by frightful dreams.

§ 136. Although the course of a maniacal attack is ordinarily such as is represented above, yet sometimes, especially on the application of a powerfully exciting cause, it breaks out suddenly and terminates in death or recovery within a very few days. When cases of this description are subjected to judicial inquiry, it is often difficult to satisfy a jury of the genuineness of the disease. The proofs, though suffi-

cient for those who are much conversant with insanity, are very far from striking others with equal force. Most cases of transitory mania belong to that form of the disease to be described hereafter, under the name of homicidal monomania, and are supposed to be unaccompanied by delusion, or other intellectual disturbance. There is a smaller class, however, characterized by violence and confusion of mind, the patient being apparently under the dominion of some exclusive and overpowering idea. Their medico-legal importance renders no apology necessary for introducing several of these cases.

§ 137. A syphilitic patient having recovered from his disorder, was about to quit the hospital, when, suddenly, without the least premonition, he began to vociferate, and destroy the furniture of his room. He stripped off all his clothes, tore out his hair, beat his head against the walls, and tried to bite and strike all who approached him. He seemed to be excessively frightened, as if pursued by somebody who sought to take his life. His pulse was hard and quick, his body was covered with a cold sweat, he frothed at the mouth, and trembled violently. In the course of a couple of hours, he came to himself. He then said he had experienced a similar attack four or five years before, but could assign no cause for either of them.[1]

§ 138. A sober and industrious shoemaker arose early one morning, to go to his work, when his wife was struck by his incoherent discourse and wild looks. He seized a knife and rushed upon her, when the neighbors seized him and prevented any damage. His face was red, pulse frequent and rather full, body covered with sweat, his eyes flashed, and his look was wild. About noon he became calm, and slept. In the evening, he had recovered his faculties, but had no idea of what had happened to him.

§ 139. A young man laid down one evening in good health. Some persons entering the room, he threw at them whatever

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[1] Jahn, in Berlin Med. Gazette, No. 23, 1834.

he could lay his hands upon, until he fell back upon his bed exhausted with fatigue. He sang, cursed, and tried to get at his sword. He knew nobody. His face was not red, nor his head hot; but his eyes were wild, and his pulse rather full. The next day he had not the least recollection of what had occurred.

§ 140. A tailor of sober and industrious habits, after returning one morning from a walk, sat down, refused to eat, then suddenly began to upset every thing in the room, and finally rushed upon his wife, when the neighbors came in. The next day he had no recollection of the occurrence.[1]

§ 141. "One day, while passing along the street, I was requested to come in, and see a man named D., of a bilious, nervous temperament, very susceptible of impressions, but robust and free from any bodily ailments. He was breaking the furniture, tearing up his clothes, and endeavoring to assault his wife. His face was flushed, his eyes wild, veins and muscles swelled. He cried and sang. On seeing me, for whom he had long felt a great regard, he seated himself near a table, which he kept striking with his fists. We learned from his friends, that nothing had occurred to which this outbreak could be attributed. He consented to be bled, and laid his arm upon the table. A liberal evacuation subdued both his strength and the mental excitement, and he suffered one of his friends to approach him. He soon after came to himself, and promised to be quiet. In the evening, he had no recollection of the occurrence. He has had no return of the paroxysms."[2]

§ 142. A young Irish laborer, on his way from Stonington to Providence, R. I., went into a farmer's house towards nightfall, got some bread and milk, and went to bed. In the course of an hour or two, he came down, half-dressed, into the kitchen where the family still were, talking wildly, and as if apprehending some harm. On being prevented from going

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[1] These cases are from Marc. ii. 511.

[2] Boileau de Castelnau, Annales D'Hygiène, xlv. 223.

out, he rushed through the window, though closed, demolishing it entirely, ran down to a neighboring factory village, quite naked, and was there secured. Towards morning, he began to come to his senses, and in the course of the day, had completely recovered, with a partial recollection of what had happened. He had never been so affected before.

§ 143. In the two following cases we have examples of transitory mental disturbance, apparently of a maniacal character. The evidence is not so satisfactory as would have been the results of the observation of persons specially acquainted with insanity. It was sufficient, however, to deter the jury from a conviction, and in the absence of other evidence, we are obliged to share the conclusions of the jury.

§ 144. In March, 1843, Mercer was tried by the court of oyer and terminer of New Jersey, for the murder of Heberton, on the 10th of February previous. He was defended by his counsel on the plea of insanity, and acquitted, though it does not appear that the acquittal was on this ground. We shall only notice such facts, which appeared in evidence, as have any bearing on Mercer's mental condition. On the 8th of February he was informed of the seduction of his sister, a young, simple-minded girl, by Heberton, a practised libertine. The communication made a powerful impression upon his feelings, attended with manifestations of the highest mental excitement. During the greater part of the day, he was strongly agitated — crying and cursing — sitting still and silent for a minute or two, and then violently striding through the room — insisting on calling his father to come and shoot his sister, who had ruined and disgraced them all — declaring that he would go and kill her himself, and abusing his friends for keeping him in the room. He did not seem to understand or appreciate any thing that was said to him, nor know what he himself said or did. On being told that the law could not hold Heberton, he became quite furious and wild. His face had a mottled appearance, and his eyes were wild and staring. He complained that his head was burning, and bound around it a wet handkerchief. This conduct continued in the evening. Of his condition during the next

day we hear nothing from the witnesses, until late in the evening, when he accosted the captain of the watch, in an oyster-cellar, and without any previous acquaintance with him, insisted on telling him the whole story of his sister's disgrace. He said his sister was crazy, his father was crazy, his mother was crazy, and they were all ruined. He imagined that some trunks he saw in the street were Heberton's, and wished to watch them, lest he might elude him. His manner was wild, and his countenance haggard. He called for food and drink, but scarcely tasted of either. Another witness, who saw him the same evening, described his manner as being very wild and agitated. He said somebody was running away with his sister. On the 10th he passed by an acquaintance without seeming to notice him; on meeting him a second time and being addressed, he looked with a vacant stare, turned and walked away in a wild and hurried manner. Another witness saw him walking up and down the street, his face red on one side and white on the other, looking wild and agitated. Witness spoke to him about some business Mercer and his son had together, hoping thereby to call his attention, but his answers were quite strange and irrelevant. He spoke of men with whom he had no acquaintance. While walking in the streets he frequently changed his course, and looked around anxiously, as if expecting to see some one. That evening he shot Heberton, while sitting in his carriage in the ferry-boat. He immediately confessed the act, and made no attempt to escape. Soon after, he asked several different persons for a fiddle, that he might have a dance. During the coroner's inquest the same night, he sat resting his head on his arms over the back of a chair, recognizing no one. In the night, he said his sister was in the insane asylum. Shortly after his committal he was visited by a physician, who had been previously acquainted with him. By him, Mercer was considered insane on the strength of the following facts. His face was flushed, his eye wild and wandering, his manner restless, his conversation was incoherent and rambling, and he miscalled persons and things (this fact was testified to by several

other witnesses). For two or three days he complained of a pain in his head, and was much constipated. Essentially the same was the testimony of two other witnesses (not medical), one of whom thought he was not quite himself, till the 18th.[1]

§ 145. The nature of the exciting cause in this case, renders it not very strange that Mercer should have become insane, and the circumstances above related, touching his appearance, furnish no light proof that such was actually the fact. It certainly is not very far from the ordinary line of occurrences, that a high-spirited, nervous young man, suddenly hearing of the ruin of a beloved sister, should be completely overwhelmed and driven from his propriety, — that reason should depart, and the passions rage with intense excitement. Why the disease should have run its course so rapidly, we know not. It is a common opinion, however, that this character of short duration is oftener witnessed in cases which, like this, have been attended by some dreadful deed of violence. Unquestionably, Mercer was in a towering passion, and to a certain degree, at least, he acted as if under its influence. But a storm of passion seldom, if ever, continues three or four days together. After the first outbreak, which spends its fury in a few hours, the mind settles down into a state of fixed, decided determination, forming its plans, and steadily and consistently pursuing them. How different from this was Mercer's case! At no time, between hearing of his sister's infamy and revenging her wrongs, did he act with calmness, deliberation, and coherence. That he was under a high degree of mental excitement, is undeniable; that he had also lost his reason, or, in scientific language, was laboring under a pathological irritation of the brain, is shown by some facts that cannot well be explained upon any other ground. To talk wildly and incoherently, to imagine that a pile of trunks he happened to see in the streets were Heberton's; that his family were all crazy, and his sister in a hos-

[1] Report in the Dollar Newspaper.

pital; to be constantly miscalling persons and things; to talk familiarly of men whom he did not know; to return irrelevant answers to questions on business; and, finally, after accomplishing the terrible act of revenge, to call for a fiddle that he might have a dance, — these things are strongly indicative of insanity. In a large portion of cases recently attacked, which come into hospitals for the insane, the proofs of insanity are not more strong and abundant than they were in Mercer's case. Very often the disease is evinced, not so much by any particular word or act, as by incoherent and disjointed discourse, and by a course of conduct and demeanor at variance with the natural character of the individual. In this case, too, if the testimony may be relied upon, there were delusions, and these, if genuine, can only spring from insanity.

§ 146. Very similar to the above, in many of its features, was the case of Wood, who was tried for the murder of his daughter, the 30th of September, 1839, in Philadelphia. It appears from the testimony, that Wood, who was a confectioner, and considered an upright, industrious man, had for the last fifteen years suffered much from diseases of a nervous character, such as neuralgia, dyspepsia, and constipation, and exhibited much mental irritability. About a year before this event, while making some alterations in his house, he interfered with his workmen in a very unreasonable manner, frequently rubbing his hands together, and exclaiming he was ruined. Just before the event, he went to New York, where he was disposed to make some strange business arrangements; but suddenly left the city, neglecting to pay his board and to meet an engagement with a person whom he had engaged to see. On the 27th of September, he heard of the marriage of his daughter with a man whom he regarded as a great villain, and was much agitated by the communication. He walked the room in great distress, crying and moaning, and exclaiming that he was a lost, ruined man. He then shut up his shop and went running through the streets. When he returned home, he refused for half an hour to sit down, and when he did, he kept moving his head back-

wards and forwards. So strangely did he appear, that his neighbors requested his wife to remove his razors, and offered to watch him through the night. In the middle of the night he ordered his wife to go to the front window and call his daughter by name, for he heard her in the street crying to get in. On the 28th, he was very importunate to see his daughter, who had not been at home since her marriage. When she appeared, he raised his hands, uttered a wild scream, and fell down in a sort of fit, gnashing his teeth, and appearing to be in a great agony. He manifested no anger towards her, but treated her with his usual affection, and, on parting, they kissed each other. In the afternoon he went into the streets, looking wild and agitated, as the day before. A colored man whom he knew, he requested to come to his house the next day, though it was Sunday, as he was to entertain a large party. In the night he arose, went to his daughter's room, laid his head down by the side of hers, crying violently, and manifesting the most intense fondness for her. On the 29th, he was met in the street, walking rapidly along, by his family physician, who, noticing his strange conduct, beckoned him to come to him, but he merely put up his hand, made a rapid motion with it, turned round and went in the opposite direction. On the morning of the 30th he appeared quite weak, and drank two or three glasses of brandy. While his wife and a man-servant were talking in the kitchen about confining him, he proceeded to his daughter's chamber and shot her dead with a pistol. He made no attempt to escape, and confessed that he was the murderer, sauntering about the room apparently quite unconcerned. Shortly he laid down upon a bed and moaned heavily. When told that his daughter was dead, he expressed himself as satisfied; said he should not long survive; and requested to be buried in the same grave. He then described the manner in which he had accomplished the bloody act. It appeared also, that he was a kind, amiable man, very fond of his children, not intemperate, nor accustomed to drink spirituous liquors at all, and that on the 27th, 28th, 29th, he took no food, except a very little on the evening of the 29th. On his mental condition

subsequently, the testimony throws no light. He was acquitted on the ground of insanity.[1]

§ 147. This case differs from Mercer's in the important fact that, for some time previous, Wood had been laboring under a certain degree of mental impairment, and was apparently on the verge of insanity. In this state he hears of the marriage of his daughter, which, in his mind, was equivalent to her ruin and the dishonor of himself and family. Overpowered by the shock, his nervous system becomes violently agitated, and reason soon ceases to control his movements. In this state of bewilderment and confusion, he wanders about, without aim or object, till at last, when the powers of nature are about to yield from pure exhaustion, impelled by no passion, and actuated by no rational motive, he takes the life of his beloved child. That he did not act from passion, is evident from the fact that he had evinced no anger towards her, but, on the contrary, had shown the strongest affection. The only passion which could have actuated him at that moment was revenge, and in that case, the object of his fury would have been the daughter's husband. It may be supposed, perhaps, that the bloody deed was perpetrated under the influence of the liquor he drank; or, at any rate, that it would not otherwise have been done. This, no doubt, is possible, but the true question at issue is, whether or not he was insane for two or three days previous to the criminal act. If he were, then the intoxication was the effect of insanity, and he was no more accountable for the former than for the latter. A fondness of strong drinks is a not uncommon accompaniment of mania, and a person may drink while insane, who never drank before. The conditions of this case were all favorable to the production of insanity, — a highly irritable, nervous temperament, a morbid apprehension of coming ills, and a powerfully exciting cause of the disease. Where is the wonder, then, that Wood should have become insane, and while so, that he should have committed any imaginable folly or crime?

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[1] Report in the Spirit of the Times, Philadelphia.

§ 148. The mental disorders are, of course, as numerous and various as the mental constitutions of the insane themselves; and to consider any particular association of them as characteristic of the state of mind called mania, would be only to blend things together that have no uniform nor necessary relations to one another; and would convey no more really valuable information, than it would to marshal forth every symptom that has at any time been observed in the countless disorders of digestion, as *the* symptoms of diseased stomach. The only use which the physician makes of the latter is to refer them as they occur, to some particular derangement of that organ, and thus establish the ground for an appropriate and efficient treatment. There is no reason why the same process should not be pursued in mania; and it is because a different one has been followed, that the common notions of this disease are so loose and incorrect, as not only to be of little service in judicial discussions, but absolutely in the way of arriving at just and philosophical conclusions. To furnish any light on the subject, it would be our duty to analyze the various phenomena of mania, associate them by some natural relations, and refer them, as far as our knowledge will permit, to particular faculties. It is proposed, therefore, following this idea as closely as possible, to consider mania as affecting either the *intellectual*, or the *affective* faculties; meaning by the former, those which make us acquainted with the existence and qualities of external objects and the relations of cause and effect, and conduct us to the knowledge of general truths; and by the latter, those sentiments, propensities, and passions necessary to man as a social and accountable being. It is not intended to convey the idea that mania is invariably confined to one or the other of these two divisions of our faculties; for though they may sometimes be separately affected, the one presenting a chaos of tumult and disorder, while the other apparently retains its wonted soundness and vigor, yet more frequently, they are both involved in the general derangement. But unless we study these disorders separately, and recog-

nize their independent existence, — and this effect it is the tendency of the above classification to produce — we never shall be able to refer them to their true source, nor discover their respective influence over the mental manifestations.

CHAPTER VI.

INTELLECTUAL MANIA.

§ 149. INTELLECTUAL MANIA is characterized by certain hallucinations or delusions,[1] in which the patient is impressed with the reality of facts or events that have never occurred, and acts more or less in accordance with such belief; or, having adopted some notion not altogether unfounded, carries it to an extravagant and absurd extent. It may be *general*, involving all or the most of the operations of the understanding; or *partial*, being confined to a particular idea, or train of ideas.

SECTION I.

GENERAL INTELLECTUAL MANIA.

§ 150. The general description of mania is equally applicable to the acute state of this, and sometimes of other forms of the disease. It is not, generally, till after the excitement has somewhat subsided, that the distinctive features of each become very manifest. In this stage of general intellectual mania, many glimpses of natural soundness may be discovered amid the intellectual disorder.[2] Questions on indifferent

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[1] These terms, though they have long held a place in medical language, have always been used with remarkable diversity and vagueness of meaning. Without troubling the reader with an array of nosological definitions, it will be sufficient to say, that in this treatise, the latter is used as a general designation of all those notions which are indicative of derangement of the reflective, as the former is of the perceptive powers.

[2] Pinel, Traité sur l' alienation mentale, 142, § 148.

subjects may be appropriately answered; many of the patient's relations to surrounding circumstances may still be perceived; and no little acuteness and ingenuity are often manifested in accommodating the real and true to the delusions under which he labors. The difficulty is to fix the attention on a particular point, the mind constantly running from one idea to another, or absorbed in the thoughts which happen, for the moment, to predominate over every other.

§ 151. In the present state of our knowledge of the mental constitution, it is not strange to find considerable diversity of opinion respecting the nature or cause of hallucinations of the senses; yet, in a medico-legal point of view, it is important that they should be correctly understood. Hoff'bauer[1] says that they consist in a vicious relation between the imagination and the senses, in consequence of which the patient mistakes the creations of the one for objects really perceived by the others. Esquirol, not entirely satisfied with this explanation, divides them into two classes, termed by him, *illusive sensations*, and *hallucinations*.[2] The first arise in the senses, as when a maniac mistakes a window for a door, passes through it, and is precipitated to the ground; or takes the clouds which he sees in the sky for contending armies; or believes his legs are made of glass; or his head turned round. In all these instances, the error refers to the real impression which is ill-perceived; there is an error of sensation, a vicious relation between the sense which actually perceives and the intellect which judges falsely of the external object. In the second, on the contrary, the senses have no share; the imagination alone is exalted; the brain is exclusively the seat of the disturbance; the patient mistaking the creations of his imagination for objects actually present to his senses. He sees images and apparitions amid the thickest darkness; hears sounds and voices in the most perfect silence; and smells odors in the absence of all odorous bodies. This distinction does not seem to be well sup-

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[1] Op. cit. sup. § 84. [2] Idem, § 82, note.

ported. That the functions of the senses are sometimes greatly perverted, there can be no question; but it needs more evidence than we yet have, to prove that such perversions bear much if any part in producing these illusions; more especially as Esquirol admits that, in what he terms hallucinations, an exalted imagination is sufficient of itself to produce a very similar effect. In old age, where, in consequence of the decay of the senses, wrong impressions are being constantly received, they nevertheless give rise to none of these delusions. When the hero of Cervantes did battle with the sheep and the windmills, it will not be contended that he was laboring under any special optical infirmity which conveyed false impressions of outward objects, because on most occasions, the action of his senses was unequivocally sound. Ready as he was to mistake a company of peaceable shepherds for the creations of his disordered intellect, he never imagined Sancho to be any other than his faithful squire, for the reason that his reflective faculties were not so far subverted as to be incapable of any healthy action. Besides, if erroneous sensation has any thing to do with producing these illusions, we must go the length of asserting, that at such times all the senses are disordered, or deny that the errors of one may be corrected by the others. It is not so strange that vision should sometimes be so affected as to deceive a person with the idea that his legs are made of glass or butter, but it certainly is very strange, that on such occasions, the other senses should all return equally false impressions; the touch being unable to distinguish the feel of flesh and blood, and the hearing the sound produced by striking them, while they retain this power in regard to every other part of the body. These illusions appear to result from a morbid excitement of the perceptive faculties, whereby they are stimulated by outward impressions to involuntary and irresistible activity, while a coexistent impairment of the reflective faculties prevents them from being considered as illusions and not actual realities. The physician will not unfrequently hear a patient complaining of seeing colors of the utmost beauty and variety of combina-

tion passing and repassing before his eyes, or forms of objects of every possible description, whether his eyes be open or shut, the room dark or light. His understanding being sound, he is not deceived, but believes them to be what they actually are, merely illusions; but if, on the contrary, it were unsound, then these illusions would be taken for realities, and he would conduct accordingly. Ben Jonson would keep awake an entire night, gazing at armies of Turks and Tartars, Carthaginians and Romans contending around his great toe; in which amusement there is no evidence of mania, but merely of a morbid activity of the internal perceptive organs. The apparitions of Nicolai of Berlin, and others of a similar kind, arose, no doubt, from the same cause. Indeed unnatural excitement of these organs in insanity is sometimes so obvious and well-marked, as to be immediately recognized and properly understood. Rush gives the case of a young woman who delighted her visitors with her efforts in singing and poetry, though previously she had never manifested any talent for either; and the author once attended an insane patient of feeble intellect and defective education, who occupied much of her time in making verses, though she had not shown the slightest trace of such a power before the invasion of her disease. The faculty of construction, too, is occasionally heightened to a wonderful degree. Pinel speaks of a maniac who believed he had discovered the perpetual motion; and in the course of his researches he constructed some very ingenious machines. The common and essential element, then, in the production of hallucinations and illusive sensations, is an impairment of the *reflective* faculties accompanied by morbid activity of the *perceptive* faculties. The only real difference between them is, that in the latter, the morbid activity of the perceptive faculties requires to be excited by outward impressions, while in the former, this effect is produced by the remembrance of past impressions, — a distinction that can be of but little if any importance, in judicial investigations. We have been thus particular in showing the true origin of hallucinations, that any mistake arising from wrong views of

their nature might be avoided, — an event not altogether beyond the limits of possibility, for one instance has come to our own knowledge, where it was attempted, in a court of justice in a neighboring State, to measure the extent of the insanity by the comparative number of the senses supposed to be deranged in the hallucination.

§ 152. Hallucinations of the senses occur in a large proportion of maniacs. In the early stage of acute mania they are generally numerous and changing, and somewhat masked by the more conspicuous symptoms. In chronic mania they are more simple, uniform, and obvious. Occasionally, however, this rule is reversed, the hallucinations being very distinct and vivid from the beginning of the disease. And it should be borne in mind, that when it is the predominant feature of the mental disorder, the patient is disposed to conceal it from others as long as he retains sufficient control over his thoughts. A little strangeness of demeanor may, for months, be the only perceptible deviation from the natural condition, the reason, in the mean while, struggling with the suggestions of the hallucinated sense, till it finally yields, and the patient, in obedience to some voice or vision, commits a sudden and fearful act of violence. In the stillness of night they are more common and often more vivid than during the day. For the most part their occurrence is irrespective of times and seasons, and whether in solitude, in the church, in the gay assembly, in the midst of animated conversation, in the pursuit of pleasure or of business, the attention may be arrested at once, and the whole soul engrossed by the powerful appeal to the senses. When the patient describes his hallucinations, there is a remarkable air of sincerity and frankness in his manner, which no art of simulation can successfully imitate.

§ 153. To determine exactly what mental impairment it is which is essential to insanity, metaphysicians and physiologists have long and anxiously labored with hardly the shadow of success. The various definitions and explanations to which their inquiries have given rise, display some ingenuity, but would scarcely be worth considering in this place, were

they not capable of an injurious application in judicial investigations. It has been said that insanity consists essentially in diseased perception, — that this is the common attribute of its various kinds and degrees. We have seen, above, however, that in a state of perfect mental soundness, the perceptions may be deeply disordered, insomuch as to give rise to strange and most extraordinary impressions, while many a mad man may be found who evinces no one single error of perception. The doctrine that insanity consists in false judgments, conveys no more satisfactory notion of its essential characters, for though there most certainly is false judgment in every case of insanity, it is far from being confined to this condition of the mind. Every one is occasionally guilty of some gross error of judgment on which he may reason accurately and arrive at specious conclusions, without being considered at the time madder than his neighbors. Locke, as if strongly impressed with the curious fact of the coexistence of absurd fancies with the power of reasoning shrewdly and pertinently to a certain extent, which is occasionally observed in the insane, remarked that they did not seem to have lost the faculty of reasoning, "but having joined together some ideas very wrongly, they mistake them for truths, and they err as men do that argue right from wrong principles."[1] If Locke had possessed any practical acquaintance with insanity, if he had even spent an hour in a well-managed hospital for the insane, he never would have adopted this opinion, for nothing can be further from the truth, than the idea that generally madmen reason correctly from wrong premises. The lady who imagined that a tooth which a dentist had removed, had slipped from his fingers and stuck in her throat, and insisted that she could not swallow a morsel, while she ate and drank heartily, was as wrong in her conclusion as she was in her premises; and the man who, like Bellingham, imagines that the government has been culpably negligent of his private interests, and thence proceeds to take the life of a person

[1] On the Human Understanding, Book II. ch. xi. § 13.

whom he believes to be perfectly innocent, in order that he may have an opportunity of bringing his affairs before the country, errs in every stage of his reasoning. Indeed, it is matter of common observation, that maniacs display their insanity, not more in the delusions which they entertain, than in the course they pursue in order to accomplish their objects. The last and most ably-supported speculation on this subject is that of Dr. Conolly, who makes insanity to consist in "the impairment of any one or more of the faculties of the mind, accompanied with, or inducing a defect in the comparing faculty."[1] There can be no doubt that this power of comparison is often, perhaps generally, affected in insanity; but it may be questioned whether this author has not referred many phenomena to this faculty of the mind, which more properly belong to some other. And even when the mental disturbance does unquestionably flow from defect in the comparing power, it would seem as if this defect were but the consequence of one affecting more deeply the secret springs of thought. It is said that the celebrated Pascal sometimes believed that he was near the brink of a fearful precipice, and that his attendants, to allay his apprehension of falling down it, were accustomed to place a chair near him, in the direction of the supposed precipice. "He then compared what was done with what appeared to him," says Dr. Conolly, "and drew the just conclusion, that a chair could not stand upon air, beyond the brink of a precipice, and that he was not therefore in real danger." "Whenever the comparison could be made," he adds, "the delusion yet remaining, he was not sane on the subject of the precipice."[2] Now it cannot be denied that in both instances, Pascal saw the chair, and was sensible that it was in the direction of the precipice, and that the real difference between them was, that in the former he could, in the latter he could not, *draw the just conclusion* that a chair could not stand upon air. It is evident that, in this case at least, and there is much reason to believe

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[1] Indications of Insanity, 300. [2] Idem, 316.

the fact is a general one — the faculty of the mind, primitively affected, was that which recognizes the relations of cause and effect. We might multiply examples of this fondness for definitions, but enough has been said on this point, to convince the student of legal medicine how barren of all practical benefit such speculations are, and to place him on his guard against their admission in judicial investigations, as tests, or criteria of insanity.

§ 154. It is not to be understood that, in this form of mania, the derangement is confined to the intellectual faculties, the moral continuing to be exercised with their ordinary soundness. On the contrary, the moral faculties seldom escape its influence; and one of the earliest symptoms of the disease is an unaccountable change in the patient's social and domestic feelings. He becomes indifferent to those whom he loved the most; the mother thinks no longer of her children, or regards them with loathing; the child forgets his parents; the husband is insensible to the endearments of his wife; and love, attachment, and friendship are replaced by hatred, jealousy, and indifference. These traits, however, are not so prominent as the intellectual disorders (except in the earliest stage of the disease), and besides, are very different from those which characterize that form of mental derangement to be presently described under the title of moral mania.

SECTION II.

PARTIAL INTELLECTUAL MANIA.

§ 155. By the ancients this form of the disease was called Melancholia, on the supposition that it was always attended by dejection of mind and gloomy ideas. This term was used and so understood by modern writers, till Esquirol proved its improper application by showing that the ideas are not always gloomy, but frequently of a gay and cheerful nature. He substituted the term Monomania, which is now in general use; and though possessing a more correct and

definite signification, it embraces, besides the cases which come under the present division, a class that will be treated of under a different head. Still, for convenience' sake, the use of the term will be continued, with the understanding that it always refers to that form of insanity which is the immediate subject of discussion.

§ 156. Monomania is often described as a derangement of any one or few of the intellectual faculties, but incorrectly, upon our views of the constitution of those faculties, many of which may be simultaneously deranged by the action of disease, without necessarily producing insanity. This point has been already established, when speaking of those affections of the perceptive faculties which give rise to apparitions, and change, to appearance, the outward qualities of objects. (§ 151.) A multitude of cases are recorded, in which the faculty of language too has been wholly or partially lost, while the soundness of the reasoning powers remained unimpaired; indeed there is not a single perceptive faculty whose functions have not been sometimes obliterated or diminished, without being accompanied by insane delusion. It is evident that before a person can be insane, partially or generally, the mental faculty or faculties must be deranged, by which we discern the relations of things, and arrive at the knowledge of general truths.

§ 157. The most simple form of this disorder is that in which the patient has imbibed some single notion contradictory to common sense and to his own experience, and which seems to be, and sometimes no doubt really is, attended by errors of sensation. Thus, thousands have believed their legs were made of glass, or that snakes, fish, or eels had taken up their abode in their stomach or bowels. In many such cases the hallucination is excited and maintained by impressions propagated from diseased parts, the presence of which has been revealed by dissection after death. Esquirol[1] has related numerous cases in proof of this proposition, among which

[1] Des Maladies Mentales, ii. 211–213.

is that of a woman who insisted she was pregnant with the devil, in whose womb there was found, after death, a mass of hydatids; of another, in the Salpetrière, who imagined that a regiment of soldiers lay concealed in her belly, and that she could feel them struggling and fighting with each other; and of another, who believed that the apostles and evangelists had taken up their abode in her bowels and were occasionally visited by the pope and the patriarchs of the Old Testament, in both of whom, the intestines were found agglutinated together in consequence of chronic peritonitis. That these hallucinations are not always connected with corporeal impressions of this kind, seems to be proved by the fact, that they are sometimes dissipated by the skilful application of arguments, or manœuvres, by which the patients are made to believe themselves cured of their complaint. The story of the "Turned Head," in the "Diary of a Physician," ludicrous as it is, is scarcely a caricature of the truth; and one of M. Manry's patients, who, after thinking himself cured of a serpent in his bowels by means of a pretended surgical operation, suddenly took up the idea, that the creature had left its ova behind ready to be hatched into a brood of young ones, was again restored by the dexterous reply of his physician, that the snake was a male.[1] In this class of cases, the mind is not observed to have lost any of its original vigor, and its soundness on every other topic remains unimpaired, though there unquestionably does exist some derangement in the reflective faculties.

§ 158. In another class of cases, the monomania takes a little wider range, involving a train of morbid ideas, instead of being limited to a single point. The patient imbibes some notion connected with the various relations of persons, events, time, space, resistance, etc., of the most absurd and unfounded nature, and endeavors, in some measure, to regulate his conduct accordingly; though, in most respects, it is grossly inconsistent with his delusion. It is certainly not

[1] Medico-Chirurgical Review, N. S., xxi. 524.

one of the least curious phenomena of our mental constitution, that these delusions will sometimes continue for years together, unaffected by time, and proceeding parallel, as it were, with the most sound and healthy operations of the mind, though more often, the predominant idea, instead of enduring in this manner is freqently changing, one insane notion disappearing to give place to another and another. Rush says that he knew one clergyman and had heard of another, who were deranged at all times, except when they ascended the pulpit, where they discovered, in their prayers and sermons, all the usual marks of a sound and correct mind; and he speaks of a judge who was rational and sensible upon the bench, but constantly insane when off it.[1] The celebrated case of the Rev. Simon Browne is another remarkable instance of this kind. For many years before his death, he entertained the belief that "he had lost his rational soul," though during that time he evinced great ability both in his ordinary conversation and in his writings. Having discontinued all public or private worship, he explained to his friends, that "he had fallen under the sensible displeasure of God, who had caused his rational soul gradually to perish, and left him only an animal life in common with brutes; that it was therefore profane in him to pray, and incongruous to be present at the prayers of others." In a book of some merit which he dedicated to the queen he speaks of himself as "once a man; and of some little name; but of no worth, as his present unparalleled case makes but too manifest; for, by the immediate hand of an avenging God, his very thinking substance has for more than seventeen years been wasting away, till it is wholly perished out of him, if it be not utterly come to nothing."[2]

§ 159. The operations of the understanding, even on subjects connected with the insane belief, are sometimes not impaired in an appreciable degree; on the contrary, we are

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[1] On Diseases of the Mind, 204.

[2] An account of this case may be found in the Gentleman's Magazine, Oct. 1762, and in the Adventurer, No. 88.

occasionally struck with the acuteness of the reasoning power displayed by monomaniacs. Muratori relates the case of a jesuit, named Sgambari, who believed himself a cardinal, and claimed to be addressed by the title of eminence. A friend was anxious to convince him of his error, and obtained a patient hearing of his remarks. When he had finished, the madman replied: "Either you consider me insane or rational; on the latter supposition, you do me injustice by your remonstrances; on the former, I hardly know which is the most mad, I, for believing myself a cardinal, or you, for thinking to cure a madman by such reasonings."[1]

§ 160. Though monomaniacs are generally ready enough to declare their predominant idea, yet when sufficient inducement exists, such as interest, fear of ridicule, etc., they will occasionally conceal it; and this, too, without the occurrence of a lucid interval, and while they believe in its reality as firmly as ever. Chambeyron, the French translator of Hoffbauer's treatise, speaks of "a woman who on her admission to the Saltpetrière told one of the overseers, 'that she was an apostle, and that Louis XVIII. had remembered her in his will.'" "The next day," says he, "at my visit, I asked her reasons for entering the hospital. 'If I tell you,' said she, 'you will think me mad.' On my protesting to the contrary, however, she replied, 'well, I am remembered in the will of Louis XVIII.' Of the other notion whose absurdity was more palpable, she said not a word. Now [a few days after] she denied that she ever entertained either notion, though her conduct and conversation prove that she still believes them both." Some cases of a similar kind are also related in Erskine's speech in the defence of Hadfield. Georget speaks of a lady who thought she was deprived of the power of sensation, and professed to feel neither fatigue nor the ordinary wants of nature, comparing herself to a machine moved by springs. Believing she never should recover, she made several attempts at suicide; at times she was greatly agi-

[1] Hoffbauer, Op. cit. sup. § 86, note.

tated, and abused her female companion. And yet this lady received visits, and sometimes passed whole evenings with persons of her acquaintance without manifesting the slightest disorder in her mental faculties.[1]

§ 161. It has just been stated (§ 151), that any one of the perceptive faculties might be disordered, without any derangement of the reflective or reasoning powers. The true nature of these cases is generally quite obvious, but as those in which the faculty of language is affected, might, by the careless or incompetent observer, be mistaken for insanity, they require a particular notice in this place. It is a curious, though well-established fact, instances of which are related numerous enough to fill a volume, that the faculty of *language*, or the power of representing thoughts by appropriate articulate or written signs, may be utterly or partially lost, the other mental powers remaining sound. This disorder either arises from slight congestion in the brain, or is the sequel of traumatic or pathological lesions of this organ, especially of apoplexy. The patient is observed to be more or less incapable of communicating his thoughts and feelings by spoken or written language, the words appearing to be arbitrary signs totally unconnected with ideas. When a word is pronounced slowly and distinctly, he may be able to repeat it once or twice, seldom oftener, or he may be unable to articulate at all. In some cases the power of language is soon and completely regained; in some, a slight stammering or hesitancy is observed, as long as they live; while in a few the power never spontaneously returns, the person being obliged to learn to read and write, as if he had never known how before. Mr. Hood relates a case[2] in which the patient, a blacksmith, lost the memory of all words except *yes* and *no*, while he comprehended distinctly whatever was said to him. Though able to understand what was read to him from a book, he could not himself read. When a name was pro-

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[1] Nouvelle discussion médico, lég. 23.

[2] Phrenological Transactions, 255.

nounced, he would repeat it once or twice, but before he could do it a third time, it was utterly gone. Within a few days of the first attack, he would go to his shop and attend to his workmen, but though he lived three years afterwards, his power of language though much improved, was always greatly impaired. Another case has been related [1] where the patient received an injury on the head by falling from a coach-box, one effect of which was the loss of the use of all language, but the word *oui*. In other respects his mind was entirely sound. In some cases, this loss of the memory of words is confined to common and proper nouns. This happened to the celebrated naturalist Brousonnet who entirely recovered from an attack of apoplexy, except that he could never after utter nor write the names of persons or things, though other parts of speech were at his command in abundance. When he wished to designate an individual, he described his figure, his qualities, and occupation. He recognized the name at once, when pointed out to him in a book, though it never would occur spontaneously to his memory.[2] In other cases of this kind, the patient is observed to have forgotten every thing but substantives. One is mentioned whose "apprehension of the use and importance of substantives was keen and unimpaired, but he could not succeed in perceiving the modifying influence of articles, adjectives, or adverbs. Of verbs he had a very imperfect recollection." [3] Esquirol had a patient who recollected no words but substantives, and but few of them, using generally abstract terms, corresponding to states of the mind, the ordinary events of life, etc., but not indicating the objects by which he was surrounded, or those presented to his senses. Thus, when asked how he was, he would reply — "malheur, injustice, audacité, courage, pieté, mort." [4]

§ 162. In the simplest form of monomania, the understanding appears to be, and probably is, tolerably sound on

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[1] Jour. de la Soc. Phrenol. no. 2, art. 5.
[2] Cuvier, Eloges historiques, i. 341.
[3] W. A. F. Browne. Edin. Phrenol. Jour. viii. 415. [4] Idem.

all subjects but those connected with the hallucination. When, however, the disorder is more complicated, involving a longer train of morbid ideas, we have the high authority of Georget for believing, that though the patient may reason on many subjects unconnected with the particular illusion on which the insanity turns, the understanding is more extensively deranged, than is generally suspected. If we could follow these people to the privacy of their own dwellings, narrowly observe their intercourse with their friends and neighbors, and converse with them on the subjects nearest to their thoughts, we should generally detect some perversity of feeling or action, altogether foreign to the ordinary character. Cases illustrative of this remark will frequently occur to the reader in the course of this work; and it is not necessary to insist on the importance of this fact in estimating the degree of criminal responsibility remaining in monomaniacs. It is a fact that must never be forgotten, that the phenomena of insanity do not lie on the surface, any more than those of other diseases, but oftentimes can be discovered only by means of close and patient examination.

CHAPTER VII.

MORAL MANIA.

§ 163. Thus far mania has been considered as affecting the intellectual faculties only; but a more serious error on this subject can scarcely be committed, than that of limiting its influence to them. It will not be denied that the propensities and sentiments are also integral portions of our mental constitution; and no enlightened physiologist can doubt that their manifestations are dependent on the cerebral organism. Here, then, we have the only essential conditions of insanity, — a material structure connected with mental manifestations; and until it is satisfactorily proved that this structure enjoys a perfect immunity from morbid action, we are bound to believe that it is liable to disease, and, consequently, that the *affective*, as well as *intellectual* faculties, are subject to derangement. In fact, it has always been observed, that insanity as often affects the moral, as it does the intellectual perceptions. In many cases there is evinced some moral obliquity quite unnatural to the individual, a loss of his ordinary interests in the relations of father, son, husband, or brother, long before a single word escapes from his lips, "sounding to folly." Through the course of the disease, the moral and intellectual impairments proceed *pari passu*, while the return of the affections to their natural channels, is one of the strongest indications of approaching recovery. Such being the fact, it ought not to be a matter of surprise, that in some cases the aberration should be confined to the moral impairment, the intellectual, if there be any, being too slight to be easily discerned.

§ 164. The doctrine that insanity may be confined appar-

ently to the affective powers, has been stoutly resisted by lawyers, by whom, during the last twenty years, it has been often pronounced to be without any foundation in true metaphysics, and dangerous in its consequences. They contend that insanity — such, at any rate, as annuls criminal responsibility — necessarily implies intellectual disturbance, and that unless this be established, a person can claim no exemption from the ordinary consequences of crime. If the intellect be sound, they say, it perceives all the relations of the criminal act; there is no reasoning right from wrong premises, nor wrong from right premises; and thus the individual acts solely in accordance with his own good will and pleasure. If he blindly follows the guidance of his passions, unheeding the voice of conscience or common sense, we are not warranted in taking his case out of the category of ordinary crime. In fact, every alleged case of moral insanity may be paralleled by one of proper moral depravity universally recognized and admitted as such. By those who reason thus, the admission that the intellect may, possibly, be disturbed, though the fact cannot be demonstrated, is deemed to be insufficient. Because, the intellectual disturbance must be manifested in an inability to recognize some of the qualities of crime, and therefore so long as these are all correctly discerned, there can be no intellectual disturbance, — none, certainly, which a court of law need take into account.

§ 165. A formal refutation of such views may be deemed superfluous by all who have much practical acquaintance with the insane, but unfortunately, we are obliged to address those who, without such knowledge, undertake to lay down opinions, *ex cathedra*, on the effects of insanity on the mental constitution. If we choose to indulge in metaphysical subtleties, we may, no doubt, arrive at one of two conclusions, equally false; either that all criminals are insane, or that every insane person, unless actually raving, is responsible for any criminal act he may commit. But common sense and professional experience teach us that there is a distinction — obvious enough for all practical purposes — between the depravity which belongs to the character of the man, and

that which is the result of disease, or congenital deficiency. Here it is enough to say, that the former is marked by method, object, motive, deliberation, coolness, and consistency; the latter by impulse, agitation, nervous excitement, and unnatural conduct. It is not generally understood that in a large proportion of the insane (leaving out of view the imbecile and demented), we observe no delusion, nor hallucination, nor, it may be, any other derangement of the intellectual faculties. Some of them may not evince all their natural strength and sagacity of mind, but their discourse is always coherent, correct, and pertinent, exhibiting nothing that, in itself, can be regarded as indicative of disease. Others may show a degree of shrewdness, promptitude, and vigor, scarcely manifested in their best estate. Now, the insanity of these people is not questioned. They are regarded as unfit to be at large, and by universal consent are confined in establishments for the insane. Their disorder is exhibited not in intellectual aberration, but in morbid exaltation or depression of spirits, so that they are ardent, sanguine, and full of schemes of advancement, or sunk in the lowest depths of despondency and revolving thoughts of self-destruction; in unnatural indulgence of appetite; in moral perversions which render them quarrelsome, vindictive, savage, impatient of contradiction, careless of appearances, regardless of domestic proprieties, and indifferent to the feelings of others.

§ 166. For a different purpose, it has been said that the very fact of a person's being under the undivided dominion of the affective powers, and yielding to their paramount influence, is, of itself, sufficient proof of intellectual impairment. This position can hardly be maintained, without ignoring a matter of common observation — that, within certain limits, the moral and intellectual faculties act independently of each other. Everybody knows that the practical conclusions of men, their views of the future, their judgments of one another, are determined very often more by the state of their feelings than by any process of reflection, — those feelings which are governed, in a great degree, by the condition of

the nervous system. The starving man who steals the means of sustenance is the same person who, but the other day, while easy and comfortable, would have recoiled from the imputation of such an act with indignation. One must be happily constituted, who has not sometimes experienced the utmost hope and confidence from a state of facts which, at another time, without any change of circumstances, furnished only materials of doubt and despondency. In these cases, it is obvious enough that there is no change in the intellect. It is the appetite, the emotions, the passions that have changed, and so far as the intellect is concerned, it is immaterial whether that change results from the normal or the abnormal movements of the nervous system.

§ 167. But whether there may or may not be some small degree of intellectual disturbance in the class of cases referred to, is a question which, practically, is of trivial importance. The main truth will scarcely be denied, that the disturbance of the moral or affective powers is obvious and extensive, while that of the intellect is very slight at the most. The essential question is, not whether the intellect is impaired, but whether the affective powers are so deranged as to overpower any resistance made by the intellect. It is a matter of relative power, and hence it is quite immaterial whether the result proceeds from impaired intellect, or irresistible activity of the affective powers. To say, in reply, that all crime proceeds from this inordinate force of the passions and propensities, overpowering the conscience and judgment, is only to utter a truism entirely irrelevant to the real question at issue, namely, whether this predominance of the moral over the intellectual is, or is not, the result of disease? A stronger objection consists in the difficulty of distinguishing sometimes between ordinary depravity and the impulses of disease — a difficulty we are not disposed to ignore. But the difficulty of drawing the line between two classes of phenomena does not prove, certainly, that there is no difference between them. Nature makes no dividing lines, and our divisions override one another at numerous points. But instead of rejecting all classification, we recognize the difficulty, and endeavor to

obviate it by larger knowledge and deeper insight. Under a mode of criminal procedure, which would permit a satisfactory observation of doubtful cases, we might not avoid all difficulty, but we should seldom commit a gross injustice. Objection has been also taken to the name given to this form of mental disorder, and the aid of ridicule has been invoked to add new odium to a defence already viewed with suspicion and distrust. Among those even who admit the thing, are many who regret the name. There seems, however, to be no substantial reason for this objection. The division of the mental faculties into moral and intellectual, is very old and very well founded, and it seems natural and proper that the same names should be applied to their respective disorders. The effect of association might have been avoided by using the term *affective*, but the thing itself would remain, and there, probably, the objection really lies.

§ 168. To moral mania, as a distinct form of the disease, the attention of the profession was first directed by the celebrated Pinel, in the beginning of the present century. Participating in the common belief, he found, to his great surprise, on resuming his researches at the Bicêtre, that there were many maniacs who betrayed no lesion whatever of the understanding, but were under the dominion of instinctive and abstract fury, as if the affective faculties alone had sustained injury. This form of mental disorder he designated as *manie sans délire*. The examples which he gives being chiefly characterized by violent anger and unbounded fury, by no means furnished suitable illustrations of the affection now styled moral insanity, though they do illustrate a particular form of that disorder. This defect, however, has been amply supplied by the researches of others, which have made us acquainted with a great number and variety of cases, in which the affective faculties, either singly or collectively, were deranged, independently of any appreciable lesion of the intellect. The reality and importance of this distinction which thus establishes two classes of mania, is now generally acknowledged by practical observers, among whom it is sufficient to mention Esquirol, Georget,

Gall, Marc, Rush, Reil, Hoffbauer, Andrew Combe, Conolly, and Prichard, though some of them are inclined to doubt whether the integrity of the understanding is so fully preserved in moral mania, as Pinel believed. Still, its apparent soundness, and the difficulty, at least, of establishing the existence of any intellectual derangement, while the moral powers are unequivocally and deeply deranged, render it no less important in its legal relations, than if the understanding were unequivocally affected. It is defined by Prichard, who has strongly insisted on the necessity of assigning it a more distinct and conspicuous place, than it has hitherto received, as "consisting in a morbid perversion of the natural feelings, affections, inclinations, temper, habits, and moral dispositions, without any notable lesion of the intellect or knowing and reasoning faculties, and particularly without any maniacal hallucination."[1] It will be convenient, even if not scientifically precise, to consider it under two divisions, according as it is general or partial.

SECTION I.

GENERAL MORAL MANIA.

§ 169. One form of this condition is thus vividly described by Prichard. "There are many individuals living at large, and not entirely separated from society, who are affected in a certain degree by this modification of insanity. They are reputed persons of singular, wayward, and eccentric character. An attentive observer may often recognize something remarkable in their manner of existence, which leads him to entertain doubts of their entire sanity, and circumstances are sometimes discovered on inquiry which assist in determining his opinion. In many instances it is found that there is an hereditary tendency to madness in the family, or that several relatives of the person affected have labored under dis-

[1] Cyclop. Prac. Med. iii. 826.

eases of the brain. The individual himself is discovered, in a former period of life, to have sustained an attack of madness of a decided character. His temper and dispositions are found on inquiry to have undergone a change; to be not what they were previously to a certain time; he has become an altered man; and this difference has perhaps been noted from the period when he sustained some reverse of fortune which deeply affected him, or since the loss of some beloved relative. In other instances, the alteration in his character has ensued immediately on some severe shock which his bodily constitution has undergone. This has either been a disorder affecting the head, a slight attack of paralysis, a fit of epilepsy, or some fever or inflammatory disorder, which has produced a perceptible change in the habitual state of the constitution. In some cases the alteration in temper and habits has been gradual and imperceptible, and it seems only to have consisted in an exaltation or increase of peculiarities which were always more or less natural or habitual." "Individuals laboring under this disorder are capable of reasoning or supporting an argument on any subject within their sphere of knowledge that may be presented to them, and they often display great ingenuity in giving reasons for their eccentric conduct, and in accounting for and justifying the state of moral feeling under which they appear to exist. In one sense, indeed, their intellectual faculties may be termed unsound, but it is the same sense in which persons under the influence of strong passions may be generally said to have their judgment warped, and the sane or healthy exercise of their understandings impeded. They think and act under the influence of strongly excited feelings, and a person sane is under such circumstances proverbially liable to error both in judgment and conduct."[1] It was this class of persons, undoubtedly, that suggested the following description in a work published in the beginning of the present century. "Among the varieties of maniacs met with in medical practice, there is

[1] Op. cit. sup. p. 826.

one, which, though by no means rare, has been little noticed by writers on this subject: I refer to those cases in which the individuals perform most of the common duties of life with propriety, and some of them, indeed, with scrupulous exactness, who exhibit no strongly marked features of either temperament, no traits of superior or defective mental endowment, but yet take violent antipathies, harbor unjust suspicions, indulge strong propensities, affect singularity in dress, gait, and phraseology; are proud, conceited, and ostentatious; easily excited and with difficulty appeased; dead to sensibility, delicacy, and refinement; obstinately riveted to the most absurd opinions; prone to controversy, and yet incapable of reasoning; always the hero of their own tale, using hyperbolic, high-flown language to express the most simple ideas, accompanied by unnatural gesticulation, inordinate action, and frequently by the most alarming expression of countenance. On some occasions they suspect sinister intentions on the most trivial grounds; on others are a prey to fear and a dread from the most ridiculous and imaginary sources; now embracing every opportunity of exhibiting romantic courage and feats of hardihood, then indulg ng themselves in all manner of excesses. Persons of this description, to the casual observer, might appear actuated by a bad heart, but the experienced physician knows it is the head which is defective. They seem as if constantly affected by a greater or less degree of stimulation from intoxicating liquors, while the expression of countenance furnishes an infallible proof of mental disease. If subjected to moral restraint, or a medical regimen, they yield with reluctance to the means proposed, and generally refuse and resist, on the ground that such means are unnecessary where no disease exists; and when, by the system adopted, they are so far recovered, as to be enabled to suppress the exhibition of the former peculiarities, and are again fit to be restored to society, the physician, and those friends who put them under the physician's care, are generally ever after objects of enmity and frequently of revenge."[1]

[1] Cox, J. M., Practical Observations on Insanity. London, 1804.

§ 170. Heinroth and Hoffbauer both recognize a form of mental alienation consisting exclusively of morbid excitement of the passions and feelings. "It is clear," says the latter, "that mania may exist uncomplicated with mental delusion; it is in fact only a kind of moral exaltation (*tollheit*), a state in which the reason has lost its empire over the passions and the actions by which they are manifested, to such a degree that the individual can neither repress the former, nor abstain from the latter. It does not follow that he may not be in possession of his senses and even his usual intelligence, since, in order to resist the impulses of the passions, it is not sufficient that the reason should impart its counsels; we must have the necessary power to obey them. The maniac may judge correctly of his actions without being in a condition to repress his passions, and to abstain from the acts of violence to which they impel him."[1] Subsequently he observes, that when mania proceeds from inordinate passions, "its more immediate cause lies in the physical temperament, or in certain moral affections which induce frequent occasions of anger. In every other respect, the maniac may be master of his propensities and the actions to which they lead; he may judge and act rationally. He is irrational only in his paroxysms of fury, and then his errors of judgment are rather the effect than the cause of his furious transports."[2]

§ 171. There is another very common and well-marked form of insanity, the manifestations of which are chiefly confined to the moral sentiments. Its characteristic feature is that of excitement alternating with depression, the two conditions varying considerably, in different cases, in point of intensity, and also — as well as the intervening interval — in point of duration. The general traits of the first-mentioned condition, are an unusual flow of spirits, great self-confidence, sanguine anticipations of the future, restlessness both of body and mind, and untiring loquacity. Usually, these traits are only strong enough at first to modify the ordi-

[1] Op. cit. sup. § 122. [2] Ibid. § 126.

nary character of the individual, without raising the slightest suspicion, and not uncommonly giving the impression that the person has been indulging too freely in drink. Sooner or later, they become more strikingly developed, and exert an unmistakable influence upon the conduct and discourse. He engages in enterprises, moral, social, or commercial, either manifestly beyond his means, or, in one way or another, inappropriate to his condition. Especially is he bent on speculation, and nothing comes amiss capable of gratifying this passion. Whether it be a farm or a ship, a mill privilege or a city lot, a parcel of trumpery jewelry, or the odds and ends of a twopenny auction, he is equally ready to buy, and equally sanguine of getting a good bargain. He is constantly yielding to some new fancy, and ardently prosecuting some of the countless schemes that swarm in his teeming brain. He frequents company either above or below his own grade, while perhaps he amazes and mortifies his friends, by the levity of his manners, if not the laxity of his morals. His movements are abrupt, rapid, and unseasonable. He is fond of taking long journeys, and horse flesh suffers under his hands. He sleeps much less than he usually does, and is fond of being up at night, roaming about the house or neighborhood. He is always ready with plausible reasons for his strangest conduct, sufficient to silence, if not to satisfy, any troublesome inquirer, while his discourse is entirely free from delusion, or obvious incoherence. With all this there is generally an utter disregard of the feelings of others, an imperious and even tyrannical deportment towards those who are dependent upon him, and a disposition to trample upon all domestic conveniences and proprieties. The slightest attempt to restrain or control his movements, or even to administer advice, is met by the fiercest hostility, and any intimation of mental infirmity provokes his hottest wrath. The most common moral trait is an utter disregard of veracity. To lie seems more natural and easy than to tell the truth, and between exaggeration, false coloring, and perverted facts, his statements are totally unworthy of credit.

§ 172. To this the state of depression presents a complete

contrast, every trait here mentioned being replaced by its opposite. Seldom speaking except when spoken to, and apparently absorbed in his own gloomy reflections, he is silent and quiet in the midst of company, and as if overwhelmed by a sense of inability, he reluctantly engages in any occupation beyond the most ordinary routine, and often is scarcely persuaded to perform the most necessary duties. All nature without and within him is shrouded in gloom, a terrible evil seems to be impending over him, the future reveals not a single gleam of hope, and were he called on to lay down his life, he would hardly hesitate to obey. His conduct during the excited state is now viewed in its true light, and is the subject of bitter reflections. He wonders that he should have done such things, and, in some instances, begs his friends to keep him in future from similar exhibitions by seasonable measures of restraint. With the mental dejection there is often some bodily ailment, and he loses both flesh and strength. Either this or a total paralysis of the will may keep him in bed much of the time, and incapacitate him for the slightest effort.

§ 173. In point of duration the two states are generally equal as compared with each other in the same case, though varying, in different cases, from one month to a couple of years. In point of severity, too, they are subject to the same rule. The excitement may be confined to an unusual flow of spirits, to an increase of self-confidence, and a fondness of self-magnification, while the patient attends to his ordinary duties, evincing no loss of his usual intelligence and discretion. Or it may be manifested by boisterous and violent conduct, by a disposition to engage in foolish enterprises, and an utter abandonment of all regular and appropriate employment. So, too, the state of depression may vary from what passes merely for low spirits, to the most profound and painful melancholy attended with the keenest distress and disposing to suicidal attempts.

§ 174. The interval between these two conditions, when the individual appears to be perfectly rational and natural, also presents the same kind of uniformity, in the same case,

and the same kind of diversity in different cases. In many, and perhaps the majority of cases, it has no appreciable duration as a distinct condition, the periods of excitement and depression passing into each other, with scarcely an interval between. In others it may continue as long, or even longer, than either of these states, although, as is more frequently the case, it is considerably shorter. Generally, the lucid interval follows the excitement and precedes the depression, but sometimes the excitement passes abruptly into depression, and this more gradually is followed by the lucid interval.

§ 175. Another feature worthy of notice, is that the duration of these several states occasionally changes, in the same individual. In one case that came under my observation, they gradually changed within four or five years, from one month to eight or ten. Generally, the longer the duration of the excitement and depression, the less prominent and distinct is the lucid interval.

§ 176. This form of mental disease, when the periodicity is once fairly established, is peculiarly intractable to treatment, and may continue for years; but then it finally assumes a more continuous and uniform character, until its original phasis entirely disappears.[1]

§ 177. The contrast often presented in moral mania between the state of the intellectual and that of the moral faculties, is one of its most striking features. These patients can reason logically and acutely on any subject within their knowledge, and extol the beauties of virtue, while their conduct is filled with acts of folly, and at war with every principle of moral propriety. Their moral nature seems to have undergone an entire revolution. The sentiments of truth, honor, honesty, benevolence, purity, have given place to men-

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[1] Since the above was written, this form of insanity has been described by Baillarger under the name of *Folie à double forme*, and by Falret under the name of *Folie circulaire*. I am not aware that it has been noticed by any others, though it is perfectly familiar to all much conversant with the insane in this country.

dacity, dishonesty, obscenity, and selfishness, and all sense of shame and self-control has disappeared, while the intellect has lost none of its usual power to argue, convince, please, and charm. I once asked a patient who was constantly saying or doing something to annoy or disturb others, while his intellect was apparently as free from delusion or any other impairment as ever, whether, in committing his aggressive acts, he felt constrained by an irresistible impulse, contrary to his convictions of right, or was not aware, at the moment, that he was doing wrong. His reply should sink deep into the hearts of those who legislate for, or sit in judgment on the insane. "I neither acted from an irresistible impulse, nor upon the belief that I was doing right. I knew perfectly well I was doing wrong, and I might have refrained if I had pleased. I did thus and so, because I *loved* to do it. It gave me an indescribable pleasure to do wrong." Yet this man when well, is kind and benevolent, and in his whole walk and conversation a model of propriety.

§ 178. In nothing, however, is the intellectual soundness more strikingly evinced than in the ingenuity with which these persons endeavor to explain the folly and absurdity of their acts, and reconcile them to the ordinary rules of human action. By denying entirely some alleged circumstances in a particular transaction, adding a little to one and subtracting a little from another, and giving a peculiar coloring to the whole, they will convince the unguarded observer that there is some mistake about the matter, — that they acted precisely as any one else would under similar circumstances, and that they are the victims of misrepresentation and unkindness.

§ 179. There is, unquestionably, a great tendency in this affection to pass into intellectual mania, which we have seen is no less strongly characterized by moral perversities than by delusions; and Georget actually describes it as belonging to the initiatory stage or *incubation* of the latter disorder. Without stopping to discuss the correctness of this view, the fact that it may continue for an indefinite length of time and become the object of judicial investigation, gives

it incalculable importance in a medico-legal point of view, and entitles it to a prominent place in a work like the present.

§ 180. The form of mental disorder which we are now considering, has been so little noticed by writers until quite recently, while an ample knowledge of its phenomena is essential to the correct administration of justice, that no further apology is needed for illustrating it with several examples collected from the observations of others. The first is related by Pinel as belonging to his *manie sans délire*. "An only son of a weak and indulgent mother was encouraged in the gratification of every caprice and passion of which an untutored and violent temper was susceptible. The impetuosity of his disposition increased with his years. The money with which he was lavishly supplied removed every obstacle to the indulgence of his wild desires. Every instance of opposition or resistance roused him to acts of fury. He assaulted his adversaries with the audacity of a savage; sought to reign by force, and was perpetually embroiled in disputes and quarrels. If a dog, a horse, or any other animal offended him, he instantly put it to death. If ever he went to a fête or any other public meeting, he was sure to excite such tumults and quarrels as terminated in actual pugilistic encounters, and he generally left the scene with a bloody nose. This wayward youth, however, when unmoved by passions, possessed a perfectly sound judgment. When he became of age, he succeeded to the possession of an extensive domain. He proved himself fully competent to the management of his estate, as well as to the discharge of his relative duties, and he even distinguished himself by acts of beneficence and compassion. Wounds, law-suits, and pecuniary compensations were generally the consequences of his unhappy propensity to quarrel. But an act of notoriety put an end to his career of violence. Enraged with a woman who had used offensive language to him, he precipitated her into a well. Prosecution was commenced against him; and on the deposition of a great many witnesses who gave evidence to his furious deportment, he was condemned to

perpetual confinement in the Bicêtre."[1] In this instance there was something more than the unrestrained indulgence of strong passions, though, no doubt, the passions of this person were naturally remarkably strong and active; the understanding, though sound, was incapable of restraining their impulses, for the reason that they were excited by disease, and, therefore, beyond its control. The constant excitement of passions already too much developed by means of a vicious education, led to that condition of mind in which the healthy balance of the affective and intellectual faculties is destroyed, — in other words, to moral mania. A case of a very similar character to this, and to which the rank of the person and the disastrous results of the affection, have given a melancholy preëminence over all others in the medico-legal history of the disease, is that of Earl Ferrers, who was executed in 1760, for the murder of his steward. It differs from the above in exhibiting a more advanced stage of the disease, and in more distinctly revealing its approximation to intellectual mania by the unfounded notions which the patient had imbibed. Though his reasoning powers were sound and his conversation rational, he imagined that his relatives had formed a conspiracy against him in which his victim was an accomplice; and his conduct in many respects was so wild and strange, as to excite in those who were in the habit of meeting him, a suspicion, and even conviction of his insanity.[2]

§ 181. The following case which came under the observation of the writer, strikingly exhibits the prominent features of moral mania. This person, while yet a youth, had several paroxysms of mental disorder, which were accompanied by such a spirit of violence and mischief, as to require his close confinement at home. He got married, however,

[1] Sur l'Aliénation Mentale, 156, § 159.

[2] A report of Earl Ferrers' trial may be found in Hargrave's State Trials, and it is noticed at considerable length in Smollet's Continuation of Hume's History of England. Some valuable comments on this case, are contained in Combe's Observations on Mental Derangement, 204.

went into the back settlements, and, by means of his industry and energy, he accumulated some property, while he was respected for his many virtues. Every two or three years he had an attack of his mental disorder, when he neglected his usual employments, launched into speculations of every kind, and projected schemes for making money. He talked loud and fast, became irritable and despotic, impatient of contradiction and easily offended. At the same time, he conceived a high idea of his religious attainments, and frequented religious meetings where he was distinguished by the fervor of his exhortations and prayers. Finally, having squandered the most of his property, and treated his wife quite roughly, she had him placed in an hospital. He came in breathing out threatenings and slaughter against all who had any hand in the measure, while he explained, with great plausibility, every incident which had been represented as indicative of insanity. He continued to be wild and turbulent, and was a perpetual source of strife and trouble. His principal employment was to make mischief, by fomenting troubles between fellow-patients, disaffecting them towards the physicians and attendants, and, in one way or another, annoying everybody around him. He set at nought every rule of propriety, while incessantly charging others with misbehavior and representing himself as an object of persecution and abuse. From cursing and swearing, it was an easy transition to praying; and, whether entertaining others with coarse and vulgar talk, or a strain of religious discourse calculated to deceive the very elect, he seemed to be equally pleased. He stole whatever he could lay his hands upon, and hoarded all kinds of worthless things. In the course of four or five months, his natural character began to return, and in two or three more he went home quite restored. In about two years he was again attacked, and again was placed in the hospital.

§ 182. The following case from Metzger is cited by Hoffbauer, who observes that the patient labored under no delusion, properly speaking, but was only not master of his actions.

§ 183. A Russian colonel came to Königsberg to receive an inheritance, and committed there so many acts of violence, that he was summoned before the tribunal of justice. His conduct before the magistrates was equally unreasonable. He had become so much an object of dread at Königsberg, that nobody would execute any commission for him, — the very chimney-sweepers required a guard if sent to sweep his chimneys. At last, after several complaints made against him, he was arrested because he had threatened to stab his landlord with a pitchfork for demanding his rent, and pursued him with that intent. "In going into the prison," says Metzger, "I saw an old man with white hair, of a respectable appearance, who received me politely. I first inquired concerning his health. 'I am ill, through old age,' he replied, 'and tormented with gout, with the stone, and with the scurvy, evils for which I can have no remedy.' He desired to know who had sent me to see him; I told him it was the tribunal. 'I ought to be judged,' he replied, 'by a French tribunal,' and he pretended that I should find proof of what he said in a writing which he forced me to take. At last I informed him of the reason of his arrest. His eyes then sparkled, and he said in French, with much volubility, that M. M——— and ——— were his mortal enemies; that they had several times tried to ruin him; that he had experienced much injustice and opposition on the part of the tribunal; and that they had disposed, as they pleased, of his brother's inheritance. Being asked what were his occupations, he replied, 'that he was, as every honest man should be, free and content, even in prison; that he amused himself with poetry, and copied verses relating to his situation.'"[1]

§ 184. The following cases are taken from Prichard. "I. K., a farmer, several of whose relatives had been the subjects of mental derangement, was a man of sober and domestic habits, and frugal and steady in his conduct, until about his forty-fifth year, when his disposition appeared to

[1] Op. cit. sup. § 126.

have become suddenly changed in a manner which excited the surprise of his friends and neighbors, and occasioned grief and vexation in his family. He became wild, excitable, thoughtless, full of schemes and absurd projects. He would set out and make long journeys into distant parts of the country to purchase cattle and farming-stock, of which he had no means of disposing; he bought a number of carriages, hired an expensive house ready furnished, which had been inhabited by a person much above his rank, and was unsuitable to his condition; he was irascible and impetuous, quarrelled with his neighbors, and committed an assault upon the clergyman of the parish, for which he was indicted and bound to take his trial. At length his wife became convinced that he was mad, and made application for his confinement in a lunatic asylum, which was consequently effected. The medical practitioners who examined him were convinced of his insanity, by comparing his late wild habits and unaccountable conduct with the former tenor of his life, taking into consideration the tendency to disease which was known to prevail in his family. The change in his character alone had produced a full conviction of his madness in his friends and relatives. When questioned as to the motives which induced him to some of his late proceedings, he gave clear and distinct replies, and assigned, with great ingenuity, some plausible reason for almost every part of his conduct."

§ 185. "Abraham B., a working tradesman of industrious and sober habits, conducted himself with propriety until about forty-six years of age, and had accumulated a considerable property from the fruits of his exertions. About that period he lost his wife, and after her death became more and more penurious. At length he denied himself the comforts, and, in a great measure, the necessaries of life, and became half-starved and diseased; his body was emaciated and beset with scaly eruptions. Mr. S., a gentleman who had long known him, hearing of the condition into which he had sunk, sent a medical practitioner to visit him, by whose advice B. was removed from a miserable dirty lodging to a lunatic asylum. Mr. S., who was present on the occasion, observed

that Abraham B., previously to his quitting the room in which he had immured himself, kept his eyes fixed on an old trunk in the corner of the apartment. This was afterwards emptied of its contents, and in it were found, in the midst of various articles, dirty bank-notes, which had been thrown into it apparently at different times to the value of more than a thousand pounds. Abraham B., after his removal to an asylum where he had wholesome food and exercise, soon began to recover from his bodily infirmities, and at length became anxious to be at large. The writer of this article visited him and conversed with him for some time, in order to ascertain his mental condition. He betrayed no sign of intellectual delusion, nor did it appear that any thing of that description had ever been a part of his complaint. His replies to questions were rational according to the extent of his natural capacity. He was determined to go and manage his property, and get a wife who should take care of him. In a few days after his release he was married to a servant belonging to the lunatic asylum where he had been confined. His new wife found after some months that it was impossible to endure the strange conduct of her husband, and after various expedients, brought him back to the asylum, with a certificate from a medical man, who had examined him and declared him to be insane. He still remains in confinement, and his derangement is now more complete than formerly, as it plainly involves his intellect."[1]

§ 186. These are no uncommon instances of that condition of mind so often mistaken for any thing rather than what it really is — mental derangement. Its true nature was here recognized by intelligent practitioners who looked beyond the circle of a definition, and might have been recognized, perhaps, by others of narrower views, in a calm investigation for therapeutical purposes; but, amid the excitement produced by great criminal acts, and the struggles between knowledge and ignorance, truth and prejudice, that spring up

[1] Op. cit. sup. 831.

in judicial investigations, how seldom, alas, has it been discerned. The following cases in which this perversion of the moral faculties was accompanied in its latter stages, by delusions, furnish a striking illustration of this form of disease, as well as its intimate connection with intellectual mania.

§ 187. Col. M. was a man of superior intellectual powers, and moved in the higher walks of society. He was a lawyer by profession, and was appointed District Attorney in one of the South-western States by President Jackson whom he had previously served in a military capacity. Towards the meridian of life, his conduct became so disorderly and boisterous, that he was often confined in jails, or hospitals for the insane. On one of these occasions he cut off his nose, and subsequently came to Boston in order to have it replaced by Dr. J. Mason Warren, by means of the rhinoplastic operation which proved quite successful. While in Boston he made the acquaintance of Dr. Bell of the McLean Asylum, for the purpose, as he declared, of getting his aid in obtaining redress for the wrongs he had sustained in being placed under guardianship and confined in jails and hospitals, his object being, not to retaliate, but to protect his future reputation. The Dr. has kindly furnished such particulars of his case as came to his knowledge from various sources. "I inferred that he was naturally of a proud, arrogant, and extravagant spirit which was kept in check, while she lived, by the discretion of his wife. He was sensual, but not intemperate, until his nervous system had become excited. His peculiar theory was, that, while he admitted that he had held — and, towards the last of my interview, avowed that he then held — certain fanciful notions which we might term delusions, if we pleased, still they were such as did not interfere with his right to entire liberty of action. 'For instance,' said he, 'I feel that I am cousin to the Duke of Wellington and to Napoleon. It seems ridiculous. I can't make it out by any kind of proof. I even laugh at it. But still, I dwell upon it as a reality. It concerns nobody else. It has in it no dangerous element. Why, then, should I be interfered with for harboring a delu-

sion, if you choose to call it so, no more absurd than a thousand religious sects feel themselves happy in resting upon.' He would often argue thus: 'I protest against being called insane on account of my ideas. For my actions I am accountable. I never yet claimed — I never will claim — immunity as an irresponsible being. I will permit no one to set up such a defence for me. Try me by the laws of the land and the strict rules of evidence, and I will abide by the result, as a good citizen, but I must have opportunity to argue my own cause, and examine the witnesses brought against me.'

"He had often been arrested for assault and battery, but always continued to beat the complainants, by his familiarity with legal proceedings, and by his quick perception of whatever made for or against himself. If, in his best estate, he had been counsel for another party, he could not have managed the case better than he did his own. However wild, extravagant, and boisterous, at hotels and such places, of which he was the terror, as soon as he was in the atmosphere of a court of justice, he became calm, dignified, and respectful, but tenacious to the last degree. For example, when carried before the police judge in New York, on a warrant, the printed form of which had been in use for twenty years, setting forth that in consequence of insanity 'or otherwise,' he was dangerous to be at large, he, at once, advocated successfully his constitutional right to have the offence set forth specifically and precisely.

"He had most carefully considered the extent of his rights, — the precise amount of force justifiable in ejecting an unwelcome guest, or, what was a more common event, in resisting an ejectment; the obligation of inn-holders to receive applicants, and the value of proving the first blow in defence of assaults. On one occasion, thinking the hackmen and cabmen of New York were insolent and exacting in regard to the right of way, he armed himself with a heavy whip, took a good witness by his side, and drove through Broadway in a strong carriage, running against every charioteer who failed to give him his exact half of the road.

This of course produced a collision of tongues as well as wheels. His peculiarly sarcastic language tempted a touch of the whip from some of his opponents, and upon this, our hero turned to and thrashed them within an inch of their lives. They appealed to the courts, but his witness soon and truly proved the aggression on them.

"While in the Pennsylvania hospital for the insane, and again, I believe, while in the jail in Washington, he got discharged by means of a writ of *habeas corpus* which he was allowed to sue out. When thus brought before the court, he argued his case upon the settled legal doctrine, that an ability to distinguish right from wrong is the sole test of sanity. Of course, no judge did or could hesitate in opinion, that a gentleman who was able to make an elegant and an astute argument on the nature, origin, and protection of the rights of the subject, could, by any means, be within the category of individuals intellectually incapable of discriminating between right and wrong. In fact, processes of detention as a lunatic, held, in his case, only until he could get before some tribunal. And yet when thus turned loose upon society, he was a passionate, dangerous lunatic. When hard pushed by evidence of extravagant and boisterous conduct, he would attribute the fact to his having unfortunately taken a little too much wine (which was probably true to some extent), comprehending perfectly that an offence of that kind would be followed by a much lighter consequence — a mere fine, in fact — than seclusion as a lunatic. When the self-mutilation was alluded to, he would most frankly attribute it to his ignorance of physiological laws, and allege that his lost organ being covered with blotches and carbuncles, he cut it off, absurdly supposing that nature had a renewing power, as in the growth of the hair.

"After he became so wild in his conduct in Boston, as to be a universal annoyance, I advised his friends in Missouri to place him under care as a lunatic. They replied that the thing was impracticable; that no institution had been found able to hold him, and they would not arouse his vindictive feelings by any further trials of that sort. His

intemperate habits increased, and his delusions became more palpable, yet without affecting his intellectual power. The idea returned, that parts of his face, if removed, would grow again, and he cut out the cicatrix on his forehead whence the nasal flap had been taken. Fortunately, death stepped in at this point, and removed a man whose fate was so melancholy, for under all the ravages of mental disease, there were traces of noble sentiments and lofty aspirations."

§ 188. There is another form of moral insanity deeply interesting in its medico-legal relations, that has been almost entirely overlooked. It is a fact well-established in this country at least, that masturbation, or self-pollution is a prolific cause of mental derangement in young subjects. It deserves our special attention for the reason, that, although the intellect finally suffers deeply and rapidly, yet in its initiatory stage, the moral and affective powers may be seriously perverted, while the conduct and conversation of the individual may be outwardly marked by his usual propriety. Long before any intellectual aberration is observed, and while the patient is merely moody and reserved, his mind may be tortured by fears and suspicions that mar his peace and sometimes lead him to acts of violence. Dr. Bell, the accomplished physician of the McLean Asylum, Massachusetts, observes that he knew "a pious, intelligent student, pursuing his daily avocations to the satisfaction of his friends and instructors, who nightly slept with a weapon under his pillow to protect himself from an attack from one whom he had scarcely seen, and to whom he had never spoken; and when convinced of his delusion by proofs so overpowering that his mind was obliged to acknowledge its assent, he merely transferred his suspicions to another equally innocent individual." Had this young man met the object of his suspicions and shot him dead, how few could have been brought to believe that he acted under the influence of insanity, and was consequently irresponsible! How feeble would have been any evidence of his insanity but such as had reference expressly to the particular form under which he was laboring! Such a case as this should make a strong impression on the mind of

the medical jurist. When an act of violence is committed by a young subject without any apparent motive, and without any obvious signs of insanity, it should always be ascertained, if possible, whether he has been addicted to masturbation, and whether he has shown any of those changes of temper and habit which generally accompany the incipient stage of this form of mental derangement. If it appear that he has practised this vice, and especially if he have also manifested its usual moral effects, then is there strong ground for believing that his mind was possessed by a delusion which further inquiry may bring to light. This form of disease is not yet, perhaps, sufficiently understood to warrant us in furnishing an exact detail of its phenomena. Reference must be had to the opinions of those who have had opportunities of observing it, and to the few valuable contributions that have been made to the subject.[1]

§ 189. A very common feature of moral mania, as has been already stated, is a deep perversion of the social affections, whereby the feelings of kindness and attachment that flow from the relations of father, husband, and child, are replaced by a perpetual inclination to tease, worry, and embitter the existence of others. The ordinary scene of its manifestations is the patient's own domestic circle, the peace and happiness of which are effectually destroyed by the outbreakings of his ungovernable temper, and even by acts of brutal ferocity. Frederic William of Prussia, father of Frederic the Great, undoubtedly labored under this form of moral mania; and it furnishes a satisfactory explanation of his brutal treatment of his son and his utter disregard of the feelings or comfort of any other member of his family. About a dozen years before his death, his health gave way under his constant debauches in drunkenness, he became

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[1] An Hour's Conference with Fathers and Sons in relation to a common and fatal Indulgence of Youth. By L. V. Bell, M. D., Superintendent of the McLean Asylum, 1840. Hints to the Young, in relation to Health of Body and Mind. By S. B. Woodward, M. D., Superintendent of the Mass. Lun. Hospital. See also Dr. Bell's last Report (1843), pp. 39, 40.

hypochondriacal, and redoubled his usual religious austerities. He forbade his family to talk of any subject but religion, read them daily sermons, and compelled them to sing, punishing with the utmost severity any inattention to these exercises. The prince and his eldest sister soon began to attract a disproportionate share of his hostility. He obliged them to eat and drink unwholesome or nauseous articles, and would even spit in their dishes, addressing them only in the language of invective, and at times endeavoring to strike them with his crutch. About this time he attempted to strangle himself, and would have accomplished his design, had not the queen come to his assistance. His brutality towards the prince at last arrived to such a pitch, that he, one morning, seized him by the collar as he entered his bedchamber, and began beating him with a cane in the cruelest manner, till obliged to desist from pure exhaustion. On another occasion, shortly after, he seized his son by the hair and threw him on the ground, beating him till he was tired, when he dragged him to a window apparently for the purpose of throwing him out. A servant, hearing the cries of the prince, came to his assistance, and delivered him from his hands. Not satisfied with treating him in this barbarous manner, he endeavored, though unsuccessfully, by a similar course of conduct, to make him sign an act renouncing his claim to the succession of the Prussian throne, in favor of his brother. To obtain this end, though in a different manner, he connived at the prince's attempts to escape from his tyranny, in order that he might procure from a court-martial a sentence of death, and this even he was anxious to anticipate, by endeavoring, first to strangle him, and afterwards to run him through the body with his sword. Being diverted, much against his will, by the interposition of the emperor, from carrying the sentence of death into execution, he kept him in confinement, and turned all his thoughts towards converting him to Christianity. At this time, we first find mention of any delusion connected with his son, though it probably existed before. In his correspondence with the chaplain to whom he had intrusted the charge of converting

the prince, he speaks of him as one who had committed many and heinous sins against God and the king, as having a hardened heart and being in the fangs of satan. Even after he became satisfied with the repentance of the prince, he showed no disposition to relax the severities of his confinement. He was kept in a miserable room, deprived of all the comforts and many of the necessaries of life, denied the use of pens, ink, and paper, and allowed scarcely food enough to prevent starvation. His treatment of the princess was no less barbarous. On the occasion of her brother's attempted escape, of which he thought her cognizant, he knocked her down, and trampled her under foot. She was also confined, and every effort used to make her situation thoroughly wretched, — and though, after a few years, he relaxed his persecution of his children, the general tenor of his conduct towards his family and others, evinced little improvement in his disorder, till the day of his death.[1]

§ 190. There can be little doubt that the affection above described, is far more common in the ordinary walks of society, than is generally imagined. It is so imperfectly understood, however, that those singular freaks of conduct and whimsical notions which would unquestionably subject a person to the imputation of insanity, were there the slightest aberration of reason, are set down to eccentricity of temper, or inherently vicious dispositions. The suspicion that they spring from insanity, is immediately dispelled by calling to mind the general correctness of his views, and the steadiness and sagacity with which he pursues his daily avocations. And so intimately connected are the ideas of insanity and delusion in the common mind, that it requires no little courage and confidence on the part of the practitioner who ventures, in a given case, to declare the existence of the former, independently of the latter. The consequences of

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[1] Lord Dover's Life of Frederic II. King of Prussia, vol. 1, B. 1, chap. 2, 3, 4, 5, 6, 7. The narrative of the princess in her Memoirs of the Margravine of Bareith conveys a far stronger impression of the king's insanity than the above selected incidents.

these erroneous views are often strikingly and painfully exhibited, when a person thus affected becomes the object of a legal procedure. While he may be described by one, as acute and methodical in his business, and rational in his discourse, and believed to be perfectly sane; another will testify to the strangest freaks that ever a madman played, and thence deduce the conviction of his insanity; while one represents him as social and kindly in his disposition, ready to assist and oblige, and to accommodate himself to the varying humors of those about him, it will be testified by another, that in his domestic relations, his former cheerfulness has given way to gloom and moroseness, that equanimity of temper has been replaced by frequent gusts of passion, and that the warm affections, which spring from the relations of parent and child, husband and wife, have been transformed into indifference or hate. These are the cases that confound the wise and defy the scrutiny of the skilful, while they tempt the superficial and conceited to betray their ignorance, under the delusion of superior penetration; which tarnish many a professional reputation, and expose even the pretensions of true science to popular mockery and derision.[1]

SECTION II.

PARTIAL MORAL MANIA.

§ 191. In this form of insanity, the derangement is confined to one or a few of the affective faculties, the rest of the moral and intellectual constitution preserving its ordinary integrity. An exaltation of the vital forces in any part of the cerebral organism, must necessarily be followed by increased activity and energy in the manifestations of the fac-

[1] Many striking cases of moral mania might have been related which have come under the author's own observation, but as this could not be done without giving pain, probably, to the patients themselves or their friends, it was deemed advisable to draw almost entirely from foreign sources.

ulty connected with it, and which may even be carried to such a pitch as to be beyond the control of any other power, like the working of a blind, instinctive impulse. Accordingly, we see the faculty thus affected, prompting the individual to action by a kind of instinctive irresistibility, and while he retains the most perfect consciousness of the impropriety and even enormity of his conduct, he deliberately and perseveringly pursues it. With no extraordinary temptations to sin, but on the contrary, with every inducement to refrain from it, and apparently in the full possession of his reason, he commits a crime whose motives are equally inexplicable to himself and to others. The ends of justice require that this class of cases should be viewed in their true light; and while it is not denied that their similarity to other cases in which mental unsoundness is never supposed to have existed, renders such a view difficult, yet this very difficulty is a fresh reason for extending our inquiries and increasing our information. In the account now to be given of partial moral mania, those forms of it only will be noticed which have the most important legal relations.

§ 192. Instances of an irresistible propensity to steal, unaccompanied by any intellectual alienation, are related on good authority, and are by no means rare. "There are persons," says Dr. Rush, "who are moral to the highest degree as to certain duties, but who, nevertheless, live under the influence of some one vice. In one instance, a woman was exemplary in her obedience to every command of the moral law, except one, — she could not refrain from stealing. What made this vice more remarkable was, that she was in easy circumstances, and not addicted to extravagance in any thing. Such was the propensity to this vice, that when she could lay her hands on nothing more valuable, she would often at the table of a friend, fill her pockets secretly with bread. She both confessed and lamented her crime."[1] I knew a very worthy clergyman who, towards the latter part of his life, became addicted to stealing articles of trivial value,

[1] Medical Inquiries and Observations, 1.

such as the samples of corn, beans, etc., which the village shopkeeper exposed in his window. He took them home and put them in his garret, but never appropriated them to any purpose. Cases like this are so common that they must have come within the personal knowledge of every reader who has seen much of the world, so that it will be unnecessary to mention them more particularly.[1] One of them which caused much discussion at the time (April, 1855), drew the following remarks from the London Times: "It is an instance of that not very uncommon monomania which leads persons otherwise estimable and well-conducted, to pilfer articles of a trifling value, in obedience to the impulses of a diseased imagination. The fact is notorious, that many persons of high rank and ample means have been affected with this strange disorder. Every one who is acquainted with London society could at once furnish a dozen names of ladies who have been notorious for abstracting articles of trifling value from the shops where they habitually dealt. Their *modus operandi* was so well known, that on their return from their drives, their relatives took care to ascertain the nature of their paltry peculations, inquired from the coachman the houses at which he had been ordered to stop; and, as a matter of course, reimbursed the tradesmen to the full value of the pilfered goods. In other cases, a hint was given to the various shopkeepers at whose houses those monomaniacs made their purchases, and they were simply forewarned to notice what was taken away, and to furnish the bill, which was paid as soon as furnished — and, as a matter of course, by the pilferer herself, without any feeling of shame or emotion of any kind." It would be difficult to prove directly, that this propensity, continuing, perhaps, during a whole life, and in a state of apparently perfect health, is, notwithstanding, a consequence of diseased or abnormal action in the brain, but the presumptive evidence in favor of this explanation is certainly strong. First, it is very often ob-

[1] In Gall's large work, *On the Functions of the Brain*, iv. 131, Boston edition, the reader will find a considerable number of these cases related.

served in abnormal conformations of the head, and accompanied by an imbecile condition of the understanding. Gall and Spurzheim saw in the prison of Berne a boy twelve years old, who could never refrain from stealing. He is described as "ill-organized and rickety." At Haina they were shown an obstinate robber whom no corporal punishment could correct. He appeared about sixteen years of age, though he was in fact twenty-six; his head was round, and about the size of a child's one year old. He was also deaf and dumb, a common accompaniment of mental imbecility. An instructive case has been lately recorded, in which this propensity seemed to be the result of a rickety and scrofulous constitution.[1] Secondly, this propensity to steal is not unfrequently observed in undoubted mania. Pinel says it is a matter of common observation, that some maniacs who, in their lucid intervals, are justly considered models of probity, cannot refrain from stealing and cheating during the paroxysm.[2] Gall mentions the case of two citizens of Vienna, who, on becoming insane, were distinguished in the hospital for an extraordinary propensity to steal, though previously they had lived irreproachable lives. They wandered over the house from morning till night, picking up whatever they could lay their hands upon, — straw, rags, clothes, wood, etc., which they carefully concealed in their room.[3] A propensity to theft is recognized by Prichard, as being often a feature of moral mania, and, sometimes, the leading, if not the sole character of the disease, and he mentions a lunatic who would never eat his food, unless he had previously stolen it, and accordingly his keeper was obliged to put it into some corner within his reach, in order that he might discover and take it furtively.[4] Thirdly, it has been known to follow diseases or injuries of the brain, and therefore to be dependent on morbid action. Acrel mentions the case of a young man, who after receiving a severe wound on the temple, for which he was trepanned, manifested an

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[1] Phrenological Journal, x. 459.
[2] Op. cit. sup. § 132.
[3] Ibid. iv. 131.
[4] Ibid. 829.

invincible propensity to steal, which was quite contrary to his ordinary disposition. After committing several larcenies, he was imprisoned, and would have been punished according to law, had not Acrel declared him insane, and attributed his unfortunate propensity to a disorder of the brain. In the *Journal de Paris*, March 29th, 1816, appeared the following paragraph: "An ex-commissary of police at Toulouse, Beau-Conseil, has just been condemned to eight years' confinement and hard labor, and to the pillory, for having, while in office, stolen some pieces of plate from an inn. The accused persisted to the last in an odd kind of defence; he did not deny the crime, but attributed it to mental derangement produced by wounds he had received at Marseilles in 1815."[1] The late Dr. Smith, of New Haven, Connecticut, once observed a similar effect consecutive to an attack of typhoid fever. "One patient in particular, who had been extremely sick with this disease, after his recovery, had a strong propensity to steal, and did in effect take some articles of clothing from a young man to whom he was under great obligations for the care which he had taken of him during his sickness. He at length stole a horse and some money, was detected and punished. I took some pains to inquire into the young man's former character, and found it good, and that his family were respectable."[2] Fourthly, this propensity to steal is sometimes followed by general mania. Foderè relates the case of a female servant in his own family, who could not help stealing secretly from himself and others, articles, even of a trifling value; though she was intelligent, modest, and religious, and was all the while conscious of and admitted the turpitude of her actions. He placed her in a hospital, considering her insane, and after apparent restoration and a long trial, he again took her into his service. Gradually, in spite of herself, the instinct again mastered her, and in the midst of an incessant struggle between her vicious propensity on the one hand and a conscientious horror of her con-

[1] Quoted by Gall in Ibid. 141.

[2] Medical and Surgical Memoirs, 62.

dition on the other, she was suddenly attacked with mania, and died in one of its paroxysms.[1] Fifthly, it seems sometimes to be the result of a sudden and temporary confusion of mind, like that of mania. The following was related by Dr. Boys de Loury, at a meeting of the Society of Medicine of Paris, in July, 1851. "A female servant, gaining honestly her livelihood, was detained at St. Lazare, on the charge of stealing a small quantity of bacon. The money had been given her to purchase the article. She recollected having turned from the street leading to the market, but could not tell why; and did not recollect having seen the seller, nor indeed any event that occurred. She was greatly afflicted at the idea of disgrace to her family. She experienced frequently great heat in her head, was tormented with dreams of fire, of blood, and of frightful noises. In consideration of the small value of the article stolen, of her previous good conduct, and of the certificates of several physicians who stated that they had seen this female frequently in a state of high mental excitement, I was induced to admit, and so to certify, that she had been in a state of transient mental alienation, when she committed the robbery, and the court dismissed the complaint." Another woman aged thirty, engaged in a flourishing mercantile business, stole several articles from the table of the restaurant where she dined. She could give no reason for it, and her reputation was unblemished. It seemed that owing to family troubles, she had been seized with violent nervous affections, complained much of her head, and had exhibited marks of high excitement. The opinion was given that she committed the act under a momentary seizure of insanity, and the court discharged her.[2] Sixthly, this propensity is sometimes produced by certain physiological changes in the animal economy. Gall met with four examples of women who, when pregnant, were violently impelled to steal, though perfectly upright at other times. Friedreich gives the case of a pregnant woman who, otherwise perfectly

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[1] Traitè de medicine legale, i. 237.

[2] Am. Jour. Ins. ix. 76, from Revue Med. Sept. 16, 1851.

honest and respectable, suddenly conceived a violent longing for some apples from a particular orchard, two or three miles distant. Notwithstanding the entreaties of her parents and husband not to risk her character and health, and their promises to procure the apples for her in the morning, she started off in company with her husband, at nine o'clock of a cold September night, and was detected by the owner in the act of stealing the apples. She was tried and convicted of theft, but subsequently a medical commission was appointed by the supreme court to examine and report upon her case. Their inquiries resulted in the opinion that she was not morally free, and consequently not legally responsible, while under the influence of those desires peculiar to pregnancy. They added that if Eve had been in the condition of the accused, when she plucked the forbidden fruit from the tree, the curse of original sin would never have fallen on the race.[1]

§ 193. An inordinate propensity to lying is also of no uncommon occurrence in society; and most of the readers of this work have probably met with instances of it in people whose morals in other respects were irreproachable, and whose education had not been neglected. The maxim of Jeremy Bentham, that it is easier for men to speak the truth, and therefore they are more inclined to do so, than to utter falsehood, seems, in them, to be completely reversed, for they find nothing more difficult than to tell the truth. In repeating a story which they have heard from others, they are sure to embellish it with exaggerations and additions, till it can scarcely be recognized, and are never known to tell the same story twice alike. Not even is the slightest groundwork of truth necessary, in order to call forth the inventions of their perverted minds; for they as often flow spontaneously, in the greatest profusion, as when based on some little foundation in fact. This propensity seems to result from an inability to tell the truth, rather than from any other cause; as it can be traced to no adequate motive,

[1] Handbuch der gericht. Psychologie, 691.

and is often indulged when truth would serve the interests of the individual better. Like that last mentioned, it is liable to degenerate into unequivocal mania, of which it is sometimes a preliminary symptom, and is also quite a common feature in this disease, — a circumstance which Rush considers as proof of its physical origin.

§ 194. We are not prepared to go the length of referring all the instances of these two propensities thus manifested, to the influence of disease, but they cannot all be attributed to faults of education, to evil example, or to innate depravity, without doing violence to the testimony of every day's experience. It may be difficult no doubt, in many cases, to distinguish them in respect to their physical or moral origin, but the distinction is no less real on that account; the same principles are to guide us that regulate our decision in questions touching any other form of insanity; and if common sense and professional intelligence preside over our deliberations, the final judgment will not often be wrong. Where the propensity to steal is manifested in a person whose moral character has previously been irreproachable, and whose social position and pecuniary means render indulgence in this vice peculiarly degrading and unnecessary, his plea of having committed the larceny while deprived, in a measure, of his moral liberty, deserves to be respectfully considered. If the object stolen is of trifling value, or incapable of being turned to any purpose of use or ornament; if the offence have been preceded by others of a similar kind; and especially if, in addition to these circumstances, the individual be a woman in a state of pregnancy, there can scarcely be a doubt that the plea should be admitted. We must not overlook the fact, however, that objects which are utterly valueless to some men, are exceedingly prized by others; and it is a lamentable truth that some persons, in their eagerness to get possession of certain objects that gratify a favorite passion or taste, seem to lose sight all at once of the ordinary distinctions of *meum* and *tuum*. A celebrated anatomist of irreproachable character was so anxious to enrich his cabinet with a valuable specimen of pathological anatomy which had

smitten his fancy, that he actually directed one of his pupils to visit the place and steal it for him. The commission, however, was not executed. "If the larceny had been attempted only," says Marc, who relates the anecdote, and was himself the pupil charged with the commission, "and the attempt had been discovered, neither the professor or the pupil could have been deemed excusable." [1]

§ 195. Morbid activity of the sexual propensity is unfortunately of such common occurrence, that it has been generally noticed by medical writers, though its medico-legal importance has never been so strongly felt as it deserves. This affection, in a state of the most unbridled excitement, filling the mind with a crowd of voluptuous images, and ever hurrying its victim to acts of the grossest licentiousness, though without any lesion of the intellectual powers, is now known and described by the name of *aidoiomania*. We cannot convey a better notion of the phenomena of this disorder, than by quoting a few examples from Gall, by whom it was first extensively observed and its true nature discovered. Its milder forms and early stages, when not beyond the control of medical and moral treatment, are illustrated in the following cases.

§ 196. "A robust and plethoric young man came to reside in Vienna. Having no *liaisons*, he was unusually continent, and was soon attacked with erotic mania." Gall, pursuing the treatment indicated by his peculiar views of the origin of the disease, succeeded in restoring him in a few days to perfect health.

§ 197. "A well educated, clever young man, who, from his infancy almost, had felt strong erotic impulses, succeeded in controlling them to a certain extent, by means of equally strong devotional feelings. After his situation permitted him to indulge without constraint in the pleasures of love, he soon made the fearful discovery, that it was often difficult for him to withdraw his mind from the voluptuous images that haunted it, and fix it on the important and even urgent

[1] Marc, de la Folie, etc. ii. 259.

concerns of his business. His whole being was absorbed in sensuality." He obtained relief by an assiduous pursuit of scientific objects, and by finding out new occupations.

§ 198. "A very intelligent lady was tormented, like the subject of the last-mentioned case, from infancy, with the most inordinate desires. Her excellent education alone saved her from the rash indulgences to which her temperament so violently urged her. Arrived at maturity, she abandoned herself to the gratification of her desires, but this only increased their intensity. Frequently, she saw herself on the verge of madness, and in despair, she left her house and the city, and took refuge with her mother who resided in the country, where the absence of objects to excite desire, the greater severity of manners, and the culture of a garden, prevented the explosion of the disease. After having changed her residence for that of a large city, she was, after a while threatened with a relapse, and again she took refuge with her mother. On her return to Paris, she came to me, and complained like a woman in perfect despair. 'Everywhere,' she exclaimed, 'I see nothing but the most lascivious images; the demon of lust unremittedly pursues me, at the table, and even in my sleep. I am an object of disgust to myself, and feel that I can no longer escape either madness or death.'" [1]

§ 199. In the following cases, the mind was finally overwhelmed by the force of this frightful propensity, and sunk into complete and violent madness. "A man had lived many years in a happy and fruitful union, and had acquired by his industry a respectable fortune. After having retired from business and led an idle life, his predominant propensity gradually obtained the mastery over him, and he yielded to his desires, to such a degree, that, though still in possession of his reason, he looked on every woman as a victim destined to gratify his sensual appetite. The moment he perceived a female from his window, he announced to his wife

[1] Sur les Fonctions, iii. 317–319.

and daughters, with an air of the utmost delight, the bliss that awaited him. Finally, this partial mania degenerated into general mania, and shortly after, he died in an insane hospital at Vienna." [1]

§ 200. Pinel has related a very similar case. "A man had creditably filled his place in society till his fiftieth year. He was then smitten with an immoderate passion for venereal pleasures; he frequented places of debauchery, where he gave himself up to the utmost excesses; and then returned to the society of his friends, to paint the charms of pure and spotless love." His disorder gradually increased; his seclusion became necessary; and he soon became a victim of furious mania.

§ 201. Many more cases like these might be quoted, particularly from the writings of Esquirol, Georget, and Marc, but the above are sufficient to illustrate a truth as generally recognized as any other in pathology, and to convince the most skeptical mind, that if insanity, — or, in more explicit terms, morbid action in the brain inducing a deprivation of moral liberty, — ever exists, it does in what is called aidoiomania.

§ 202. A morbid propensity to incendiarism, or *pyromania*, as it has been termed, where the person, though otherwise rational, is borne on by an irresistible power, to the commission of this crime, has received the attention of medical jurists in Europe, by most of whom it has been regarded as a distinct form of insanity, annulling responsibility for the acts to which it leads. Numerous cases have been related, and their medico-legal relations amply discussed by Platner,[2] Vogel,[3] Masius,[4] Henke,[5] Gall,[6] Marc,[7] Friedreich,[8] and others.

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[1] Op. cit. sup. iii. 320.
[2] Quæstiones Medicinæ Forensis, 1824.
[3] Beitr. zur gerichtsärztl Lehere d. Zurechnungsfahigkeit, p. 10, 1825.
[4] System der gerichtlichen Arzneykunde für Rechtsgelehrte, 1818.
[5] Abhandl. gerichtl. Medic. iii. 1824.
[6] Sur les Fonctions, iv. 157–160.
[7] Annales d'Hygiene, x. 357.
[8] Handbuch der gericht. Psychologie, 393–435.

In a few of these cases the morbid propensity is excited by the ordinary causes of insanity; in a larger class it is excited by that constitutional disturbance which often accompanies the menstrual periods; but in the largest class of all, it occurs at the age of puberty, and seems to be connected with retarded evolution of the sexual organs. The case of Maria Franc, quoted by Gall from a German journal, who was executed for house-burning, may be referred to the first class. She was a peasant of little education, and, in consequence of an unhappy marriage, had abandoned herself to habits of intemperate drinking. In this state a fire occurred in which she had no share. "From the moment she witnessed this fearful sight, she felt a desire to fire houses, which, whenever she had drunk a few coppers' worth of spirit, was converted into an irresistible impulse. She could give no other reason, nor show any other motive for firing so many houses than this impulse which drove her to it. Notwithstanding the fear, the terror, and the repentance she felt in every instance, she went and did it afresh." In other respects her mind was sound. Within five years she fired twelve houses, and was arrested on the thirteenth attempt.[1]

§ 203. Among numerous other cases of this kind that have been reported, we have room for only two more. Eve Schebomska, twenty-two years of age, was guilty of four incendiary acts, to which she said she was impelled by an inward agitation that tormented her. This agitation which, however, did not prevent her from performing her domestic labors, was greatly augmented, according to the testimony of her mistress, when she had been some time without seeing her lover.[2] A peasant girl, named Kalinovska, seventeen years of age, while returning from a dance, where she had got quite heated, was suddenly seized with a desire to burn a building. She struggled with the desire for three days, when she yielded, and she declared that on seeing the flames burst out she experienced a joy such as she had never felt before.[3]

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[1] Op. cit. sup. iv. 158. [2] Klein, Annalen, xvi. 141. [3] Ibid. B. xii. 53.

§ 204. In the following cases the incendiary propensity was excited by disordered menstruation, accompanied in some of them by other pathological conditions. A servant girl, named Weber, aged twenty-two years, committed three incendiary acts. Her mistress had observed that she was sad; that she would frequently seem as if buried in thought, and would cry out in her sleep. It appeared in evidence that she had had a disease two years before, that was accompanied by violent pains in the head, disordered circulation, insensibility, and epileptic fits; and that since then menstruation had ceased.[1] The servant girl of a peasant, seventeen years old, that had been guilty of two incendiary acts, declared that she was constantly beset by an inward voice that commanded her to burn and then destroy herself. The first fire she regarded with calmness and even pleasure. The second time, she gave the alarm herself, and immediately after tried to hang herself. She had never manifested any mental disorder, but from her fourth year she had been subject to spasms which finally degenerated into epileptic fits that were unusually violent whenever they coincided with the menstrual period. A very severe fit occurred but a few days previous to the second incendiary act. The faculty of Leipzig, who were consulted respecting the case, terminate their report with saying, that "in consideration of the physical state of the accused, they do not consider it probable, that, at the periods when she committed the incendiary acts, she enjoyed the free use of her mental faculties."[2]

§ 205. The following examples of the last class of cases will show the nature of the exciting causes of the incendiary impulse, and the physical imperfections of its subjects. A servant girl was committed for two incendiary attempts on the premises of her master, in a German village, in 1830. On her examination before the magistrate she denied the charge, but subsequently confessed it while in prison. She assigned no reason for her conduct, acknowledged that she

[1] Ibid. B. xiii. 131.

[2] Platner, Op. cit. sup. P. ii.

had been well treated by her employers, and they expressed themselves perfectly satisfied with her. It appeared in evidence that she was in her twentieth year; that she had never menstruated; that since her thirteenth year, she had frequently had epileptic fits, two of which occurred on the day these attempts were made, one in the interval between them, the other after the last; and that for several days subsequently she had two fits daily in prison. It also appeared that she had been guilty of other incendiary acts when in the service of a different family. On one occasion she declared "that she felt badly, and that when she felt so, she knew not what she did." The physicians by whom she was examined, and who made reports to the proper authorities, stated that she was quiet in her demeanor, betraying no indication of a malicious disposition, inclined to talk to herself, and, in regard to mental capacity, obviously stupid and dull. They concluded that she was not responsible for criminal acts, and that those she was charged with proceeded from an incendiary impulse which was a consequence of "interrupted physical evolution." She was accordingly released by the court. Under appropriate treatment the menses were soon established, after which she had no return of her epilepsy, nor her pyromania.[1]

§ 206. A girl, fifteen years old, named Graborkwa, while suffering from nostalgia, or homesickness, made two incendiary attempts in order that she might be able to leave the service of her employers. She stated that from the moment she entered their service, she was unceasingly beset by the desire of burning buildings. It seemed as if a shade that was constantly before her, impelled her to acts of incendiarism. It appeared that she had long suffered violent pains in her head, and had never menstruated.[2]

§ 207. Dr. King of Brighton, England, has reported the case of a servant girl, between sixteen and seventeen, who was tried for setting fire to her master's house. She had previously

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[1] Neues Archiv des Criminalrechts. xiv. 393.

[2] Klein, Annalen, xii. 126.

borne a good character, and had no apparent motive for the act. It appeared that about a year before, she entered an infirmary, where she had, in succession, low fever, measles, scarlet fever, and strong symptoms of consumption — cough, expectoration, night sweats, and diarrhœa. She had never menstruated, had always been of a reserved, taciturn disposition, and had conducted herself in an eccentric manner on many occasions. She was acquitted.[1]

§ 208. A servant girl, seventeen years old, was guilty of incendiarism, for the purpose, as she stated, of being sent back to her parents. She exhibited no sign of mental derangement, though of very limited capacity. She was unusually short in stature, the sexual organs showed no signs of development, and the menses had never appeared.[2]

§ 209. That the evolution of the sexual functions is very often attended by more or less constitutional disturbance, especially in the female sex, is now a well-established physiological truth. The shock seems to be felt chiefly by the nervous system, which experiences almost every form of irritation, varying, in severity, from the slightest hysteric symptoms, to tetanus, St. Vitus's dance, and epilepsy. And when we bear in mind, also, that general mania is sometimes produced by this great physiological change, it cannot be deemed an extraordinary fact that partial mania, exciting to acts of incendiarism or murder, should be one of its effects. Still we would not be understood as favoring the opinion that every youth between the age of twelve and fifteen, guilty of incendiarism, is a subject of pyromania. The general principle of the power of the change in question to produce this disorder, is not alone sufficient. It is necessary to trace the connection between them in the particular case, and unless this can be done, we have no right to claim the benefit of the general truth. To aid us in the investigation of this point, it will be well to bear in mind the follow-

[1] London Medical Gazette, xii. 80.
[2] Platner, Op. cit. sup. xv.

ing considerations, laid down by Henke,[1] and adopted by Marc, in his excellent paper on this disorder.[2]

§ 210. 1. To prove the existence of pyromania, produced by the sexual evolution, the age should correspond with that of puberty, which is between twelve and fifteen. Sometimes, however, it may occur, especially in females, as early as the eleventh or tenth year, and, therefore, if the symptoms are well marked, we have a right to attribute them to this cause.

2. There should be present symptoms of irregular development; of marked critical movements, by means of which nature seeks to complete the evolution. These general signs are, either a rapid increase of stature, or a less growth and sexual development than is common at the age of the individual; an unusual lassitude and sense of weight and pain in the limbs; glandular swellings; cutaneous eruptions, etc.

3. If, within a short time of the incendiary act, there are symptoms of development in the sexual organs, such as efforts of menstruation in girls, they deserve the greatest attention. They will strongly confirm the conclusions that might be drawn from the other symptoms, that the work of evolution disturbed the functions of the brain. Any irregularity whatever of the menstrual discharge, is a fact of the greatest importance in determining the mental condition of incendiary girls.

4. Symptoms of disturbance in the circulating system, such as irregularity of the pulse, determination of blood to the head, pains in the head, vertigo, stupor, a sense of oppression and distress in the chest, are indicative in young subjects of an arrest or disturbance of the development of the sexual functions, and therefore require attention.

5. For the same reason, symptoms of disturbance in the nervous system, such as trembling, involuntary motions of

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[1] Op. cit. sup.

[2] Considérations médico-légales sur la monomania et particulièrement sur la monomania incendiaire. Annales d'Hygiène, x. 357–473.

the muscles, spasms, and convulsions of every kind, even to epilepsy, are no less worthy of attention.

6. Even in the absence of all other symptoms, derangement of the intellectual or moral powers would be strong proof, in these cases, of the existence of pyromania. Of the two, the latter is far the more common, and is indicated by a change in the moral character. The patient is sometimes irascible, quarrelsome; at others, sad, silent, and weeping without the slightest motive. He seems to be buried in a profound revery, and suddenly starts up in a fright, cries out in his sleep, etc. These symptoms may have disappeared and reappeared, or degenerated at last, into intellectual mania.

7. The absence of positive symptoms of mental disorder, as well as the presence of those which appear to show that the reason is sound, is not incompatible with the loss of moral liberty. The remarks of Marc on this point deserve to be quoted in full. "Even when, previously to the incendiary act, they have shown no evident trace of mental alienation, and been capable of attending to their customary duties; when, on their examinations, they have answered pertinently to questions addressed to them; when they have avowed that they were influenced by a desire of revenge; we cannot conclude with certainty, that they were in possession of all their moral liberty, and that, consequently, they should incur the full penalty of the crime. These unfortunates may be governed by a single fixed idea, not discovered till after the execution of the criminal act. Pyromania resulting from a pathological cause, may increase in severity, as this cause itself is aggravated, and suddenly be converted into an irresistible propensity, immediately followed by its gratification." [1]

§ 211. If the above considerations are carefully pondered by the medical jurist, he will be in little danger of mistake, in determining the question whether or not the incendiary

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[1] Op. cit. sup. 457.

act is excited by a pathological condition of the nervous system, incident to the evolution of the sexual functions. If it be decided in the affirmative, the acquittal of the accused should follow as a matter of course, though it might not square with the technical definitions of insanity, and the usual subtleties respecting moral liberty and freedom of the will. In the north of Germany, where pyromania in young subjects is remarkably frequent, the court is generally governed by the opinions of the medical experts, and thus the accused escapes the ignominious fate which is almost inevitable wherever the spirit of the English common law prevails.

§ 212. The last and most important form of moral mania that will be noticed, consists in a morbid activity of the *propensity to destroy;* where the individual, without provocation or any other rational motive, apparently in the full possession of his reason, and oftentimes, in spite of his most strenuous efforts to the contrary, imbrues his hands in the blood of others; oftener than otherwise, of the partner of his bosom, of the children of his affections, of those, in short, who are most dear and cherished around him. The facts here alluded to are of painful frequency, and the gross misunderstanding of their true nature, almost universally prevalent, excepting among a few in the higher walks of the professions, leads to equally painful results. In the absence of any pathological explanation of this horrid phenomenon, the mind seeks in vain, among secondary causes, for a rational mode of accounting for it, and is content to resort to that time-honored solution of all the mysteries of human delinquency, the instigation of the devil. Of the double homicide to which this affection gives rise, there can be no question which is most to be deplored, for, shocking as it is for one bearing the image of his Maker to take the life of a fellow-being with brutal ferocity, how shall we characterize the deliberate perpetration of the same deed, under the sanction of law and of the popular approbation? We trust, however, that the ample researches of writers of unquestionable veracity and ability, which are now just reaching

the attention of the legal profession, will be soon followed by a conviction of past errors, and a more rational administration of the criminal law. For the purpose of contributing to this object, it will be necessary to bring fully before the reader the result of these researches, and, in view of the importance of the subject, to risk the charge of prolixity by the number and length of the quotations.

§ 213. The form of disease now under consideration was first distinctly described by Pinel; and though its existence as a distinct form of monomania was, for a long time after, doubted, it has subsequently been admitted by the principal writers on insanity; by Gall and Spurzheim, Esquirol,[1] Georget, Marc, Andral, Orfila, and Broussais in France; by Conolly, Combe, and Prichard in England; by Hoffbauer, Platner, Ethmuller, Henke, and Friedreich in Germany; by Otto of Copenhagen; and by Rush in this country. It has received the various appellations of *monomanie-homicide*, *monomanie-meurtriere*, *mélancolie-homicide*, *homicidal insanity*, *instinctive monomania*. Esquirol, in his valuable memoir, first published in the shape of a note in the French translation of Hoffbauer's work, observes that homicidal insanity, or *monomanie-homicide*, as he terms it, presents two distinct forms, in one of which the monomaniac is always influenced by avowed motives more or less irrational, and is generally regarded as mad; in the other, there are no motives acknowledged, nor to be discerned, the individual being impelled by a blind, irresistible impulse. It is with the latter only that we are concerned, for the other is clearly a form of partial intellectual mania; but as this division has not been strictly made by nature, cases often occurring that do not clearly come under either category, the subject will be better elucidated by noticing all the forms of this affection, and seeing how intimately they are connected together.

[1] It is worthy of mention, that though Esquirol, in his article *Manie*, in the *Dict. Méd. Sci.*, expressed his disbelief in the existence of homicidal insanity unconnected with other mental alienation, he since not only retracted his opinion, but has published the very best contribution to our knowledge of the subject.

§ 214. In the first group of cases we have the simplest form of homicidal insanity, — that in which the desire to destroy life is not only prompted by no motive whatever, and solely by a violent impulse, but without any appreciable disorder of mind or body.

"In a respectable house in Germany, the mother of the family returning home one day, met a servant, against whom she had no cause of complaint, in the greatest agitation; she begged to speak with her mistress alone, threw herself upon her knees, and entreated that she might be sent out of the house. Her mistress, astonished, inquired the reason, and learned that whenever this unhappy servant undressed the lady's child, she was struck by the whiteness of its flesh and experienced the almost irresistible desire to tear it in pieces. She felt afraid that she could not resist the impulse, and preferred to leave the house." "This circumstance," says the narrator, "occurred in the family of Baron Humboldt, and this illustrious person permitted me to add his testimony."[1]

§ 215. "A young lady who had been placed in a *maison de santè*, experienced homicidal desires, for which she could assign no motive. She was rational on every subject, and whenever she felt the approach of this dreadful propensity, she shed tears, entreated to have the strait-waistcoat put on, and to be carefully guarded till the paroxysm, which sometimes lasted several days, had passed."[2]

§ 216. "M. R., a distinguished chemist and a poet, of a naturally mild and sociable disposition, committed himself a prisoner in one of the *maisons de santè* of the faubourg St. Antoine. Tormented by the desire of killing, he prostrated himself at the foot of the altar, and implored the divine assistance to deliver him from such an atrocious propensity, of the cause of which he could give no account. When he felt that he was likely to yield to the violence of this inclination, he hastened to the head of the establishment, and requested him to tie his thumbs together with a ribbon. This slight ligature was sufficient to calm the unhappy R., who

[1] Marc, consultation médico-légale, pour H. Cornier, p. 52. [2] Idem.

subsequently endeavored to kill one of his friends, and finally perished in a fit of maniacal fury." [1]

§ 217. The following case is recorded by Gall, who derived it from a German paper of April 13, 1820. "A carrier, belonging to the bailiwick of Frendenstadt, who had quitted his family in perfect health, was suddenly attacked by a paroxysm of furious madness, on the route between Aalen and Gemunde. His first insane act was to shut himself up in the stable with his three horses, to which he gave no fodder; and when departing he harnessed only two of his horses, accompanying the carriage, mounted on the other. At Moglengen he abused a woman; at Unterbobingen, he alighted, and walked before his horses with a hatchet in his hand. On the route between the last place and Hussenhofen, the first person he met with was a woman whom he struck several times with his hatchet, and left her lying in a ditch by the road side. Next, he encountered a lad thirteen years old whose head he split open; and shortly after he split the skull of a man, thirty years old, and scattered his brains in the road; and after hacking the body, he left his hatchet and carriage, and thus unarmed proceeded towards Hussenhofen. He met two Jews on the road, whom he attacked, but who, after a short struggle, escaped him. Near Hussenhofen, he assaulted a peasant who screamed till several persons came to his aid, who secured the maniac and carried him to Gemunde. They afterwards led him to the bodies of his victims, when he observed, 'It is not I, but my bad spirit, that has committed these murders.'" [2]

§ 218. William Brown was tried at Maidstone, England, in 1812, for strangling a child whom he accidentally met one morning while walking in the country. He took up the body and laid it on some steps, and then went and told what he had done, requesting to be taken into custody. On the trial, he said he had never seen the child before, had no malice against it, and could assign no motive for the dreadful act. He bore an exemplary character, and had never been

[1] Marc, op. cit. 65.

[2] Sur les Fonctions, etc. iv. 103.

suspected of being insane.[1] It is needless to say that he was hanged.

§ 219. A country gentleman, enjoying good health and easy circumstances, consulted Esquirol in regard to his singular and unhappy condition. He related that he had read the indictment of Henriette Cornier, which, however, did not very strongly excite his attention. In the course of the night he suddenly awoke with the thought of killing his wife who was lying beside him. He left his wife's bed for a time, but within three weeks the same idea seized upon his mind three times, and always in the night. During the day, considerable exercise and occupation preserved him from this fearful inclination. He evinced not the slightest mental disorder; his business was prosperous; he had never experienced any domestic chagrins; and he had no cause of complaint or jealousy in regard to his wife whom he loved, and with whom he never had had the least disagreement. With the exception of a light headache occasionally, he had always been well and free from pain. He is sad and troubled about his condition, and has quitted his wife for fear lest he might yield to the force of his desire.[2]

§ 220. In most cases of homicidal insanity the presence of some physical or moral disorder may be detected; and though none is mentioned in those above related, there is reason to suppose that it might have been ascertained by a more thorough examination. It is a curious fact, however, that homicidal desires of the intensest kind will sometimes flit through the mind, while the individual, though capable of judging of his feelings, is unconscious of being otherwise than perfectly well. Marc, the distinguished medical jurist, relates, that passing over a bridge in Paris one day, he observed a lad sitting on the parapet of the bridge, eating his breakfast, when he was seized with an almost irresistible desire to push him over into the river. The idea was but a

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[1] Knapp and Baldwin's Newgate Calender, iv. 80.

[2] Des Maladies Mentales, ii. 830.

flash, but it filled him with such horror, that he rapidly crossed over to the opposite trottoir, and got out of the way as quick as possible. Talma, the actor, also assured him, on hearing the story, that he had experienced the same propensity under very similar circumstances.[1] In the following group of cases the homicidal fit was obviously accompanied or preceded by disease or physical disorder of some kind.

§ 221. The following case is related by Gall, who obtained it from Dr. Zimmermann of Krumback. "A peasant, born at Krumback, Swabia, who never enjoyed very good health, twenty-seven years old, and unmarried, had been subject from his ninth year to frequent epileptic fits. Two years ago, his disease changed its character without any apparent cause, and ever since, instead of a fit of epilepsy, this man has been attacked with an irresistible inclination to commit murder. He felt the approach of the fit many hours, and sometimes a whole day, before its invasion, and from the commencement of this presentiment, he begged to be secured and chained that he might not commit some dreadful deed. 'When the fit comes on,' says he, 'I feel under a necessity to kill, even if it were a child.' His parents, whom he tenderly loved, would be the first victims of this murderous propensity. 'My mother,' he cries out with a frightful voice, 'save yourself, or I must kill you.' Before the fit he complains of being exceedingly sleepy, without being able to sleep; he feels depressed, and experiences slight twitchings of the limbs. During the fit, he preserves his consciousness, and knows perfectly well that in committing a murder, he is guilty of an atrocious crime. When he is disabled from doing injury, he makes the most frightful contortions and grimaces, singing or talking in rhyme. The fit lasts from one to two days. When it is over, he cries out, 'Now unbind me. Alas! I have cruelly suffered, but I rejoice that I have killed nobody.'"[2]

§ 222. On the fifteenth February, 1826, Jacques Mounin,

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[1] Marc, de la Folie, etc. ii. 478.

[2] Gall, op. cit. iv. 104.

after many acts of violence and fury, escaped from his family who wished to restrain him, scaled the walls of several adjoining properties, and took to the fields, without shoes, hat, or weapons of any kind. His flight having excited considerable alarm, as after some epileptic attacks he had formerly given many signs of a blind fury, the local authorities were informed, and several persons despatched after him as quickly as possible. On arriving at a field, where many laborers were at work at a distance from one another, Mounin first threatened a man who was driving a cart, and immediately after pursued Joseph Faucher and pelted him with stones. The latter having escaped, he then approached an old man almost blind, named Mayet, whom he knocked down and killed by beating on the head with a large stone. He next attacked a man who was digging at a little distance, and killed him with a spade. A few minutes afterwards he met Propheti on horseback, whom he struck down with stones, but was obliged to leave him in consequence of the cries of his victim. He then chased some children who saved themselves by hard running, but he overtook a man at work and slew him. On being questioned during his confinement, Mounin said he well recollected having killed the three men, and especially one, a relative of his own, whom he greatly regretted; he added that in his paroxysms of phrensy he saw nothing but flames, and that blood was then most delightful to his sight. At the end of a few days' imprisonment, he seemed to have entirely recovered his reason, but subsequently he relapsed. The court declined trying him, under the conviction that he was insane while committing the murders above mentioned.[1]

§ 223. "Frederick Jensen, a workman, thirty-seven years old, had for some time suffered from fits of giddiness, which always obliged him to seize hold of the nearest objects. In the spring of 1828, he lost a beloved daughter, which afflicted him very much. The state of his health was nevertheless perfect in mind as well as in body, when he, one day (Sun-

[1] Georget, Discussion médico-légale, etc. 153.

day, 28th September, 1828) after dinner, told his wife that he would take a walk with his son, a boy ten years old. He did so, and went with him to the green which encircles the citadel. When he came there, — he now relates, 'a strange confusion came over me;' it appeared like a matter of absolute necessity to him to drown his son and himself in the waters at the citadel. Quite unconscious of what he was doing, he ran towards the water with the boy in his hand. A man, surprised at his behavior, stopped him there, took the boy from him, and tried to persuade him to leave the water; but he became angry, and answered that he intended to take a walk, and asked, 'whether anybody had a right to forbid him to do so?' The man left him, but took the boy along with him. An hour afterwards he was taken out of the water, into which he had thrown himself, and taken to prison. As he still showed symptoms of insanity, he was bled and purged, and two days after, was brought into the hospital, and committed to the care of my friend, Dr. Wendt, who has perfectly cured him, and who kindly afforded me the opportunity to see and to speak with him. He now very quietly tells the whole event himself, but is not able to explain the cause of the suddenly rising desire to kill himself and the boy whom he loved heartily. This cause is only to be sought in congestion of blood in the brain, the same which before had caused his giddiness; and whether we adopt an organ of destructiveness in the brain or not, it is to be assumed that the propensity to kill himself and the son arose from a morbid excitation of a certain part of the brain. The disposition to congestion originated from a fall he suffered on the head in 1820." [1]

§ 224. A patient of Mr. Daniel of Newport Pagnell, England, was suffering under a derangement of the digestive organs, which rendered him irritable and desponding. "One day," says Mr. D., "I called upon him, and found him in a state of great agitation, — countenance flushed, eyes unusually bright and shining, pulse rapid, breathing hurried and

[1] Dr. Otto, in the Edinburgh Phrenological Journal, vi. 611.

disturbed, as though he were just recovering from some violent mental commotion. He assured me that nothing had occurred to disturb his equanimity, at least as far as his family or business was concerned; 'for all that,' said he, 'I have undergone a great trial, a trial which fills me with horror when I reflect upon it. I was lying on the sofa, and my wife and children were sitting by the fire; I had been talking to them very comfortably, when suddenly my eye caught the poker, — a desire came upon me I could not control; it was a desire to shed blood. I combated with it as long as I could. I shut my eyes and tried to think of something else, but it was of no use; the more I tried, the worse I became, until, at last, I could bear it no longer, and with a voice of thunder, I ordered them all out of the room. Oh, had they resisted — had they opposed me, I should have murdered them every one — I must have done it; no tongue can tell how I thirsted to do it.' On another occasion he met his youngest child, a sweet girl about six years old, on the landing of the staircase, where was a sash window, looking into the yard, being at an altitude of fifteen or sixteen feet from the ground. An impulse came upon him at that moment; he actually seized the child by the arm, and had his hand upon the frame of the window, when his better feelings mastered the desire, and he rushed into his bedroom, and lay all day in a state of horror and distraction." [1]

§ 225. Dr. Bucknill relates the following case which came under his own observation. "An agricultural laborer, of steady and industrious habits, had thought, talked, and read much on religious subjects; two years before his admission into the asylum, he left the Church of England and joined the Independents; twelve months after that, he became restless, gloomy, and reserved, irregular at his labors, and distressed about his soul. He was fully conscious of his state, and had great hopes of being cured in the asylum. He had shown no outward disposition to suicide or violence,

[1] American Jour. Insanity, iii. 13.

but had the constant feeling that he must destroy some one. None of his relations had been insane. On admission, he was twenty-six years of age, a fine, powerful man, six feet high, with more than the average intelligence of his class. He was aware that his mind was affected, and said, 'that his head was filled with vain and evil thoughts, and that the more he strove to get near the Scriptures, the further he was from them; he felt a strong desire to commit murder, which he struggled against, and thought a temptation from the devil.' His head was hot and he had some pain in it, but was otherwise in good health. In the course of a month he improved greatly, but relapsed after a visit from his friends; he, however, again improved, lost all his bad thoughts, and for some weeks, labored at spade husbandry. Whilst thus engaged, he one day came to the physician, and begged to be taken from the garden and placed in a safe ward, as he had experienced the strongest desire to kill some of the patients with his spade. His request was complied with, and from this time, he never again lost the homicidal feeling. To avoid the murderous assault to which he found himself urged, he often requested to be locked in his bedroom, and still more frequently tied his own hands together with a piece of packthread which he could have snapped with the greatest facility, but which, he said, enabled him to resist the temptation; he was sad and morose, but never displayed the slightest violence. Six months after his admission, he was attacked with pneumonia, first of one lung, and then of the other, partial softening took place, followed by hemorrhage, of which he died. On post-mortem examination, the membranes of the brain and the brain itself bore evident traces of disordered nutrition; the arachnoid was thick and opaque, and the cerebral convolutions at the vertex were atrophied." [1]

§ 226. Another curious form of homicidal insanity occurs in women, and seems to be connected with those changes in the system produced by menstruation and lactation. It is

[1] Unsoundness of mind in relation to criminal acts, p. 89.

a little remarkable that with few exceptions, the victim selected by the patient is always her own, or some other young child. Among several cases which Esquirol has related at length, are the two following, which are abridged from his memoir.

§ 227. Madam N., whom Esquirol received into his hospital, and whom he describes as being perfectly rational in her conversation and conduct, and of a mild, affable, and industrious disposition, very calmly related to him the circumstances connected with a strong inclination she felt to kill her child. After her last accouchement, fourteen months before, she had several hysterical fits, and was much troubled with pains in the head, stomach, and bowels; with vertigo, and ringing in the ears. These mostly disappeared, but she then became exceedingly capricious in her temper and affections, being alternately gay and sad, confiding and jealous, resolute and weak. In this condition, she heard of the murder committed by Henriette Cornier, when she was immediately seized with the idea of killing her infant, and one day when her child entered the room, she felt the most violent desire to assassinate it. 'I repelled the idea,' said she, 'and coolly inquired of myself, why I should conceive such cruel designs — what could put them into my imagination? I could find no answer. The same desire returned; I feebly resisted it, was overcome, and proceeded to consummate the crime. A new effort arrested my steps, I raised the knife to my own throat, saying to myself, better perish yourself, bad woman.' When asked the cause of these evil thoughts, she replied, that something behind her back urged her on. During the first fortnight of her stay in the hospital, she was afflicted by a return of the physical disturbances with which she was at first attacked, but at the end of six weeks was so much better, in consequence of a proper medical treatment, that she received her husband and child with joy, and lavished on the latter the tenderest caresses. Suddenly she perceived a cutting instrument, and was seized with the desire of snatching it up and committing two murders at once, — a thought which she suppressed only by flying from the room.

The symptoms of physical disturbance now again made their appearance, during which she was informed that her child was sick, and while extremely distressed and weeping at the news, 'she felt a violent desire,' to use her own expression, 'to stab or stifle it in her arms.' After about three months' residence at the hospital, she went away restored, and continued well.[1]

§ 228. A girl fourteen years old, of strong constitution and difficult temper, enjoyed apparently good health, though she had not menstruated. Once a month she complained of pain in the head, her eyes were red, she was irascible, gloomy, and restless; every thing went wrong with her, and she was particularly inclined to dispute with her mother who was always the object of her threats and abuse; and finally she became most violently angry, sometimes attempting her own life, and sometimes her mother's. When the fit arrived to this degree, the blood escaped from her mouth, nose, or eyes; she wept and trembled; the extremities became cold, and affected with convulsive pains; and her mind was filled with distress. The fit, which altogether continued one or two days, being over, she recovered her affection for her mother, and asked her forgiveness. She did not recollect all the circumstances of these fits, and denied with feelings of surprise and regret some of the particulars which were related to her. At the age of sixteen years, these fits of anger were often replaced by hysteric convulsions; the disease diminished progressively, but did not cease till she was seventeen years old, when the menses appeared. She afterwards married, and became an excellent mother.[2]

§ 229. Almira Brixey was a maid-servant in a respectable English family, and one day, in the spring of 1845, while the nurse was out of the room, she obtained a knife from the kitchen and cut the throat of her master's infant child. She then went down stairs and told what she had done, inquiring with some anxiety whether she would be hanged or transported. No delusions were detected, nor had she manifested

[1] Des Malad. Ment. ii. 821. [2] Idem. ii. 814.

any other mental peculiarity except some violence of temper about trivial matters, a short time before. She had expressed a little dissatisfaction with her share of her mistress's cast-off dresses, but beyond this, there did not appear to be a shadow of a motive. There was some proof, though not very definite, that she had labored under some menstrual disorders. She was acquitted and sent to Bethlehem hospital.[1]

§ 230. Esquirol relates another case communicated to him by Dr. Barbier of Amiens, which will be briefly noticed. This lady, Marguerite Molliens, twenty-four years old, had suffered for three years past pains in the epigastrium, and right side of the abdomen; headache, vertigo, noise in the ears, disturbance of vision, palpitation of the heart, constrictions of the throat, and trembling of the limbs. Her first child, which lived but three months, she loved and deeply regretted. Nine months ago she had another child. On the fifth day of her confinement she heard of Cornier's case, and was so deeply impressed with the story, that her thoughts dwelt upon it, and from that moment she feared lest she also might be similarly tempted. In spite of all her efforts, she gradually familiarized herself with the idea of killing her child. One day while dressing it, the thought of murdering it seized upon her mind and became a violent desire. She turned around, and perceiving a kitchen-knife on a table near her, her arm was involuntarily carried towards it. She saw that she could no longer control herself, and cried out for assistance. The neighbors came in and she soon became calm. Shortly after, she was separated from her child and sent to a hospital, where she finally recovered. It is worthy of note that when the pains in the head and epigastrium, from which she suffered greatly in the hospital, were worst, then the bad thoughts appeared to be most imperious.[2]

§ 231. Dr. Otto, of Copenhagen, relates that a female, who was received into a lying-in hospital of which he was physician, requested a private conference with him previously to her accouchement. She appeared to be in great

[1] Lond. Med. Gaz. xxxvi. 166. [2] Des. Malad. Ment. ii. 825.

agitation and embarrassment, and earnestly begged of him that she might not be left in the same chamber with other women and their infants, as it would be utterly impossible for her to resist the propensity she felt to destroy the latter. Her request was granted and she was carefully watched. Her delivery was easy, and the child was kept from her and afterwards sent to her mother. The young woman on leaving the hospital went into service, and would not return to her mother's, lest she might be tempted to destroy her infant. She declared that the sight of a very young infant kindled up a violent propensity to destroy its life. This woman was a peasant who had been seduced, but had never led a dissolute life, nor was in any way of corrupt manners. She had not been reproached, nor ill-treated by her parents, during pregnancy, nor was there the least cause for anxiety on account of the child, as her mother had engaged to provide for it. She entered into the service of a clergyman, and enjoyed good health. Some time afterwards she informed the doctor that she had lost nearly all propensity to infanticide.[1]

§ 232. The next case is recorded by Dr. Michu. "A country woman, twenty-four years of age, of a bilious, sanguine temperament, of simple and regular habits, but reserved and sullen manners, had been ten days confined with her first child, when suddenly having her eyes fixed upon it, she was seized with the desire of strangling it. This idea made her shudder; she carried the infant to its cradle, and went out in order to get rid of so horrid a thought. The cries of the little being who required nourishment, recalled her to the house; she experienced still more strongly the impulse to destroy it. She hastened away again haunted by the dread of committing a crime so horrible; she raised her eyes to heaven, went to the church and prayed. The whole day was passed by this unhappy mother in a constant struggle between the desire of taking away the life of her infant and the dread of yielding to the impulse.

[1] Medico-Chirurgical Review, O. S., xiii. 441.

She concealed her agitation until evening, when her confessor, a respectable old man, was the first to receive her confidence. He soothed her feelings, and counselled her to have medical assistance. 'When we arrived at her house,' says Michu, 'she appeared gloomy and depressed, and ashamed of her situation.' Being reminded of the tenderness due from a mother to her child, she replied: 'I know how much a mother ought to love her child; but if I do not love mine, it does not depend upon me.' She soon after recovered, the infant, in the mean time, having been removed from her sight." [1]

§ 233. Gall says he knew a woman, then twenty-six years old, who had experienced, especially at the menstrual periods, inexpressible torture, and the fearful temptation to destroy herself, and to kill her husband and children, who were exceedingly dear to her. She shuddered with terror, as she described the struggle that took place within her, between her sense of duty and of religion, and the impulse that urged her to this atrocious act. For a long time, she dared not bathe her youngest child, because an internal voice constantly said to her, 'let him slip, let him slip.' Frequently she had hardly the strength and time to throw away a knife which she was tempted to plunge into her own breast and her children's. Whenever she entered the chamber of her children, or husband, and found them asleep, she was instantly possessed with the desire of killing them. Sometimes she precipitately shut behind her the door of their chamber and threw away the key, to remove the possibility of returning to them during the night, if she should fail to resist this infernal temptation." [2]

§ 234. Another phase of homicidal mania occurs in puerperal women, within a few weeks or days after delivery. Sometimes it is accompanied by obvious bodily and mental disturbance, but frequently the homicidal act furnishes the first suspicion of derangement. Sometimes, the wretched

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[1] Memoir sur la monomanie-homicide, 99.

[2] Op. cit. sup. iv. 110.

mother is conscious of the propensity to destroy her new-born offspring, strives against it, and begs that it may be removed from her sight; sometimes the propensity arises suddenly, and overpowers all resistance at once. After the act is accomplished, she may be conscious of what she has done, and be able to describe her sensations; or she may awake as from a dream, with little or no consciousness of the terrible deed.

§ 235. Lord Hale relates, that "in 1688, at Aylesbury, a married woman of good reputation, being delivered of a child, and having not slept many nights, fell into a temporary phrensy, and killed her infant in the absence of any company, but company coming in, she told them she had killed her infant, and there it lay; she was brought to jail presently, and after some sleep she recovered her understanding, but marvelled how or why she came thither; she was indicted for murder, and the jury found her not guilty, to the satisfaction of all who heard it."[1]

§ 236. A young and hitherto wealthy woman, the mother of two children in humble life, but not indigence, applied to the Hitchin Dispensary, in consequence of the most miserable feelings of gloom and despondency, accompanied by a strong, and, according to her own account, an almost irresistible propensity, or temptation, as she termed it, to destroy her infant. The feeling first came upon her about a week before, when the child was a month old; and she now sunk into a state of extreme dejection. She begged to be continually watched, lest she should yield to this strange propensity. Her appetite was bad, bowels loose, stools dark and offensive; she had occasionally discharged portions of tape-worms from her bowels. Pulse natural, sleeps ill. This condition lasted from October 1824 until March 1825, when the patient took the smallpox. During the eruption, the mind was serene and happy, and she was free from the dreadful temptation, by which she had been previously harassed; but upon the subsidence of the smallpox, the disease returned with its former

[1] 1 Pleas of the Crown, 36.

horrors. About the middle of April, the disease, without any apparent cause, began to decline, and she was, at the end of the month, discharged from the dispensary, at her own request. She remained free from any disorder till the spring of this year, 1828, when she had another child; and about a month after the birth of it, she was assailed by the propensity to destroy it. The symptoms continued till the child was half a year old; and from that time have gradually declined. Occasionally, a sort of change takes place for a few days; the propensity to destroy the infant entirely subsides, and the place of it is supplied by an equally strong disposition to suicide. It is worthy of remark, that during the most distressing periods of her disease, she is perfectly aware of the atrocity of the act to which she is so powerfully impelled, and prays fervently to be enabled to withstand so great a temptation.[1]

§ 237. Martha Prior, wife of a laboring man, showing symptoms of mania, soon after delivery, her physician ordered her to be watched, and not allowed to have the child. On the 13th day after delivery, while her attendants were out of the way, she ordered her little daughter to bring her the child, and soon after, a razor, saying she wanted to cut the hard skin from her hands. She instantly cut off the child's head. To those who first came in, she seemed calm and collected, said it was what she, all along, had been intending to do; and added, that she would not care if any one served her the same. Her mind had previously been quite unsteady. She often said, she knew she was going to die, and was certain she was going to hell. She had borne a good character.[2]

§ 238. In another class of cases, the exciting cause of the homicidal propensity is of a moral nature, operating upon some peculiar physical predisposition, and sometimes followed by more or less physical disturbance. Instead of being urged on by a sudden, imperious impulse to kill, the subjects

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[1] Prichard, Insanity in relation to Jurisprudence, 122.

[2] Jour. Psycol. Medicine, i. 478.

of this form of the affection, after suffering for a certain period much gloom of mind and depression of spirits, feel as if bound by a sense of necessity to destroy life, and proceed to the fulfilment of their destiny with the utmost calmness and deliberation. So reluctant have courts and juries usually been to receive the plea of insanity in defence of crime, deliberately planned and executed by a mind in which no derangement of intellect has ever been perceived, that it is of the greatest importance that the nature of these cases should not be misunderstood. They are of not unfrequent occurrence, and are often attended by such horrid, heart-rending circumstances, that nothing but the plainest and strongest conviction of their true character can ever save their subjects from the last penalty of the law. The near affinity of this form of the affection to those already described will be manifest, upon a careful consideration of the few cases here given.

§ 239. The following is related by Dr. Otto of a surgeon who had served in several campaigns against the French. "He always appeared of a lively and cheerful disposition, till certain pecuniary matters ruffled his temper and made him thoughtful and melancholy. He was now frequently observed to be studying the Scriptures, and reciting passages from the Bible. He was happily married, and had four children. One morning he summoned his wife and children into the court of the house, and there informed them that it was his intention to kill them all, and afterwards himself. He descanted coolly on the propriety of homicide, and told his wife she must first be a spectator of the destruction of her children, and then her own turn would come. The woman appears to have possessed great presence of mind, and acted with great prudence on such a trying occasion. She entirely coincided in the justness of her husband's sentiments, and cheerfully agreed to the proposed tragedy. But she appeared suddenly to recollect that it would be proper for herself, as well as the children, to confess and take the sacrament previous to their appearing before their final judge, — a ceremony which would necessarily require several

days' preparation. The monomaniac replied that this was a reasonable and proper procedure; but, in the mean time, it would be absolutely necessary that he took some person's life that day. With this purpose in view, he instantly set off for Salzbourg. His wife, having placed the children in security, made the best of her way to the above-mentioned town, and went directly to professor O., the friend of her husband, for advice. The monomaniac had already been there, and not finding the professor at home, had gone away. The woman now recollected and told the professor, that her husband had threatened *his* life for some imaginary slight; but, at that time, she thought he was in jest. About midday the monomaniac came back to the professor's residence, and appeared quite calm and peaceable. The professor invited him to go and see the hospital of the town where he had a curious dissection to make, and they sat down to take some refreshments before proceeding thither. At this repast, the monomaniac informed his host that he had lately been most immoderately disposed to commit homicide, and that he had actually murdered a peasant that morning on his way to town. He confessed, also, that he had entered a coffee-house for the purpose of committing a second act of this kind, but had been diverted from his purpose. The murder of the peasant was a fiction, as was afterwards proved. The professor now turned the discourse to other subjects, and on all other topics the monomaniac was perfectly rational. They now set off for the hospital, and in their way thither the monomaniac met with an old acquaintance and fellow-campaigner. While they were greeting each other, the monomaniac suddenly struck his friend a violent blow on the pit of the stomach, exclaiming in a burst of laughter, that he had done it for him, as he had hit the cœliac plexus. The professor reprimanded him in strong terms for this dishonorable and cruel act, at which the monomaniac was much surprised, and informed his preceptor that he was irresistibly led to commit homicide, and cared not who was the victim of this propensity. The professor now asked him, somewhat tauntingly, if he had not a design against *his* life. The monomaniac ac-

knowledged it; but added that he had sufficient control over himself to prevent the destruction of his benefactor. The professor took his arm, and they proceeded to the hospital, where the monomaniac was immediately confined. He almost instantly became furiously maniacal, and in a few months after died." [1]

§ 240. Gall quotes an account of Catherine Hansterin, who, in consequence of being detected in a petty theft which was reported to her husband, a man of harsh and austere manners, of whom she stood greatly in fear on account of his cruel treatment of her, became exceedingly melancholy and depressed. After suffering much and long from her cruel husband, she determined to leave him, and accordingly departed, taking her infant two and a half months old, and her little girl who had declared she would rather die than be left behind with her father. "The thought which this reply brought to her mind, the distress that afflicted her, the fear of what would happen to her children in case of her death, and, at the same time, her ardent desire to terminate her own existence; — all these united, gave rise to the barbarous design of drowning her two children. Having arrived at the bank of the Danube, she made her little girl kneel down and pray God for a good death. She then placed the infant in the hands of her sister, blessed them both, and making the sign of the cross, pushed them into the river. This done, she returned to the village and told what had passed." [2]

§ 241. Dr. Otto has published the case of Peter Neilsen, a joiner, aged forty-seven years, who drowned four of his seven children. He appears to have experienced some misfortunes, but was not in positive want of the necessaries of life at the moment when he committed the horrid deed. Many persons who conversed with him on the same day both before and after the transaction, testified that he was not intoxicated, nor the least agitated in mind. He was, on

[1] Medico-Chirurgical Review, o. s. xiii. 446.
[2] Op. cit. iv. 152.

the contrary, placid and tranquil. No domestic altercations, of any moment, had occurred, but he was disconcerted at not readily getting a new lodging on being turned out of that which he previously occupied. His love to his children was testified to by all. He confessed that the idea of killing his children came into his head on the morning of the day that he put the idea into execution, and that the impulse was quite irresistible. He determined to drown the three younger boys and spare the daughter who was older. But she insisted on accompanying her father and brothers in the walk he proposed, and though he endeavored to persuade her to return, she would not. He averred that his motive for destroying the boys was the fear of not being able to maintain them; whereas he would have spared the girl, not because he loved her more, but because she was better able to maintain herself. Having arrived at a turf-pit he first embraced his children, and then pushed them all into the water. He stood by unmoved, and saw them struggle and sink. He then returned quietly to the town and told what he had done. He was then led back to the turf-pit, and beheld the dead bodies of his children without evincing any emotion. For a moment he wept, when he saw the bodies opened (for the purpose of medico-legal proof of the kind of death), but soon regained his tranquillity. He affirmed that he did not destroy his offspring in order to procure happiness for them in heaven, nor from any desire to be put to death himself, as he wished to live.[1]

§ 242. The case of Henriette Cornier, which occurred in Paris a few years since, has, in consequence of the imposing weight of medical opinions that were delivered on her trial, and of the discussions to which it gave rise in the various shapes of reports, newspaper criticisms, and elaborate treatises from some of the most distinguished physicians of that capital, contributed, more than any other single event, to advance our knowledge of homicidal insanity. A case so celebrated deserves a particular notice here. The facts as

[1] Edinburgh Phrenological Journal, v. 87.

related below are contained in the indictment (*acte d' accusation*), which is given at length by Georget in his account of the trial.[1]

§ 243. Henriette Cornier, a female servant aged twenty-seven years, was of a mild and lively disposition, full of gaiety, and remarkably fond of children. In the month of June, 1825, a singular change was observed in her character; she became silent, melancholy, absorbed in reverie, and finally sank into a kind of stupor. She was dismissed from her place, but her friends could obtain from her no account of the causes of her mental dejection. In the month of September she made an attempt to commit suicide, but was prevented. In the following October she entered into the service of dame Fournier, but there she still presented the melancholy and desponding disposition. Dame Fournier observed her peculiar dejection, and endeavored in vain to ascertain its cause; the girl would talk only of her misfortune in losing her parents at an early age, and of the bad treatment she received from her guardian. On the 4th of November, her conduct not having been previously different from what it usually was, she suddenly conceived and immediately executed the act for which she was committed.

§ 244. About noon her mistress went out to walk, having told Cornier to prepare dinner at the usual hour, and to go to a neighboring shop kept by dame Belon, to buy some cheese. She had frequently gone to this shop, and had always manifested great fondness for Belon's little girl, a beautiful child nineteen months' old. On this day she displayed her usual fondness for it, and persuaded its mother, who at first was rather unwilling, to let her take it out to walk. Cornier then hastened back to her mistress's house with the child, and laying it across her own bed, severed its head from its body with a large kitchen knife. She subsequently declared that while executing this horrid deed, she felt no particular emotion,—neither of pleasure, nor of pain. Shortly after, she said, the sight of the horrible spectacle before her eyes

[1] Discussion médico-légale, 70.

brought her to herself, and she expressed some emotions of fear, but they were of short duration. At the end of two hours, during which time she had remained chiefly in her own chamber, dame Belon came and inquired for her child, from the bottom of the staircase. "Your child is dead," said Henriette. The mother, who at first thought she was only in jest, soon became alarmed, and pushed forward into the chamber, where she witnessed the bloody sight of the mutilated fragments of her child. At that moment, Cornier snatched up the head of the murdered child, and threw it into the street, from the open window. The mother rushed out of the house, struck with horror. An alarm was raised; the father of the child and the officers of justice with a crowd of persons entered the room. Henriette was found sitting on a chair near the body of the child, gazing at it, with the bloody knife by her, her hands and clothes covered with blood. She made no attempt to escape, nor to deny the crime; she confessed all the circumstances, even her premeditated design, and the perfidy of her caresses, which had persuaded the unhappy mother to intrust her with the child. It was found impossible to excite in her the slightest emotion of remorse or grief; to all that was said, she replied, with indifference, "I intended to kill the child." When closely and earnestly interrogated, as to her motives for committing this dreadful act, she replied that she had no particular reason for it; that the idea had taken possession of her mind, and that she was destined to do it. When asked why she threw the head into the street, she answered that it was for the purpose of attracting public attention, so that people might come up to her chamber and see that she alone was guilty. The nature of her extraordinary replies, the want of motives for such an atrocious deed, the absence of every kind of emotion, and the state of stupor in which she remained, fixed the attention of the medical men who were called in, and impressed them with the belief that she was mad. On the examination before the magistrate, she confirmed the above statements respecting her mental condition, adding, among other things, that she had been unhappily married seven years before;

that she attempted to drown herself "because she was ennuied at changing her place of service so often;" that she knew her crime deserved death, and she desired it.

§ 245. She was tried for the first time, on the 27th of February, 1826. She then appeared to be in a state of great nervous irritation; her limbs trembled; her eyes were fixed; and her understanding was dull and stupid. A few days previous, the court, at the request of her counsel, appointed a medical commission consisting of Adelon, Esquirol, and Léveillé, to examine the accused and all the documents of the case, and report on her "present moral state." Accordingly they reported that they were unable to detect any sign or proof of mental derangement; but added that it is extremely difficult in some cases, to establish the existence of insanity, it requiring a long intimacy with the individual and numerous opportunities of watching him under every variety of circumstance, none of which they had possessed in this case. In fine, they reported that though they could not adduce any positive proof of her insanity, yet they were equally unable to pronounce her sane.

§ 246. This report not being satisfactory, the trial was postponed to another session, and the prisoner was sent to the Salpétrière to be observed by the above-named physicians. After recapitulating their observations, which were continued three months, they came to the following conclusions: "first, that during the whole time Cornier was under examination, from the 25th of February to the 3d of June, they had observed in regard to her moral state, great mental dejection, extreme dulness of mind, and profound chagrin; secondly, that the present situation of Cornier sufficiently explains her moral state, and thus does not of itself indicate mental alienation either general or partial." They also added that it was due to the cause of justice and to their own conscience, to declare that their judgment of her actual moral condition could not be considered final, if it were proved, as stated in the *acte d'accusation*, that long before the 4th of November, the character and habits had changed; that she had become sad, gloomy, silent, and rest-

less; for then that which might be attributed to her present situation, could be only the continuation of a melancholy state that had existed for a year.[1]

Cornier was again brought to trial on the 24th of June, and the jury returned a verdict of guilty of "committing homicide voluntarily, but not with premeditation;"[2] and accordingly she was sentenced to hard labor for life.

§ 247. Sometimes the individual confesses a motive for the homicidal act, which is rational and well founded, but altogether inadequate to lead to such an action in a sound mind. There are seldom wanting other circumstances in the previous conduct, conversation, or bodily health, to confirm and establish beyond a reasonable doubt the presence of insanity, the suspicion of which is thus excited. All doubt of the correctness of this conclusion is removed in the first of the following cases, which is introduced to illustrate this form of the disorder, by the pathological changes discovered after death, and in the second by the previous existence of insanity.

§ 248. At Rouen, in 1820, a young man named Trestel, seventeen or eighteen years old, whose family was respectable and in easy circumstances, obtained an almost complete meeting of its various members to the number of thirteen, and endeavored to poison them all by putting arsenic into the soup. The severe vomiting which it produced, however,

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[1] Georget justly observes that the meaning of the committee would have been better expressed in the following language: "The present moral state of Henriette Cornier is doubtful. It may be the result either of a painful moral affection, or of melancholy; which it really is, the nature of the prior circumstances must decide. If, several months before the 4th of November, her character had changed; if she became sad and gloomy without cause; if she had a motiveless propensity to suicide; and, finally, if the homicide she committed was without cause, and under the circumstances related in the *acte d'accusation*, it is certain that she has been and still is laboring under a kind of mental alienation."

[2] This verdict is very properly censured by Georget, who says, that if the accused was mad, she ought to have been acquitted; and that if not mad, she acted from premeditation, and should have suffered the punishment of death.

was the means of saving all their lives. It appeared in evidence, that Trestel was so imbecile at fifteen years of age, that he was incapable of executing the slightest commissions; that he had strange and incoherent ideas; that he was sad, taciturn, and incapable of being instructed; that he was in the habit of addressing letters to an imaginary female whom he was in love with. On the trial, as well as on the previous examination, Trestel alleged as his motive for committing the crime, that his father had frequently threatened to send him to sea. Notwithstanding these strong indications of mental deficiency and alienation, he was convicted and sentenced to be executed; but on the day appointed for the execution, he killed himself by taking poison. His body was examined by Dr. Vingtrinier, surgeon of the prisons, in the presence of three other medical men, and there was found inflammation of the arachnoid membrane of the brain, characterized by thickening, induration, and redness, and by its almost entire adhesion to the pia mater. In short, not one of the four physicians had the least doubt of the existence of arachnoid inflammation of very long standing. However uncertain other symptoms and tests of insanity may be, this at least is sure; and we are left with the comfortable reflection, that an unfortunate youth paid the last penalty of the law for the consequences of bodily disease.[1]

§ 249. "A Portuguese, by the name of Rabello, was employed by a mechanic in the western part of Litchfield county, Connecticut, to assist him as a shoemaker. He had been in the neighboring towns, and his conduct appeared singular, but usually inoffensive. In the family of the mechanic he had appeared pleasant, and grateful for the kindness which had been extended to him. One day, a little son of his new employer accidentally stepped upon his toes. The lad was only twelve years old. Rabello was exceedingly angry, and in the moment of his rage threatened the boy's life. The next day he appeared sullen, refused his food, and looked wild and malicious. The following morn-

[1] Georget, Discussion médico-légale sur la Folie, 65, 165.

ing, he went to the barn-yard with the boy, seized an axe, and killed him on the spot, mangling him in the most shocking manner. He went deliberately away from the house, but was soon overtaken by those in pursuit. He acknowledged that he killed the boy, and gave as a reason that he stepped on his toes. It was found, from the evidence produced at his trial, that this was an offence considered most heinous, and not to be forgiven. Many instances were given in which the same accident had produced the same excitement of temper, often accompanied with threats. One of the physicians who visited him in jail, stepped, apparently by accident, upon his toes while counting his pulse. The pulse, he declared, rose immediately forty strokes in a minute, his countenance flashed up, and he appeared instantly in a rage."[1] Insanity was pleaded in defence on his trial, and on this ground he was acquitted by the jury. It appeared in evidence, that his life and conduct had been marked by much singularity during his residence in this country; and after the trial it was ascertained from the Portuguese consul at New York, that he had been previously deranged. He had been employed as a clerk in a mercantile house at Madeira, to which place he had returned a "little deranged," after having been to Brazil. From Madeira he went to Philadelphia, where he got employment as a clerk in the house of some merchants, natives of Madeira, who knew he had been a little deranged, but supposed he had recovered. One day one of the house came in and asked him if anybody had called, when Rabello told him he would break his head, if he asked him any such questions. During the rest of his life, in jail, he was raving a large part of the time.

§ 250. There is another class of homicidal cases, not unfrequent of late, which may, most properly, be considered in this connection. I refer to those juvenile delinquents by whom the fatal act is committed before or about the age of puberty. Deliberately and quietly they seek the means and

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[1] Dr. Woodward's Reports and other documents relating to the State Lunatic Hospital at Worcester, Mass., 177.

opportunity for accomplishing their purpose, they make no attempt to escape, confess what they have done, but give no uniform or intelligible account of their motives. These cases cannot be referred to moral imbecility, because the act is at variance with their habitual conduct and character; nor to intellectual mania, because they exhibit no trace of delusion or other intellectual disturbance; nor to moral depravity, because their previous life presents no indications of depravity, and no apparent motive can be detected. In some, there is reason for suspecting the sexual evolution described above (§ 210), and in others, the influence of physical disorders; but there remains a portion in which we can find no clew of this kind. The following will sufficiently illustrate this form of disorder.

§ 251. A. B. a girl about fourteen years old, when alone, one day, with her infant half-brother, gave it a dose of arsenic which she had bought a short time previously. The child died, and she made known her own agency in the event, but never assigned any motive or explanation of her conduct. Her person was well formed and well developed, her countenance pleasing and intelligent, and her manners modest and respectful. It did not appear that she had ever suffered any physical or mental disorder, or expressed any feeling of dislike towards the child or any other member of the family. The only facts that appeared in evidence, which could be supposed to have any bearing upon the event, were that she had received but little education, had always been exposed to low associations, and about this time had taken an active part in spiritual rappings, as a medium, in which capacity she predicted the death of this child within a week or two. If her character had not previously been fair, it might be supposed that she was governed by the design of verifying her own prediction, but under the actual circumstances, this supposition requires a step in crime scarcely warranted by our knowledge of human nature. She was acquitted, from some defect in the evidence relative to the act.[1]

[1] For other cases, see Taylor's Med. Jurisp. p. 645; Annales d'Hygiène, viii. 397.

§ 252. Dr. Wigan states that many of these juvenile delinquents, who came under his observation, had been subject to nasal hemorrhage, which had recurred with considerable regularity, and that it was generally after its temporary suspension that the criminal act was committed. To the question put to these persons, why did you do this thing, he could never obtain any other answer than the following, — "I do not know — I had no motive — I believed I was bound to do something." He thinks the irresistible impulse depends upon a local congestion of the brain, and does not show itself until about two years after puberty.[1]

§ 253. Sometimes the homicidal act is accompanied, and perhaps excited, by a momentary hallucination. Cases of this kind seem to form the connecting link between the forms of the disease already noticed, and those hereafter described in which the homicidal act is prompted by persistent delusions. In the following case there was also some previous mental disturbance which, under other circumstances, might have been entirely overlooked. L. M., a ship carpenter, aged thirty-one, became interested in a "revival of religion." In the course of a week or two, he lost his interest in the revival, and became depressed, but continued to work at his trade. This depression, at the end of a few weeks, was followed by considerable hilarity and nervous irritability, unattended, however, by violence, or any desire to do harm. After this had continued a week or two, he went out one day into the field with his father, to work upon hay. On their way, he suddenly exclaimed, "there is the devil!" and at the same moment thrust a pitchfork into his father, killing him on the spot. No judicial proceeding was instituted, and in the course of two or three days, he was sent to the McLean Asylum for the Insane, from which he was discharged as recovered, after a stay of about five and a half months. "During the first two or three months," says Dr. Bell, who communicates the case, "he was somewhat dull and dejected, but not more so, perhaps, than would have been natural under

[1] Journal of Psychological Medicine, 1849.

the circumstances. He employed himself diligently every day. He gradually became more active, but never evinced an ordinary share of spirits, nor interested himself in the affairs of the world. Nothing which he said or did, from first to last, showed the least incoherence, impertinence, or delusion. His disposition was kind, and his temper equable, and no other nervous disorder was observed beyond some slowness of apprehension and sluggishness of the mental operations. His bodily health was uniformly good. He afterwards led a quiet, blameless life in his native town, occasionally having a week or two of mental depression. At the end of eighteen years, he was seized with an attack of acute mania, was sent to a hospital directly, and soon after died. Four of this man's uncles and two of his aunts have been insane, and in all of them, the disease was preceded by unusual attention to religious subjects."

§ 254. In the last phasis of the murderous propensity that will be noticed, though it is not properly homicidal mania, there exists some delusion, and the individual acts from motives — absurd and unfounded it is true — but still motives to him. In consequence of the universal prevalence, in some shape or other of religious fanaticism, and of the excitement of the religious sentiments thereby produced, a perversion of these sentiments is one of the most common exciting causes of the murderous propensity in this class of cases. When thus excited its fury knows no restraints, and whole families are slaughtered in a single paroxysm. Pinel gives the case of a vine-dresser, who thought himself commissioned to procure the eternal salvation of his family by killing them, or by the baptism of blood, as he called it; and accordingly executed his commission so far as to kill two of his children, when he was arrested and confined. Fourteen years after, when he was thought to be convalescent, he conceived the project of offering up an expiatory sacrifice, by killing all who might come within his reach, and he succeeded in wounding the keeper and cutting the throats of two other lunatics before he was arrested.[1]

[1] Sur l'Aliénation Mentale, § 130.

§ 255. Sometimes the individual, even when in easy circumstances, imagines that he is coming to want, and to avoid this calamity, he kills his family and generally himself. The following case presents an illustration of this very common manifestation of mental disorder.

"Captain James Purington, of Augusta, Maine, a rich, independent farmer, of steady, domestic habits, dark complexion, grave countenance, reserved in company, never looking in the face of persons he addressed, obstinate in his opinions, though he frequently changed his religious notions voluntarily, died a decided believer in universal salvation, often expressed anticipation of the moment when his family would be happy, and sometimes how happy he should be if they should die at once. He was very avaricious, and elated or depressed as his affairs were prosperous or adverse. In August, 1805, he moved to a new farm, which he rapidly improved. He seemed happy till within a few weeks of his death. The uncommon drought depressed him greatly, lest his family should suffer for want of bread, and his cattle starve. On Sunday, the 6th of July, 1806, Mrs. Purington and the eldest daughter being at church, the second daughter saw her father writing a letter which he, perceiving that he had been overlooked, attempted to hide. She asked him what he had been writing. He said 'nothing,' and asked for his butcher-knife, saying he wanted to sharpen it. Having made it very sharp, he stood before the glass and *seemed preparing to cut his throat.* His daughter, terrified, cried, 'what are you doing?' He calmly said, 'nothing;' and laid the knife away. This was told to his wife; she searched for the letter and found it. [It was addressed to his brother, and stated that he was about going a long journey, and directed him to take charge of his children.] On the 7th of July, at dinner-time, he found his wife sitting in the barn weeping; she disclosed the cause; he said he did not intend suicide; but he had a presentiment his death was near. Towards the close of the following day, he ground the axe; when the family went to bed, he was reading the Bible; it was found open on the table at Ezekiel, chap. ix. On the 9th of July, at two

o'clock in the morning, his eldest son alarmed the neighbors; they found Capt. Purington lying on his face, his two sons aged five and eight in bed, with their throats cut; the razor on the table by his side, the axe near; in the next room, Mrs. Purington, aged forty-four, in bed, her head almost severed from the body; near her, on the floor, a daughter murdered, ten years old; in the other room in bed, a daughter aged nineteen, most dreadfully butchered; the second, aged fifteen, most desperately wounded, reclining her head on the infant, eighteen months old, whose throat was cut. The eldest son was wounded, when Capt. Purington attacked and dreadfully mangled the second, twelve years old, who attempted to escape; Capt. Purington did not speak a word." [1] [2]

§ 256. The various forms of homicidal insanity have thus been illustrated, by selecting a few cases only, from a mass that would fill a considerable volume.[3] Now, however these cases may differ from one another, whether the individual has succumbed to the propensity to kill after a long struggle with his better nature, or has yielded to it at once and instantaneously; whether harassed by previous disease of body or despondency of mind, or apparently in sound health and with a cheerful disposition; whether his passions have been tamed by the discipline of a good education, or allowed to seek their gratification without restraint; they all, except the last two, possess one feature in common, the *irresistible, motiveless impulse to destroy life.* Before entering upon any discussion relative to the nature of these forms of insanity, it may be well to consider the following analysis of their most important features.

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[1] Parkman: Illustrations of Insanity.

[2] Perhaps the most extraordinary case on record of homicidal insanity accompanied by delusion, is one related by Mr. Scoresby, the Arctic navigator, and copied into Waldie's Circulating Library, vol. xii. p. 258, where the captain of a British vessel on the passage from St. Andrews, N. B., to Ireland, succeeded in getting his crew into his power, and murdering them all in detail, excepting one, who escaped into the hold desperately wounded.

[3] They who are desirous of extending their acquaintance with this class of cases, will find the later ones which have appeared in the English courts, noticed in Taylor's Medical Jurisprudence, 635.

§ 257. I. In nearly all, the criminal act has been preceded, either by some well-marked disturbance of the health, originating in the head, digestive system, or uterus, or by an irritable, gloomy, dejected, or melancholy state, in short, by many of the symptoms of the incubation of mania. The absence of particulars in some of the cases we find recorded, leaves us in doubt how general this change really is; but a careful examination would, no doubt, often, if not always, show its existence where, *apparently*, it has never taken place.

II. The impulse to destroy is powerfully excited by the sight of murderous weapons, by favorable opportunities of accomplishing the act, by contradiction, disgust, or some other equally trivial and even imaginary circumstance.

III. The victims of the homicidal monomaniac are mostly either entirely unknown or indifferent to him, or they are among his most loved and cherished objects; and it is remarkable how often they are children, and especially his own offspring.

IV. While the greater number deplore the terrible propensity by which they are controlled, and beg to be subjected to restraint, a few diligently conceal it, or if they avow it, declare their murderous designs, and form divers schemes for putting them in execution, testifying no sentiment of remorse or grief.

V. The most of them having gratified their propensity to kill, voluntarily confess the act and quietly give themselves up to the proper authorities; a very few only — and these, to an intelligent observer, may show the strongest indications of insanity — fly, and persist in denying the act.

VI. While the criminal act itself is, in some instances, the only indication of insanity, the individual appearing rational, as far as can be learned, both before and after the act; in others, it is followed or preceded, or both, by strange behavior, if not open and decided insanity.

VII. Some plead insanity in defence of their conduct, or an entire ignorance of what they did; others deny that they labored under any such condition, and at most acknowledge only a perturbation of mind.

§ 258. Apart from the obvious similarity of all these cases to those where the murderous propensity coexists with delusions, as in the last two, the circumstances under which the homicidal act is perpetrated, furnish strong ground for believing, that they depend on mental alienation in some form or other; so different are these circumstances from those which attend the commission of crime. In homicidal insanity, murder is committed without any motive whatever strictly deserving the name; or at most, with one totally inadequate to produce the act in a sane mind. On the contrary, murder is never criminally committed without some motive adequate to the purpose in the mind that is actuated by it, and with an obvious reference to the ill-fated victim. Thus, the motive may be theft, or the advancement of any personal interest, in which case it will be found that the victim had or was supposed to have property, or was an obstacle to the designs or expectations of another. Or it may be revenge, and then the injury, real or imaginary, will be found to have been received by the murderer from the object of his wrath. In short, with the criminal, murder is always a means for accomplishing some selfish object, and is frequently accompanied by some other crime; whereas, with the homicidal monomaniac, murder is the only object in view, and is never accompanied by any other improper act.

§ 259. The homicidal monomaniac, after gratifying his bloody desires, testifies neither remorse, nor repentance, nor satisfaction, and if judicially condemned, perhaps acknowledges the justice of the sentence. The criminal either denies or confesses his guilt; if the latter, he either humbly sues for mercy, or glories in his crimes, and leaves the world cursing his judges, and with his last breath exclaiming against the injustice of his fate.

The criminal never sheds more blood than is necessary for the attainment of his object; the homicidal monomaniac often sacrifices all within his reach to the cravings of his murderous propensity.

The criminal lays plans for the execution of his designs;

time, place, and weapons are all suited to his purpose; and when successful, he either flies from the scene of his enormities, or makes every effort to avoid discovery. The homicidal monomaniac, on the contrary, for the most part, consults none of the usual conveniences of crime; he falls upon the object of his fury, oftentimes without the most proper means for accomplishing his purpose; and perhaps in the presence of a multitude, as if expressly to court observation; and then voluntarily surrenders himself to the constituted authorities. When, as is sometimes the case, he does prepare the means, and calmly and deliberately executes his project, his subsequent conduct may be still the same as in the former instance.

The criminal often has accomplices, and generally vicious associates; the homicidal monomaniac has neither.

The acts of homicidal insanity are generally, perhaps always, preceded by some striking peculiarities in the conduct or character of the individual, strongly contrasting with his natural manifestations; while those of the criminal are in correspondence with the tenor of his past history or character.

In homicidal insanity, a man murders his wife, children, or others to whom he is tenderly attached; this the criminal never does, unless to gratify some evil passion, or gain some other selfish end, too obvious to be overlooked on the slightest investigation.

§ 260. A stronger contrast than is presented, in every respect, between the homicidal act of the real criminal and that of the monomaniac, can hardly be imagined; and yet we are obliged to acknowledge that men of learning and intelligence have been often unable or unwilling to perceive it, though, undoubtedly, the number of such is fast diminishing. Much of the unwillingness manifested by jurors to abide by the result to which the above distinctions would necessarily lead them, arises from those feelings of horror and indignation excited by the perpetration of cold-blooded murders, which incapacitate them from discriminating with their usual acuteness between the various causes and motives

of human action. Besides, notwithstanding the great similarity, for the most part, between these cases, one will occasionally occur, where, from defect of information, no little knowledge of insanity and of human nature is required to find one's way through the mists of doubt and obscurity in which it is involved. When, therefore, as in the case of jurors generally, the mind is not fitted by any of this preparation so necessary to a successful investigation of difficult cases, it seizes only on some of the most obvious, though perhaps least important points which they present, and of course the verdict will often be deplorably at variance with the dictates of true science.

CHAPTER VIII.

LEGAL CONSEQUENCES OF MANIA.

§ 261. MAN being destined for the social condition, has received from the author of his being the faculties necessary for discovering and understanding his relations to his fellow men, and possesses the liberty, to a certain extent, of regulating his conduct agreeably or directly opposed to their suggestions. For the manner in which this power is used he is *morally* responsible, the elements of responsibility always being the original capacity, the healthy action, and the cultivation of the moral and intellectual faculties, — the measure of the former being in proportion to the degree in which the latter are possessed. In *legal* responsibility, the last element above mentioned is not admitted, and the first to a very limited extent only, the second alone being absolutely essential. The relation of original incapacity to legal responsibility has already been discussed, when treating of MENTAL DEFICIENCY; that of cerebral disease now comes up for consideration.

§ 262. The influence of this condition on responsibility will obviously be proportioned to its severity and the extent of its action; and though we cannot hope to become acquainted with all its grades, there is no reason why we may not be able to recognize and identify some of the more common and prominent. If men had agreed to receive some particular analysis and arrangement of the affective and intellectual faculties, and to assign to each a portion of the brain as its material organ, we might then, by studying the derangements of each faculty, ascertain, in some measure, how far they affect the actions of one another. But as no

such unanimity exists, we can only consider, as we have in a preceding chapter, the observations that have been made on the derangement of a few particular faculties, and form our opinions relative to their influence, by the general tenor of human experience.

SECTION I.

LEGAL CONSEQUENCES OF INTELLECTUAL MANIA.

§ 263. The common law relating to insanity, as before intimated, is open to censure, not so much on account of the manner in which it modifies the civil and criminal responsibilities of the lunatic, as of the looseness, inconsistency, and incorrectness of the principles on which the fact of the existence of the disease is judicially established. The disabilities it imposes on this unfortunate class of our fellow men are founded in the most humane and enlightened views, and have for their object the promotion of their highest welfare. To incapacitate a person from making contracts, bequeathing property, and performing other civil acts, who has lost his natural power of discerning and judging, who mistakes one thing for another, and misapprehends his relations to those around him, is the greatest mercy he could receive, instead of being an arbitrary restriction of his rights.

§ 264. In opposition to that principle of the common law, which makes the lunatic who commits a trespass on the persons or property of others, amenable in damages to be recovered by a civil action,[1] Hoffbauer declares, that if the patient is "so deranged that he is no longer master of his actions, he is under no responsibility, nor obliged to make reparation for injuries."[2] He gives no reason for this opinion, and we are unable to see how it can be even plausibly

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[1] *Weaver* v. *Ward*, Hobart, 134; *Butterly* v. *Darling*, Com. Pleas, New York; Nat. Intelligencer, March 30, 1841.

[2] Op. cit. § 131.

supported. To the maniac, who, when restored to his senses, discovers that during his derangement he has committed an injury to his neighbor's property, indemnity for which will strip him of his own possessions and reduce him to absolute beggary, his recovery must seem indeed like escaping from one evil only to encounter a greater. Such a possible consequence of madness, it is certainly painful to think of; but as the damage is produced and must be borne by one party or the other, we cannot hesitate to say which it should be; for though it may be hard for a person thus to suffer for actions committed while utterly unconscious of their nature, it would manifestly be the height of injustice to make another suffer, who was equally innocent and perhaps equally unconscious of the act.

§ 265. There is one operation of the common law, however, which is justly a cause of complaint, namely, that by which lunatics, even when under guardianship, are subject to be imprisoned like others, in default of satisfying a civil execution obtained against them;[1] because, whether such imprisonment be considered as a penal or a merely coercive measure, it is altogether inapplicable to the insane. It cannot coerce one who has no control over his own property, and whose mental condition is supposed to be such that he is unable to see any relation between the means and the end; and to punish a person for what he himself had no agency whatever in doing, is a violation of the first principles of justice. To incarcerate some madmen in a common jail would, in all probability, aggravate their disorder, and if the confinement were protracted to the extent which the law would allow, render it utterly incurable.

§ 266. The civil disabilities above mentioned, are not incurred by every one laboring under mental derangement; the measure of insanity necessary to produce this effect, or in legal phrase, the fact of the party's being *compos* or *non compos mentis*, is a question to be submitted to judicial investigation, the result of which will depend on the views of indi-

[1] Shelford on Lunacy, 407; Ex parte *Leighton*, 14 Mass. Rep. 207.

viduals relative to the effect of insanity on the mental operations, and to the respect due to opinions and decisions already promulgated. General intellectual mania, as we have represented it, should be followed, to the fullest extent, by the legal consequences of insanity; but partial intellectual mania does not necessarily render a person *non compos*, or so impaired in mind as to be no longer legally responsible for his acts, any more than every disease of the lungs or stomach prevents a patient from attending to his ordinary affairs, and enjoying a certain measure of health. The question when mania invalidates a person's civil acts and annuls criminal responsibility, and when it does not affect his liability in these respects, has occasioned considerable discussion, and is certainly the most delicate and important that the whole range of this subject embraces. No general principles concerning it are to be found in the common law except Lord Hale's (§ 8), and cases seem to have been decided with but little reference to one another, according to the medical or legal views which happened at the time to possess the minds of the court and jury. As insanity has become better known, decisions have occasionally been more correct, but as the prevalence of these improvements has not been universal, this branch of jurisprudence has often retrograded, and thus the mind of the inquirer is confused by an array of opinions diametrically opposed. Correct general principles on this subject, therefore, are yet to be established; and in furtherance of this object, we shall endeavor to lay down such legal consequences of partial intellectual mania, as seem to be warranted by correct medical knowledge of insanity, and by enlightened principles of justice.

§ 267. We see some persons managing their affairs with their ordinary shrewdness and discretion, evincing no extraordinary exaltation of feeling or fancy, and on all but one or a few points, in the perfect enjoyment of their reason. It has been elsewhere remarked (§ 158), that strange as it may appear, it is no less true, that notwithstanding the serious derangement of the reasoning power which a person must have experienced, who entertains the strange fancies that

sometimes find their way into the mind, it may still be exercised on all other subjects, so far as we can see, with no diminution of its natural soundness. The celebrated Pascal believed at times that he was sitting on the brink of a precipice over which he was momentarily in danger of falling, and a German professor of law, mentioned by Hoffbauer, thought the freemasons were leagued against him, while he discharged the duties of his chair with his usual ability; and numberless are the instances of worthy people who have imagined their heads turned round, or their limbs made of butter or glass, who nevertheless manage their concerns with their ordinary shrewdness. A surgical friend once brought me a young man who had strongly importuned him to perform some operation on his nose which, he fancied, had got strangely twisted, though to everybody else, it seemed perfectly right. The matter gave him much uneasiness, but in every other respect he was fully himself. He was overseer of a cotton-mill, and discharged his duties satisfactorily to his employers. No one following the dictates of his own judgment, would seriously propose to invalidate such of these men's acts as manifestly have no reference to the crotchets they have imbibed. To deprive them of the management of their affairs, under the show of affording them protection, would be to inflict a certain and a serious injury, for the purpose of preventing a much smaller one that might never occur. The principle that we would inculcate is, that monomania invalidates a civil act only when such act clearly comes within the circle of the diseased operations of the mind.

§ 268. It is not to be understood, however, that in every case of partial mania we have only to ascertain the insane delusion, and then decide whether or not the act in question could have come within the range of its influence. In many instances the delusion is frequently changing, in which case, it is not only difficult to determine how far it may have been connected with any particular act, but the mind in respect to other operations, has lost its original soundness, to such a degree that it cannot be trusted in the transaction of impor-

tant affairs. Still, this is not a sufficient reason against applying the general principle where it can be done without fear of mistake. In doubtful instances we must be governed by the circumstances of the case, and this course, with all its objections, seems far more rational than the practice of universal disqualification.

§ 269. The validity of a marriage contracted in a state of partial mania, is not to be determined exactly upon the above principles. Here it is not sufficient to consider merely the connection of the delusion with the idea of being married, nor should we form any conclusion in favor of the capacity of the deranged party, from the propriety with which he conducts himself during the ceremony. The mere joining of hands and uttering the usual responses are things not worth considering; it is the new relations which the married state creates, the new responsibilities which it imposes, that should fix our attention, as the only points in regard to which the question of capacity can be properly agitated. In other contracts, all the conditions and circumstances may be definite and brought into view at once, and the capacity of the mind to comprehend them determined with comparative facility. In the contract of marriage, on the contrary, there is nothing definite or certain; the obligations which it imposes do not admit of being measured and discussed; they are of an abstract kind, and constantly varying with every new scene and condition of life. With these views we are obliged to dissent from the principle laid down by the Supreme Judicial Court of Massachusetts, in a case of libel for divorce for insanity of the wife at the time of the marriage, that "the fact of the party's being able to go through the marriage ceremony with propriety, was *primâ facie* evidence of sufficient understanding to make the contract."[1] If, by making the contract, is meant merely the giving of consent, and the execution of certain forms, then, indeed, the fact of the party's going through the ceremony with propriety, may be some evidence of sufficient understanding to make it; but if the expression includes the slight-

[1] 4 Pickering, 32.

est idea of the nature of the relations and duties that follow, or even of the bonds and settlements that sometimes accompany it, then the fact here mentioned is no evidence at all of sufficient capacity. Sir John Nicholl, looking at the subject in a different light, has very properly said, that "going through the ceremony was not sufficient to establish the capacity of the party; and that foolish, crazy persons might be instructed to go through the formality of the ceremony, though wholly incapable of understanding the marriage contract." [1] In a similar case, Lord Stowell, then Sir William Scott, had previously observed, on the fact given in evidence that the party "had manifested perfect propriety of behavior," during the ceremony, "that much stress was not to be laid on that circumstance; as persons, in that state, will nevertheless often pursue a favorite purpose, with the composure and regularity of apparently sound minds." [2]

§ 270. Within a few years, a class of cases has made its appearance, exceedingly embarrassing to the medical jurist. The woman, after preparing for a union to which her head and heart had apparently fully consented, and going through the marriage ceremony with the utmost propriety, manifesting all the while nothing unusual in her deportment, immediately after imbibes an insuperable aversion towards her husband, shuns his company, and perhaps refuses to live with him. In some of the cases, other singularities of conduct soon appear, one after another, till at last the woman becomes a subject of unequivocal insanity. In others, however, this strong repugnance towards the husband continues to be the principal, if not the only symptom, of mental disorder, but so closely do they resemble the former in other respects, that we can have no hesitation in regarding them as merely varieties of the same affection. The pathological character of these cases seems to be sufficiently obvious. From some cause or other, the patient has been affected with a cerebral irritation not sufficient to disturb the mental manifestations, and which, under favorable circumstances,

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[1] *Browning* v. *Read*, 2 Phillimore, 69.

[2] *Turner* v. *Meyers*, 1 Haggard, 414.

might have entirely disappeared. In this condition, marriage, with the crowd of new thoughts and feelings with which it is preceded, operates as a powerfully exciting cause, and under its influence the pathological affection is completely developed. It is not strange, certainly, that marriage should occasionally find a female brain in this morbid condition; nor that, in case of such a conjunction, the result here mentioned should follow. The legal relations of these cases are not so satisfactorily settled. In some of them, a close scrutiny of the conduct and condition previous to marriage, may detect indubitable signs of insanity; while in others no such signs can be discovered, though subsequently the mental disorder may have become no less obvious. Now, are we prepared to make a distinction between them? to grant divorce in one class, and refuse it in the other? This, no doubt, would be highly convenient, but we are not sure that it would be strictly just. While we see not how legal relief can be withheld in the former class, yet in regard to the latter, we recoil from the idea of depriving a woman of her protection and support, at the very moment when the severest of earthly calamities has overtaken her, merely on the strength of what we may call a pathological abstraction. How these cases have been regarded by the courts, we have had no means of ascertaining.

§ 271. The principles that should regulate the legal relations of the partially insane are few and simple. While they should be left in possession of every civil right that they are not clearly incapable of exercising, they should be subjected to the performance of no duties involving the interests or comfort of individuals, which may be equally well discharged by others. In the former instance we continue the enjoyment of a right that has never been abused; in the latter, we refrain from imposing duties on people who may not be qualified to perform them. We cannot, therefore, agree with Hoffbauer, that a monomaniac should be allowed to manage the affairs of another, or be appointed to the office of guardian, however much we might be inclined to respect the validity of his civil acts. In some instances it is impossible

to know or to conjecture, beforehand, how the predominant idea in his mind may be affected by his connection with persons and things that have hitherto been foreign to his thoughts; while in others, it is far within the range of probability that the consequences will be ruinous to himself and others. Here, for example, is a man who has long believed that he has an eel in his stomach, but on no other point has he manifested the slightest mental impairment. If a monomaniac is ever a suitable person to manage the affairs of another, it would seem, at first thought, that this one certainly is; yet nothing would be more injudicious than to intrust him with any such duty, for in all probability, though perfectly upright in his dealings, he would be irresistibly impelled to dissipate the property of others, as he always has his own earnings, in constant journeyings from one empiric to another, in purchasing medicines, and consulting physicians, for the purpose of getting relieved from his fancied tormenter. This exclusion, as Chambeyron, the French translator of Hoffbauer, justly remarks, does the monomaniac no wrong; it frees him from a great responsibility, and prevents dangers, possible at least, either to the ward or to him.

§ 272. The above views, though not yet distinctly received in courts, are countenanced by many distinguished physicians and jurists. Hoffbauer supports them to the fullest extent; Esquirol sanctions them, by interposing no word of disapprobation; Georget admits them in application to civil cases; and Paris and Fonblanque have explicitly recognized their correctness in the following passage: "When a man suffers under a partial derangement of intellect, and on one point only, it would be unjust to invalidate acts which were totally distinct from, and uninfluenced by this so limited insanity; but if the act done bear a strict and evident reference to the existing mental delusion, we cannot see why the law should not also interpose a limited protection, and still less why courts of equity, which in their ordinary jurisdiction relieve against mistake, should deny their aid in such cases."[1]

[1] 1 Medical Jurisprudence, 302.

§ 273. Mr. Evans, the translator of Pothier's Treatise on Obligations, expresses an opinion on this subject, no less positive and precise. "I cannot but think," he says, "that a mental disorder operating on partial subjects, should, with regard to those subjects, be attended with the same effects as a total deprivation of reason; and that on the other hand, such a partial disorder, operating only upon particular subjects, should not, in its legal effects, have an influence more extensive than the subjects to which it applies; and that every question should be reduced to the point, whether the act under consideration proceeded from a mind fully capable, in respect of that act, of exercising free, sound, and discriminating judgment; but in case the infirmity is established to exist, the tendency of it to direct or fetter the operations of the mind should be in general regarded as sufficient presumptive evidence, without requiring a direct and positive proof of its actual operation." [1]

§ 274. It has been already remarked, that the practice of the English courts in regard to partial insanity has been regulated by no settled principles. Of the truth of this remark we have a striking illustration in Greenwood's case, which is so often cited. Mr. Greenwood was bred to the bar, and acted as chairman at the quarter sessions, but becoming diseased, and receiving in a fever a draught from the hand of his brother, the delirium, taking its ground then, connected itself with that idea; and he considered his brother as having given him a potion, with a view to destroy him. He recovered in all other respects, but that morbid image never departed; and that idea appeared connected with the will by which he disinherited his brother. Nevertheless, it was considered so necessary to have some precise rule, that, though a verdict had been obtained in the common pleas against the will, the judge strongly advised the jury to find the other way, and they did accordingly find in favor of the will. Further proceedings took place after-

[1] 2 Pothier on Obligations, Appendix, 24.

wards, and concluded in a compromise.[1] No one would be hardy enough to affirm that Greenwood's mind was perfectly rational and sound, and as his insanity displayed itself on all topics relating to his brother, every act involving this brother's interests, to go no further, ought consequently to have been invalidated. A plainer case cannot well be imagined.

§ 275. More enlarged and correct views prevailed in the able and elaborate judgment delivered by Sir John Nicholl, in the case of *Dew* v. *Clark*,[2] where the existence of partial mania is recognized, and the necessity is strongly inculcated of bearing in mind the fact of its partial operation on the understanding, while determining its influence on the civil acts of the individual. The point at issue was the validity of the will of one Scott (who left personal property amounting nearly to £40,000), in which he bequeathed the complainant who was his daughter and only child, a life interest in a small portion of his estate, the most of which was devised to his nephews. The object of inquiry was, whether the extraordinary conduct and feelings of the deceased towards his daughter had any real cause, or was solely the offspring of delusion in a disordered mind; and to this end an unparalleled mass of evidence was offered by each party. It was proved by the nephews, that the testator had considerable practice as a surgeon and medical electrician from 1785 to 1820, and that at all times down to the latter period when he had a paralytic stroke, he managed the whole of his pecuniary and professional affairs in a rational manner, and rationally conducted all manner of business. They admitted that he was a man of an irritable and violent temper; of great pride and conceit; very precise in all his domestic and other arrangements; very impatient of contradiction, and imbued with high notions of parental authority. They represented him to have entertained rigid notions of the total

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[1] *White* v. *Wilson*, 13 Vesey, 88, and *Greenwood* v. *Greenwood*, 3 Curteis, 337.

[2] 3 Addams, 79.

and absolute depravity of human nature and of the necessity of sensible conversion, and contended that all the singularities of his conduct could be attributed to his peculiar disposition and belief, without resorting to insanity for an explanation. By the daughter, it was shown, by a body of evidence that placed the fact beyond the shadow of a reasonable doubt, that from an early period of her life, he manifested an insane aversion towards her. It appears that he was in the habit of describing her, even to persons with whom he was not intimately acquainted, as sullen, perverse, obstinate, and given to lying; as a fiend, a monster, a very devil, the special property of satan; and charging her with vices, of which it was impossible that a girl of her age could be guilty. The peculiar and unequalled depravity of his child, her vices, obstinacy, and profligacy were topics on which he was constantly dwelling, and his general deportment towards her not only negatived all idea of natural affection, but betrayed a most fiend-like temper. His manner towards her was fiery and terrific; the instant she appeared, his eye flashed with rage and scorn, and he spurned her from him as he would a reptile. He compelled her to do the most menial offices, such as sweeping the rooms, scouring the grates, washing the linen and the dishes; to live in the kitchen, and be sparingly fed. He once stripped her naked, when ten or eleven years old, tied her to a bed-post, and after flogging her severely with a large rod intertwisted with brass wire, rubbed her back with brine. Repeatedly, and on the most trivial occasions, he struck her with his clinched fists, cut her flesh with a horsewhip, tore out her hair, and once aimed at her a blow with some weapon which indented a mahogany table, and which must have killed her, had she not avoided it. Now it was abundantly proved that there existed no real cause whatever for this strange antipathy, but that the daughter was of an amiable, obliging, and docile disposition, — that she had always shown a great filial affection for her father, — that she conducted at home and abroad with the utmost propriety and decorum, — that she was a person of strictly moral and religious habits, and was so

considered and known to be by the friends of the deceased and others of high reputation and character. The court, in making up its decision, declared that the question at issue was, "not whether the deceased's insanity in certain *other* particulars, as proved by the daughter, should have the effect of defeating *a* will *generally*, of the deceased, or even *this* identical will, — but whether his insanity, on the subject of his daughter, should have the effect of defeating, not so much *any* will (*a* will *generally*) of the deceased, as this identical will." Accordingly, considering it proved that the will was the direct, unqualified offspring of that morbid delusion concerning the daughter, thus put into act and energy, it was pronounced to be *null* and *void* in law. In this decision we see the prevalence of those more correct and profound views of insanity, which have resulted from the inquiries of the last few years.

§ 276. The same principle had been previously laid down in the following case which was adjudicated in Kentucky, in 1822. George Moore made his will in April, 1822, and shortly after died. It was the validity of this will which was the point at issue. About twenty-four years previous to his death, he had a dangerous fever, during which he imbibed a strong antipathy towards his brothers, imagining that they intended to destroy or injure him, though they attended him throughout his illness, and never furnished the slightest foundation for his belief. This antipathy continued to the day of his death, with a single exception, when he made a will in their favor, but afterwards cancelled it. When asked by one of the witnesses why he disinherited his brothers he became violently excited, and declared that they had endeavored to get his estate before his death. The court, in its decision, observe, that "he cannot be accounted a free agent in making his will, so far as his relatives are concerned, although free as to the rest of the world. But however free he may have been as to other objects, the conclusion is irresistible, that this peculiar defect of intellect did influence his acts in making his will, and for this cause it ought not to be sustained. It is not only this groundless hatred or malice to his brethren

that ought to affect his will, but also his fears of them, which he expressed during his last illness, conceiving that they were attempting to get away his estate before his death, or that they were lying in wait to shoot him, while on other subjects he spoke rationally; all of which are strong evidences of a derangement in one department of his mind, unaccountable indeed, but directly influencing and operating upon the act which is now claimed as the final disposition of the estate." [1]

§ 277. Esquirol has related a case of a very similar kind, where a person conceived an antipathy against his brothers, sisters, and other relatives, who, he believed, were seeking to destroy him. Under the influence of this delusion he made testamentary dispositions, and Esquirol being consulted respecting their validity, gave it as his opinion that the testator was laboring under insanity.[2]

§ 278. On the other hand, testamentary dispositions which are founded on motives that might be supposed to govern a sane mind, and present, on their face, no indications of insanity, have not been disturbed, though the mind were confessedly laboring under some degree of derangement. The following case was decided in strict accordance with this principle.

At a session of the supreme court of Massachusetts, in Worcester county, April, 1843, the probate of a will was contested on the ground of the insanity of the testator who had bequeathed the most of his property to a nephew, though having children of his own. It appeared in evidence, on the one hand, that the testator, when under the immediate influence of strong drink, to which he was intemperately addicted, manifested some aberration of mind, and for several years before his death had persisted in the declaration that his children were not legitimate, as he had never been married to their mother. On the other hand, it appeared, that his only son was intemperate, and neglected and abused his

[1] *Johnson* v. *Moore's Heirs*, 1 Little, 371.

[2] Annales d' Hygiène Publique, iii. 370.

parents; that his daughter, her husband and children, also neglected him; and that for many years, there was no intercourse among the various members of the family. The nephew had always maintained friendly relations with the testator and ministered to his wants and infirmities. Although he had lived with the mother of his children, as husband and wife, forty-nine years, yet no certificate or record of the marriage could be found, and it did not appear very improbable that the marriage ceremony had never been performed. He had always managed his property, which was of considerable amount, prudently and intelligently, and the will was properly drawn and executed, giving good reasons also for its bequests. In short, it was a rational act, rationally done, and was established by the verdict of the jury.[1]

§ 279. Lord Brougham, however, has laid down the doctrine, that in civil cases, partial insanity should have the same legal consequences, as the general form of the disease. The idea of partial unsoundness, in the common acceptation, is incompatible, he thinks, with the unity and individuality of the mind. If the mind were an aggregate of several faculties, one or more of them might certainly become unsound, while the rest remained unaffected, and it would be very proper to consider the acts of the individual, in reference to this point. But if the mind is indivisible, we are unable to limit exactly the operation of any unsoundness by which it is affected. Delusion, as long as it exists, whether much or little under control, is a manifestation of insanity, and hence no confidence can be placed in the acts or any act of a diseased mind, however apparently rational that act may appear to be, or may in reality be, because we have no security that the lurking delusion, the real unsoundness, does not mingle itself with, or occasion the act. Hence, if a person believing himself to be Emperor of Germany, should make his will, and we were quite convinced that, had any one spoken of the

[1] For the facts in this case, I am indebted to Dr. S. B. Woodward, then Superintendent of the Lunatic Hospital at Worcester, who gave his testimony on the trial, as an expert.

German diet, or abused the German emperor, the testator's delusion would have at once broken forth, then we must pronounce the will void, be it rational and efficacious in every respect as any disposition of property could be. Now, the true issue in the case, which does not seem to be very clearly apprehended by his Lordship, is, whether or not the admitted unsoundness *did* influence the testamentary dispositions, and on this point evidence is sought in the character of the will itself. The attentive reader will not fail to see the lamentable inconsistency of the doctrine here put forth, with that which the same person has promulgated in regard to criminal cases. (§§ 37, 39.)[1]

§ 280. It must now be regarded as the settled doctrine of English and American courts, that partial insanity may or may not affect the validity of a will. But it is not so well settled that a will is *necessarily* invalidated by the presence of mental disease possessing a wider range of influence. In the judgment just referred to, Lord Brougham said that, in the trial of the case, "there was a manifest disposition to lay down a rule that no person laboring under monomania, or partial insanity, can be deemed intestable, unless the kind of insanity appears on the face of the will. But there was wanting the courage to lay down a proposition which would at once, have been rejected, and must have been met with the question, Could any court admit to probate, the will of the man who said (in the case cited by Sir John Nicholl, in *Dew* v. *Clark*), 'I am the Christ,' although that will bore no marks whatever of an unsound mind, still less of the dreadful delusion under which the party labored." Undoubtedly, many a man whose mind is swarming with delusions, and whose insanity is manifested, in some way or other, every hour in the day, may make a will, perfectly correct and proper in its dispositions, and exhibiting not a trace of disease, either in its form or substance. Is such a will to stand? Practically, perhaps, there would be no difficulty. If the testator had shown, in his discourse or his conduct, the least

[1] *Waring* v. *Waring*, 6 Thornton's Notes, 388.

scintillation of reason, his case would be regarded as one of monomania, and, of course, subject to the established rule respecting the legal effect of monomania. This result was exemplified in *Chambers* v. *The Queen's Proctor* (1840).[1] The facts were established that on the 12th, 13th, and 14th of November, 1839, the testator, a barrister, entertained the delusion, among others, that the benchers of the Inner Temple were about to disbar him on account of an imaginary trivial fraud he had practised upon them, and that in consequence thereof, he was a lost man, and must be got out of the country; that this delusion existed in the latter part of 1838 or 1839; that delusions equally gross existed at a previous period of the year 1838; that on the 15th of November, 1839, he executed his will; and that the next day he committed suicide. The court, Sir Herbert Jenner, pronounced in favor of the will, on the following grounds. No delusion was proved to exist on the 10th, 11th, or 12th of November, and it may be properly inferred, no evidence to the contrary appearing, that on the 15th, his mind was in the same condition as on the 11th. The continuance of insanity on the 15th, is not to be assumed, merely because it existed on the three previous days. These were the ostensible reasons for sustaining the will; the real one, unquestionably, was, that it was a rational act, rationally done, and the result would have been the same if the testator, instead of believing that the benchers were about to disbar him, had imagined that he was the Christ. Had there been in the will one word "sounding to folly," then, certainly, it would have been assumed that the delusion continued on the 15th, and that the act of suicide on the 16th strengthened this assumption.

§ 281. In criminal as well as civil cases, it is important to consider the operation of the predominant idea, and its influence on the act in question. There certainly is no reason why a person should be held responsible for a criminal act that springs from a delusion which would be sufficient to invalidate any civil act to which it might give rise. A mono-

[1] 2 Curteis, 415.

maniac's sense of the *fitness of things* is not different when he signs a ruinous contract, or makes a will, from what it is when he commits a criminal deed. If the inability to discern the true relations of things is the ground on which the former are invalidated, it ought equally to annul criminal responsibility; unless it can be shown that the abstract conceptions of the nature and consequences of crime are never affected in insanity, or are compatible with a degree of mental soundness that would incapacitate a person from buying a house or selling a lot of land. It is yet a disputed point, however, whether partial mania should have the full legal effect of insanity, in criminal cases. By Hoffbauer, Foderè, and some other writers, it is contended that the same principle which determines the effect of mania in civil, should also determine its effect in criminal cases; that is, that criminal responsibility should be annulled only when the act comes within the range of the diseased operations of the mind. In favor of this view, it has been urged, that the connection of the morbid delusion with the criminal act, is generally very direct, and not easily mistaken. A remote and circuitous association of the predominant idea with the deed in question, presents fair ground for suspicion, because the further the thoughts of the monomaniac wander from the object of his delusion, the less are they affected by its influence. If a man who imagines his legs are made of glass, should see another approaching him with a stick for the purpose of breaking them, he could not help resisting even to bloodshed, in what would be to him an act of self-defence, but it would require a very peculiar concatenation of circumstances to warrant us in considering a rape or theft as the offspring of this hallucination, because the idea of these acts would carry the thoughts far beyond the reach of its influence.

§ 282. Against these views it is objected, that it is not always easy to trace the connection between the predominant idea and the criminal act. The links that connect the thoughts which rise successively in the sound mind, defy all our penetration, and the few laws we have established are totally inapplicable to the associations of the insane mind.

No one will be bold enough to affirm that a certain idea cannot possibly be connected with a certain other idea, in a healthy state of the mind, least of all when it is disordered by disease; so that the existence of partial insanity once established, it is for no human tribunal arbitrarily to circumscribe the circle of its diseased operations. A case is on record of a young man who had an insane passion for windmills. He would go any distance to see a windmill, and would sit watching one for days together. In the hope of turning his mind from this strange fancy, his friends removed him to a place where there were no mills. Here he got a child into a wood, and attempted to murder it, in the hope that he would be removed, as a punishment, to some place where there were windmills.[1] The connection between his delusion and the criminal act would never have been discovered, certainly, had he not disclosed it himself. We must remember, also, that sometimes the predominant idea is frequently changing, and at others, is obstinately concealed by the patient, and not ascertained till after his restoration to health.

§ 283. Is it true that the insane judge of their relations to persons and things not immediately connected with their delusions, with ordinary clearness and accuracy? Does the cloud that settles over one portion of their mental horizon, throw no shadow over the rest of it? This question involves a matter of fact, and must be decided solely on the testimony of those who have had abundant opportunities of observing the insane, of learning their habits, their modes of thinking and feeling, their motives and impulses. It is unquestionably true that a person partially insane may, to a certain extent, be quite rational in his conduct and conversation, but the same is equally true of those who are regarded as wholly insane. Let a stranger spend an hour or two in the galleries of an asylum, observing the manners of the inmates, and watching them while engaged in their labors, amusements, and conversation, and distinguish, if he can, the wholly from

[1] Lond. Quar. Rev. lxxiv.

the partially insane. If this limited power of speaking and acting correctly does not invalidate the plea of insanity as it regards the one class, why should it as it regards the other? Touching this phenomenon there are two facts which should be duly considered, in forming our opinion of its relation to legal responsibility. In the first place, this apparent rationality of the insane is usually manifested in connection with matters, to them of secondary consequence, not calculated to excite much interest, nor to task any moral or intellectual faculty; but the moment their attention is engaged with topics of an opposite character, we perceive the influence of disease. A word, a look, by some bond of association, may touch a discordant string, and this individual, before so calm, so cool and rational, launches into a strain of absurdities, or explodes in a storm of passion. While the sea is smooth and the winds light, reason easily guides the helm which is wrenched from its grasp by the first breeze that ruffles the surface. The transition from the apparently sane to the insane, is perfectly obvious when we see the exciting cause, and the patient gives audible expression to his thoughts. But because we do not learn these intermediate steps, as they often are not manifested by any sensible marks, does it follow that the final act to which they lead, is entirely free from the taint of insanity? This is undoubtedly possible, but since we can never prove the fact, and the other event is highly probable, we are bound to abide by the known general rule and not the doubtful exception. The more one sees of mental disorder, the more, we apprehend, is he disposed to believe that this integrity of some of the functions in partial insanity, is rather apparent than real, — that the disease, however limited, seldom, if ever, fails to irradiate its morbific influence to a greater or less extent. A little acquaintance with monomaniacs almost always brings to light certain peculiarities in their modes of thinking or acting, or certain inequalities of temper, which they did not manifest previous to their disease. So latent is this effect sometimes, that it will evade the closest observation, until a suitable opportunity occurs for its development. In this respect, it seems to

follow a common law of our mental constitution, whose faculties require a certain combination of circumstances to arouse them into activity, and develop them in all their energy and power. How often do we find patients who, while enjoying the quiet, seclusion, and kindness of an asylum, are correct in their deportment, circumspect in their ways, punctual in their outgoings and incomings, courteous and obliging in their manners; but, restored to the bosom of their families, become overbearing, contentious, and irascible, destroying the peace and threatening the lives of those who should be most dear to them. In most monomaniacs — so far, indeed, as our experience goes, the fact is almost without an exception — we see, as it regards their estimates of men and things, less intellectual discernment and a lower tone of moral feeling than they manifested in their sound and healthy condition. Who that has been much conversant with the insane, has not been surprised at times, to hear persons who have always talked sensibly and discreetly except on their weak points, unexpectedly giving utterance to sentiments that betray a radical perversion of their moral perceptions? Is all this to go for nothing in settling the measure of their legal responsibility?

§ 284. We ought also to bear in mind a fact too much overlooked, that much of the ordinary working of the mind, whether sane or insane, becomes somewhat instinctive and mechanical, and goes on, if not entirely independent of the exercise of the reasoning powers, certainly without their close and active supervision. In hospitals for the insane, this phenomenon is sometimes witnessed in a very remarkable degree. There we see men whose understandings are a complete wreck, every day uttering certain mere commonplaces of conversation, performing certain acts, and continuing certain habits which to a stranger would convey the impression that their mental disorder is very partial in its operation. How often do we see patients in that state of fatuity which is the sequel of long-continued insanity, playing at draughts, or performing on some musical instrument with a very creditable degree of skill. In accordance, therefore,

with this law of our intellectual being, an insane person may be quite rational in some respects, simply because his understanding has nothing to do with it. He thinks and acts mechanically. But let him be tried on something that requires a fresh and active exercise of thought; something that requires control of his feelings, and then we shall see how feeble is the dominion of reason. It would be strange indeed, contrary to all our analogies of morbid action, if a disease so serious as to completely distort the perceptions and pervert the evidence of the senses on some points, should leave all the other mental operations perfectly intact.

§ 285. The views here objected to have found a strong opponent in Georget, whose practical knowledge of the subject and acknowledged acuteness in observing the manners of the insane, entitle his opinions to great consideration, if not to entire belief. The following observations of his should never be forgotten in forming conclusions on this disputed point. "In conversing," says he, "with patients on topics foreign to their morbid delusions, you will generally find no difference between them and other people. They not only deal in common-place notions, but are capable of appreciating new facts and trains of reasoning. Still more, they retain their sense of good and evil, right and wrong, and of social usages, to such a degree, that whenever they come together, forgetting their moral sufferings and delusions, they conduct, as they otherwise would, inquiring with interest for one another's health, and maintaining the ordinary observances of society. They have special reasons even for regarding themselves with a degree of complacency; since, for the most part, they believe that they are victims of arbitrary measures, fraudulent contrivances, and projects of vengeance or cupidity, and thus they sympathize with one another in their common misfortunes. Accordingly, the inmates of lunatic asylums are rarely known to commit those reprehensible acts which are regarded as crimes when dictated by sound reason, though the most of them enjoy considerable freedom. They often talk very sensibly of their interests, and some even manage their property perfectly well."

"Those patients who are insane on one point, only more or less limited, may have experienced some severe moral disorders which influence the conduct and actions of the individual, without materially injuring his judgment. Those who conduct themselves so well in the asylum, in the midst of strangers with whom they have no relations, and against whom they have conceived no prejudice nor cause of complaint, and in quiet submission to the rule of the house, are no sooner at liberty, in the bosom of their families, than their conduct becomes insupportable; they are irritated by the slightest contradiction, abusing and threatening those who address to them the slightest observation, and working themselves up to the most intolerable excesses. And whether the reprehensible acts they then commit are really foreign to the predominant idea or not, ought we to make a being responsible for them whose *moral* nature is so deeply affected?"[1] These facts, it cannot be denied, furnish strong ground for the remark with which Georget closes his observations on this point, namely, that if, in following the rule that partial mania excludes the idea of culpability, "the moralist and the criminal judge run the risk of committing injustice by sparing a really guilty person, certainly, the opposite course would lead them into still greater errors."

§ 286. Hoffbauer has not only limited the exculpatory effects of partial mania to the acts which clearly come within its influence, but has laid down the principle that in the criminal jurisprudence of this condition, the predominant idea should be considered as true; that is, that the acts of the patient should be judged as if he had really been in the circumstances he imagined himself to be when they were committed. This view, as we have already seen (§ 33), was maintained by the judges of England, and has been extensively received ever since. To the world at large, nothing can be more reasonable than this doctrine of regarding the acts of the insane precisely as if their peculiar belief were real and true, and not a baseless delusion. If a man really believes that another is ready to do him some grievous bodily

[1] Discussion médico-légale sur la Folie, 10, 14.

injury, it is right and proper for him to anticipate the blow by killing the object of his delusion, but not, if he fancies merely that this person has wronged him, or is exercising over him a malign influence. "If a man had the delusion that his head was made of glass, that would be no excuse for his killing a man; he would know very well, that, although his head was made of glass, that was no reason why he should kill another man, and that it was a wrong act, and he would be properly subjected to punishment for that act."[1] In other words, he may do with impunity just what any other person would be justified in doing under similar circumstances—but no more. The fallacy of this reasoning consists in the idea, that insane people always reason correctly from wrong premises, and therefore it is inapplicable to the numerous instances where the premises and inferences are all equally wrong. If a person imagines he heard the voice of God commanding him to immolate his only child, and he accordingly obeys, it may be said indeed that he is not responsible for the bloody deed, because it would have been perfectly proper, had he really heard the command; but are we to be told, that if he had killed his neighbor for a fancied petty injury, he is not to be absolved from punishment, because the act would have been highly criminal, even though he might have really received the injury? In cases like the latter, the insanity manifests itself, not only in the fancied injury, but in the disproportionate punishment which is inflicted upon the offender. Nothing in regard to insanity is better established than the fact, that when the mind is possessed by a delusion, the conclusions it may adopt are as likely to be absurd as logical and wise. The character of the conclusion, so far as we are concerned, is an accidental feature in the case, and therefore nothing can be more unphilosophical or unjust, than to make it the criterion of legal responsibility. Two men in affluent circumstances imagine that they are coming to want, and the belief fills them with the keenest distress. To all appearance they are both equally insane, equally diseased in body, and equally wretched. The one denies himself and family

[1] Baron Alderson, in *Reg.* v. *Pate* (1850), Times, July 12, 1850.

the necessities of life, and they are indebted for their continued existence to the charities of others. The other slaughters his family and attempts to kill himself. Upon the principle in question, the latter is held guilty of murder, while the former is regarded as irresponsible for his conduct. The turn which the delusion takes decides the question of guilty or not guilty. Hadfield's motive for shooting at the king was, that certain great ends might be attained by his own execution which he supposed would follow. Lawrence, who attempted to take the life of President Jackson, imagined that his victim stood in the way of his obtaining certain imaginary estates. These men were tried and acquitted, and the public voice has abundantly confirmed the correctness of the verdict. Judged however, by Hoffbauer's principle, they must have been deemed fully responsible for their acts, and so must a large portion of those lunatics who, for their bloody deeds, have been consigned to the hospital, instead of the gallows. The meaning of the principle is, that when a person who is admitted to be insane, inflicts an injury which, in the judgment of a benevolent man, is disproportioned to the provocation, the surplus injury is to be attributed to passion, or some bad motive, and the lunatic must be punished accordingly. The unsoundness of such views, it might be supposed, would have been shown by the most superficial knowledge of insanity. When a person is so insane as to imagine that another is disturbing his peace by spells and incantations, is it strange that at the same time, his notions of right and wrong should be so confused, that he thinks himself justified in sacrificing his disturber? It certainly would be far more strange — although it is not denied that this is sometimes the case — if a person, after adopting a gross delusion, should reason respecting it with all the clearness and sagacity of a sound mind. In all my intercourse with the insane, I never succeeded in convincing one that the vengeance he threatened against others was greatly disproportioned to the alleged offence, besides being wrong and unlawful. On the contrary, they always manifest the strongest possible assurance that they may rightfully do as they please in their measures of retaliation.

§ 287. It is a great mistake to suppose, as this principle does, that the insane generally act from well-defined, tangible motives or reasons. Some unquestionably do, while it is just as certain that many do not. It is often impossible for them to give a clear and consistent reason for their conduct. Their discourse on this point is vague, obscure, and contradictory. From want of sufficient steadiness or concentration of mind, or both, they find it difficult to express or explain their ideas, and for a similar reason, probably, they are singularly unstable and changing in their views. They may utter certain propositions, and may give their assent to others, but can we believe that, laboring under the deficiencies here indicated, their perceptions have that degree of clearness and accuracy which is essential to the idea of understanding and knowledge? The law asks whether the party knew that the act he committed was wrong, or contrary to law, etc., implying that the reflective powers of such a person are not essentially changed, but only conduct to unsound conclusions. The fact is, however, that seldom, if ever, do the insane, before committing acts of violence, reflect calmly on the subject, view it in its different relations, and thus deliberately form the simple, intelligible conclusion, that the act they meditate, is right. The notions which flit through their minds are too vague and disjointed to be properly called *knowledge*, although they may use that term themselves in speaking of their views. Were it otherwise, why should they, on recovery, regard the whole aspect of the subject in a very different light, and be as much astonished as others to find what they have said and done? The truth is, they act from impulse and sudden suggestions, without being very conscious at the time of what they are doing, or if they are, without being able to explain their conduct even to their own satisfaction. Many of those who attempt suicide are unable to assign any thing like a reason for the act. They contemplate it but a moment, perhaps, before proceeding to carry the idea into execution, and then sincerely rejoice that they were prevented from succeeding. Homicidal acts are often unquestionably committed by the insane, in a similar

state of mind. In general mania, especially the early stage, the mind is filled with vague fears, suspicions, jealousy, and distrust, and the thoughts are sadly confused. The patient believes that enemies encompass him around, bent on destroying his reputation or his life. With no special plan in view, he arms himself with swords and pistols, and accident or some unaccountable caprice finally determines the victim. The poor maniac can no more give a reason for his selection, than he can for the groundless fears that besiege his mind. It is a fact that should be duly pondered by those who would adopt the principle we are now contending against that very often, maniacs, upon recovery, have but a shadowy recollection of the violence they may have committed, though at the time, they may have discoursed about it with some degree of coherence and pertinency. By some even Hoffbauer's principle is considered as too indulgent, and the broad ground is taken that mere delusion is not a sufficient excuse for any crime to which it may lead. They say to the victim of a gross delusion, "what if you do believe, in all sincerity, that you are compassed about by people who seek to destroy your peace, to injure your reputation, or to poison your food. It is very wrong in them, and the provocation is certainly strong. No wonder you are angry and harbor thoughts of revenge. But other men have enemies and encounter provocations, and they control their passions and resist the impulse to retaliate. So must you. Some things you unfortunately see in a false light, but, in other respects your mind is clear, and your moral perceptions are supposed to be undisturbed by morbid propensities or irresistible impulses. You have no right, therefore, to take the law into your own hands, and if you revenge an imaginary wrong in a way that would subject a sane person who should revenge a real wrong, to extreme punishment, then the law should hold you responsible for your conduct." Of course, by persons holding these views, the acquittals of Hadfield, of Bellingham, of Rogers, and of every person, in fact, for whom the plea of insanity was successfully used, are regarded as great mistakes, so much the more serious, as they have operated as inducements to similar aggressions from

other insane persons. This reasoning implies two things which do not exist, namely, that, outside of their delusions, the minds of the insane are perfectly sound and clear, and that they always reason logically, however wrong the premises. But the idea that they may revenge their own wrongs is a part of the delusion. They are no more responsible for one than for the other, for both are equally the offspring of disease. We think it absurd to attempt to reason an insane person out of his delusions, but it is no less so to suppose that in his conduct towards offenders he will be governed by the ordinary moral considerations.

§ 288. The radical mistake in much of the reasoning on this subject, is sufficient to vitiate any conclusions formed under its influence, relative to moral responsibility. This mistake is to regard the operations of the insane mind as governed by the same laws of association, as those of the sane mind. Their motives are weighed in the same balance, they are supposed to be equally affected by the same moral considerations, and their conclusions are expected to be equally logical. Such views of the mental operations in insanity are not warranted by our knowledge of the disease. Nothing can be more unsafe than to infer, from certain notions or plans an insane person may have, the line of conduct or the speculative conclusions he may adopt. It is a fact which every one, much conversant with the insane, must have recognized, that their mental operations are marked by a kind of confusion that finds its analogy only in dreaming. And this is the case, not only with the wild and raving, but to a degree with those whose insanity is apparently confined within a narrow circle, and who would not be readily recognized to be insane, by the world at large. A man was once placed in the hospital under my care, who continued so calm and quiet, so correct in his deportment, so gentlemanly in his manners, and so intelligent and rational in his discourse, that, for some time, we were puzzled to discover why he should have been sent to us, not having then received an exact history of his case. It finally appeared that he believed his wife had been unfaithful to him,

and that the idea gave him much uneasiness. When reminded of the unsullied reputation of his wife, and the improbability of some of the incidents he related, he always replied, that he must believe what he saw with his own eyes, and then he would give a minute account of the circumstances which, if he had really witnessed them, set the question at rest. For several weeks he exhibited the same quiet and correct demeanor, performing divers services about the house, and obtaining the favorable regards of all around him. At last, he became rather silent and sad, and after a day or two, he was observed to weep much. This continued for three or four days, when he resumed his usual cheerfulness, declaring that his views had undergone a great change, and that some things appeared to him in a very different light. His whole belief about his wife's infidelity, he said, was a delusion, and never had the slightest foundation in fact. All the things which he thought he saw, now appeared to him like a dream, and he could give no other account of them. In dreaming and in insanity there is the same firm conviction of the reality of false impressions, the same patches of coherence and consistency, the same embroilment of the thoughts, the same absurdity in the conclusions, and on recovery the patient often feels as if just awoke from a dream, wondering how he could have had such thoughts and done such acts.[1] With what propriety then can we deem the insane responsible for any of the views they may adopt?

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[1] This character of insanity is admirably represented by Shakspeare, whose delineations of this disease are marked by his usual fidelity to nature. Lear, on suddenly recovering, knows not, at first, where he is, or where he has been; he scarcely recognizes his own friends, and almost doubts his own identity.

"Pray, do not mock me.
I am a foolish, fond old man,
Fourscore and upwards; and to deal plainly,
I fear I am not in my perfect mind.
Methinks I should know you, and know this man;
Yet I am doubtful; for I am mainly ignorant
What place this is: and all the skill I have
Remembers not these garments; nor I know not
Where I did lodge last night."

SECTION II.

LEGAL CONSEQUENCES OF MORAL MANIA.

§ 289. General moral mania furnishes good ground for invalidating civil acts, for notwithstanding the apparent integrity of the intellectual powers, it is probable that their operation is influenced to a greater or less extent, by a derangement of the moral powers. The mutual independence of these two portions of our spiritual nature is not absolute and unconditional, but is always liable to be affected by the operation of the organic laws. The animal economy is a whole; no part of it can exist without the rest, nor be injured or abstracted without marring the energy or harmony of the whole system; and though each part is so far independent of the others as to contribute its distinct share in the production of the general result, even sometimes when surrounded by the ravages of disease, yet the general law is, that disease in one part modifies more or less the action of all the rest, and especially of those connected with it by contiguity or by resemblance of function. Nature has established a certain adaptation of the moral and intellectual faculties to one another, leading to that harmony of action which puts them in proper relation to external things, and we can scarcely conceive of any disturbance of their equilibrium, that will not more or less impair the general result. Amid the chaos of the sentiments and passions produced by moral mania, the power of the intellect must necessarily suffer, and instead of accurately examining and weighing the suggestions of the moral powers, it is influenced by motives which may be rational enough, but which would never have been adopted in a perfectly healthy state. It is hard to conceive, indeed, that with an understanding technically sound, the relations of a person should be viewed in an entirely different light, the circle of his rights and duties broken and distorted, and his conduct turned into a course altogether foreign to that of his ordinary habits and pursuits. Notwithstanding

the correctness of his conversation, and his plausible reasons for his singular conduct, a strict scrutiny of his actions, if not his words, will convince us that in particular cases, his notions of right and wrong are obscured and perverted, and that his own social position is viewed through a medium which gives a false coloring to its whole aspect. Now, though such a person may not be governed by any blind, irresistible impulse, yet to judge his acts by the standard of sanity, and attribute to them the same legal consequences as to those of sane men, would be clearly unjust, because their real tendency is not and cannot be perceived by him. Not that his abstract notions of the nature of crime are at all altered, for they are not, but the real character of his acts being misconceived, he does not associate them with their ordinary moral relations. No fear of punishment restrains him from criminal acts, for if not totally unconscious of violating any penal laws, he thinks he is acting for an end that sanctifies the means, and therefore the great end of punishment, the prevention of crime, is wholly lost in his case. If there were no other reason for withholding punishment in cases of moral mania, this alone would be sufficient, that the fear of it, which with others is a powerful preventive of crime, or at least is supposed to be, in the most popular theories of criminal law, does not and cannot exert its restraining influence on the mind. No one would think of attributing moral guilt to Earl Ferrers for entertaining the insane idea that his steward was a villain conspiring with the earl's relatives against his comfort and interests (§ 180); why then should it be charged to him as a crime, that, amid the tumult of his passions disturbing the healthy exercise of his understanding, he acted on this belief and made himself the avenger of his own wrongs? Each delusion was alike the offspring of the same derangement, and it is unjust and unphilosophical to regard one with indifference as the crotchet of a madman, and be moved with horror at the other and visit it with the utmost penalty of the law, as the act of a brutal murderer.

§ 290. Liberty of will and of action is absolutely essen-

tial to criminal responsibility. Culpability supposes not only a clear perception of the consequences of criminal acts, but the liberty, unembarrassed by disease, of the active powers which nature has given us, of pursuing that course which is the result of the free choice of the intellectual faculties. It is one of those wise provisions in the arrangement of things, that the power of perceiving the good and the evil, is never unassociated with that of obtaining the one and avoiding the other. When, therefore, disease has brought upon an individual the very opposite condition, enlightened jurisprudence will hold out to him its protection, instead of crushing him as a sacrifice to violated justice. That the subject of homicidal insanity is not a free agent, in the proper sense of the term, is a truth that must not be obscured by theoretical notions of the nature of insanity, nor by apprehensions of injurious consequences from its admission. Amid the rapid and tumultuous succession of feelings that rush into his mind, the reflective powers are paralyzed, and his movements are solely the result of a blind, automatic impulse, with which the reason has as little to do as with the movements of a new-born infant. That the notions of right and wrong continue unimpaired under these circumstances, proves only the partial operation of the disease; but in the internal struggle that takes place between the affective and intellectual powers, the former have the advantage of being raised to their maximum of energy by the excitement of disease, which, on the other hand, rather tends to diminish the activity of the latter. We have seen that generally after the fatal act has been accomplished, and the violence of the paroxysm subsided, the monomaniac has gone and delivered himself into the hands of justice, as if, overwhelmed with horror at the enormity of his action, he either considered his own life the only compensation he could offer in return; or, it may be, felt that the presence of his fellow men, though it would seal his own fate, would be a welcome relief from the crushing agony of his own spirit. It is not to be wondered at, however, if occasionally, the tide of feeling takes a different course, and the murderer is prompted to avoid what he cannot help think-

ing to be the just consequence of his act, by flying from the bloody scene, and even denying his agency in it altogether. Considering the diversity of habits, sentiments, and education, uniformity in an unessential phenomenon like this, is not to be expected. That flying from pursuit indicates a consciousness of having committed a reprehensible act, and also a fear of punishment, is not denied, but it has never been contended that the opposite course implies the absence of all ideas of this kind from the mind of the homicidal monomaniac. The real point at issue is, whether the fear of punishment or even the consciousness of wrong doing destroys the supposition of insanity, and this is settled by the well-known fact that the inmates of lunatic asylums, after having committed some reprehensible acts, will often persist in denying their agency in them, in order to avoid the reprimand or privation which they know would follow their conviction. If insane persons have any rational ideas at all, and it is not denied that they have, it is not strange that they sometimes are conscious of the penal consequences of their acts, and use the intelligence of a brute in order to avoid them. Besides, in moral insanity the intellectual faculties are supposed not to be impaired, and when the fury of the paroxysm which has borne him on, in spite of every attempt at resistance, has subsided, the homicidal monomaniac returns, in some degree at least, to his ordinary habit of thinking and feeling. He regrets the havoc he has made, foresees its disgraceful consequences to himself, shudders at the sight, and flies, like the most hardened criminal, to avoid them.

§ 291. In medical science, it is dangerous to reason against facts. Now we have an immense mass of cases related by men of unquestionable competence and veracity, where people are *irresistibly* impelled to the commission of criminal acts while fully conscious of their nature and consequences; and the force of these facts must be overcome by something more than angry declamation against visionary theories and ill-judged humanity. They are not fictions invented by medical men (as was rather broadly charged upon them in some of the late trials in France), for the purpose of puzzling

juries and defeating the ends of justice, but plain, unvarnished facts as they occurred in nature; and to set them aside without a thorough investigation, as unworthy of influencing our decisions, indicates any thing rather than that spirit of sober and indefatigable inquiry which should characterize the science of jurisprudence. We need have no fear that the truth on this subject will not finally prevail, but the interests of humanity require that this event should take place speedily.

§ 292. The distinction between crimes and the effects of homicidal monomania is too well founded to be set aside by mere declamation, or appeals to popular prejudices, as it has repeatedly been in courts of justice. On the trial of Papavoine for the murder of two young children near Paris, in 1823, the advocate-general, in reply to the counsel of the prisoner who had pleaded homicidal insanity in his defence, declared that Papavoine committed the crime, in order "to gratify an inveterate hatred against his fellow men, transformed at first, into a weariness of his own life, and subsequently into an instinct of ferocity and a thirst of blood. Embittered by his unhappy condition, excited by a sense of his sufferings and misfortunes, irritated by the happiness of others which awakened in him only ideas of fury, and drove him into seclusion which increased the perversity of his depraved propensities, he arrived at that pitch of brutal depravity where destruction became a necessity, and the sight of blood a horrible delight. His hateful affections, after being long restrained, finally burst forth and raised in his bosom a necessity of killing, which, like a young tiger, he sought to gratify."[1] That beings in human shape have lived who delighted in the shedding of blood, and found a pastime in beholding the dying agonies of their victims, is a melancholy fact too well established by the Neros and Tiberiuses of history. For such we have no disposition to urge the plea of insanity, for though we are willing to believe them to have been unhappily constituted, we have no evi-

[1] Georget, Examen des procès criminelles.

dence that they labored under cerebral disease, and they certainly exhibited none of its phenomena. Motives, the very slightest no doubt, generally existed for even their most horrid atrocities, and even when they were entirely wanting, there was still a conformity of their bloody deeds with the whole tenor of their natural character. They followed the bent of their dispositions as manifested from childhood, glorying in their preëminent wickedness, and rendered familiar with crime by habit; and though conscience might have slumbered, or opposed but a feeble resistance to the force of their passions, yet it was not perverted by diseased action so as to be blind to the existence of moral distinctions. In homicidal insanity, on the contrary, every thing is different. The criminal act for which its subject is called to an account, is the result of a strong and, perhaps, sudden impulse opposed to his natural habits, and generally preceded or followed by some derangement of the healthy actions of the brain or other organ. The advocate-general himself represented Papavoine, "as having been noted for his unsocial disposition, for avoiding his fellow-laborers, for walking in retired, solitary places, appearing to be much absorbed in the vapors of a black melancholy." This is not a picture of those human fiends to whom he would assimilate Papavoine, but it is a faithful one of a mind over which the clouds of insanity are beginning to gather. Where is the similarity between this man, who, with a character for probity and in a fit of melancholy, is irresistibly hurried to the commission of a horrible deed, and those wretches who, hardened by a life of crime, commit their enormities with perfect deliberation and consciousness of their nature.

§ 293. It has been also urged that the subjects of homicidal insanity are, no less than criminals, injurious to society, the safety of which implicitly requires their extermination, upon the same principle that we do not hesitate to destroy a dog that has been so unfortunate as to go mad. Sane or insane, criminal or not, such monsters should be cut off from the face of the earth, and it is a misplaced humanity to reserve them for a different fate. Such language might have

been expected from people who are moved only by the feelings that are immediately raised by the sight of appalling crimes, but it is an humiliating truth that the opinions of those who are in the habit of discriminating between various shades of guilt, and of canvassing motives, are too often but an echo to the popular voice. If the old custom of smothering under a feather bed the miserable victims of hydrophobia, be now considered as a specimen of the most revolting barbarity, we cannot see why the punishment of insane offenders should be regarded under a more favorable aspect. Society has a right to protect itself against the aggressions of the dangerously insane; but unnecessary severity in its protective measures often defeats the very purpose in view, and indicates a want of humanity and intellectual enlightenment. While confinement in prisons and hospitals furnishes all the restraint which the necessity of their case requires, it is idle to urge the infliction of death as the only means by which society can be effectually shielded from a repetition of their terrible enormities.[1]

§ 294. One of the principal objects of punishment should be to deter from the commission of crime, by impressing the mind with ideas of physical and moral suffering as its certain consequence; and whenever it is found to produce a very different effect, it is the part of enlightened legislation to devise some other means of prevention. Nothing can be more absurd than to inflict the very punishment which the delusion of the monomaniac often impels him to seek, — to put *him* to death, who voluntarily surrenders himself, and imploringly beseeches it as the only object he had at heart in perpetrating a horrid crime. What is it but converting a dreadful punishment into the dearest boon that earth can offer? Platner has related the case of a man who shot his

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[1] It must not be forgotten that when a person charged with a capital crime, is acquitted on the ground of insanity, though admitted to be the author of the crime, it is rendered obligatory on the court in England, by stat. 39 and 40 Geo. III. c. 94, and by similar provisions in most of the United States, to order him into confinement.

companion, because he labored under the delusion, that he was endeavoring to deprive him of life by means of witchcraft. He knew he should be executed, he said, but it was a thousand times better to die on the scaffold than to perish miserably through the arts of magic.[1] A few years ago, a young man entered a shooting-gallery in Holborn, took up a pistol, and deliberately shot the proprietor, who subsequently died of the wound. He said he had no knowledge of the person,—he shot him simply for the purpose of being hanged for it. He had been thinking of suicide for some years.[2] In religious monomania, it is not uncommon for the patient to believe that the joys of heaven are in store for him, and, under the excitement of this insane idea, to murder a fellow creature, in order that he may the sooner enter on their fruition. To execute one of this class, is to perpetuate an evil which needs only a change of penal consequences to be effectually remedied. A kind of delusion has sometimes prevailed in certain parts of Europe, which persuades its unfortunate subjects that eternal happiness can be gained by being executed for the murder of some innocent person. The idea is that suicide being itself a sin, will not be followed by the happiness they seek, but that murder, though a greater crime, can be repented of before the time of execution. This delusion prevailed epidemically in Denmark, during the middle of the last century, and to avoid sending an unprepared person out of the world, the victim generally selected was a child. Death, of course, was no punishment in this case, and at last, the king issued an ordinance directing that the guilty should be branded on the forehead with a hot iron and whipped, and be imprisoned for life, with hard labor. Every year, on the anniversary of their crime, they were to be whipped.[3] Lord Dover, in his life of Frederic, relates that such was the severity of discipline to which the Prussian troops at Potsdam were subjected, that many wished for death to finish their

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[1] Quoted by Pagan, Med. Jur. 143.

[2] Taylor, Med. Jur. 643.

[3] London Quarterly Review, xii. 219.

intolerable sufferings, and murdered children whom they had enticed within their power, in order to obtain from justice the stroke they dared not inflict upon themselves.[1] Abolish capital punishment in such cases, and the delusion will disappear with it; continue it, and no one can tell when the latter will end.

§ 295. Not only is the moral effect of punishment totally lost when inflicted on the subjects of homicidal insanity, since it does not deter other madmen from committing similar acts, but by a curious law of morbid action, the very publicity obtained for them, by the trial and excution of the actors, leads to their repetition to an almost incredible extent. At a sitting of the Royal Academy of Medicine in Paris, August 8th, 1826, Esquirol stated that since the trial of Henriette Cornier, which occurred not two months before, he had become acquainted with six instances of a parallel nature. Among these was a Protestant minister who became affected with the desire of destroying a favorite child. He struggled against this terrible inclination for fifteen days, but was at last driven to the attempt on his child's life, in which he fortunately failed. Several other physicians, on the same occasion, bore similar testimony relative to the effect of that trial, and the newspapers about that period teemed with cases of child-murder which had originated in the same way.

§ 296. It should not be forgotten, that well-grounded suspicion that the homicidal act, thus punished, was the result of physical disease, instead of moral depravity, is so horrid as to excite, in whatever mind it arises, feelings of distrust and jealousy, towards the law and its ministers, infinitely more to be dreaded than the occasional acquittal of a supposititious maniac. When, on the contrary, the distinction is carefully made between the acts of a sound and those of an unsound mind, and a decision in doubtful cases is dispassionately and deliberately formed upon every species of evidence calculated to throw light upon it, the mind is impressed

[1] i. 321.

with a new sense of the wisdom and majesty of the laws, and with a feeling of security under their discriminating operation. The numerous trials for witchcraft in a former age, and the occasional condemnation of a maniac in the present, have done more to lessen men's respect for the laws, than all its overruled decisions have to weaken their confidence in its certainty. Insanity is a disease, before the prospect of which the stoutest heart may quail; but how much more appalling is it made by the reflection, that in some wild paroxysm, it may be followed by legal consequences that will consign its unhappy subject to an ignominious death. In cases of simulated madness, the purposes of justice are more fully answered by receiving and examining all the evidence and patiently showing its value and bearings, and thus laying open the imposition to the conviction of all, than by repelling the plea with idle declamation on its injurious tendency. Not only does the criminal obtain his deserts, by such a course, but the most cunning device of his ingenuity is seen to be baffled, and the plea that should ever shield the innocent from destruction is ineffectually urged to protect the guilty. Every murmur at the injustice of the sentence is hushed, all scruples are removed, and all fears are dissipated, that a fellow being has been sacrificed, whose only crime was the misfortune of laboring under disease of the brain. Besides, what if amid the obscurity in which a case may sometimes be involved, a guilty person do escape, — though this event must be of very rare occurrence, — is it not a maxim in legal practice that it is better for ten guilty persons to escape punishment than for one innocent person to suffer? And though he escape the sentence of the law, yet society is perfectly secure from the effects of mistake, because the very plea by which he obtains his acquittal, consigns him to confinement and surveillance.

§ 297. In those cases where there are some but not perfectly satisfactory indications of insanity, the trial or sentence should be postponed, in order that opportunity may be afforded to those who are properly qualified, for observing the state of the prisoner's mind. Where the moral powers

have become so deranged as to lead to criminal acts, without, however, any perceptible impairment of the intellect, time only is necessary, in the greater proportion of cases, to furnish indubitable evidence of mental derangement. And whatever may be the result, the ends of justice are not defeated by waiting a few months, while the scruples of the over humane are removed, and the acquiescence of the ministers of the law in measures calculated to establish innocence rather than guilt, gains for them a confidence and respect that the conviction of guilt never can. Many instances might be mentioned where the accused, whose insanity was doubtful on trial, has, during the confinement subsequent to his acquittal on a criminal prosecution, become most manifestly insane. Hadfield, who was tried for shooting at the king, and acquitted on the ground of insanity, spent the remainder of his life in Bethlem hospital, and for thirty years showed scarcely any signs of mental alienation, except once, when suddenly and without any known cause, he became so furious that they were obliged to chain him in his room. This paroxysm lasted but a short time, when he recovered his ordinary state of health.[1]

§ 298. Another reason for delay is, that insanity is sometimes so completely veiled from observation, as never to be suspected even by the most intimate associates of the patient. An instructive case is related by Georget, in which the existence of insanity, though of several years' duration, was not recognized till after the death of the subject. The circumstances were briefly these. Bertet, a revenue officer, exercised the duties of his office for three years, in the manufactory of MM. Ador and Bonnaire, at Vaugirard, where he was only noticed for his unaccommodating disposition, melancholy temperament, and fondness for seclusion. One day while M. Ador was conversing with some of the workmen, he was requested by Bertet to affix his signature to certain papers. He proceeded to his room for this purpose, and while in the act of writing, was shot dead by Bertet, who

[1] Billiard, quoted by Georget in Nouv. discuss. méd. lég. 71.

immediately afterwards blew out his own brains. Among his papers were found several addressed to the advocate-general, bearing the most singular titles, such as *my last reflections*, *my last sighs*, in which he declared that he had been poisoned several years before, and gave a minute account of the numerous remedies he had ineffectually used, insisting at the same time that his head was not turned, that he acted deliberately, and giving very coherent reasons to prove it. He announced that four victims were required, namely, the two heads of the establishment, a woman who was living in it, and his old housekeeper, and that in case he should be contented with one, he would leave to justice the charge of obtaining the others. Some of these papers he finishes with saying, "To-day my pains are less acute, — I feel better, — my vengeance is retarded," or "my pains are renewed — with them my thoughts of vengeance." Among other wild fancies, he made a description of the funeral monument to be raised to one of his victims, which was to be a gibbet covered with figures of instruments of punishment. He also described his own funeral procession. He wished the four corners of the pall to be carried by the four persons above mentioned, in case he should not have sacrificed them; that the advocate-general should follow the cortege; and that when it reached the cemetery, the latter should prepare a large ditch in which they should first cast him, Bertet, and then the four pall-bearers. In another paper, he said he designed for each of his victims two gilt balls, as an emblem of their ambition and thirst of gold, and some pulverized cantharides, as an image of the torments which he suffered. Bertet had never shown any signs of mental alienation in his official letters and reports. He was sometimes abstracted and loved to be alone, but his disposition, in this respect, had been of long standing, and seemed to be owing to the state of his health, of which he was constantly complaining, though judging from his exterior, he seemed to be well enough. He had always discharged the duties of his office satisfactorily, and, by his own solicitation, had just before obtained a more profitable place. Had not Bertet recorded

his insane fancies, but, failing in his suicidal attempt, had been brought to trial for the murder of M. Ador, the plea of insanity would have fallen on the most incredulous ears, and he would have paid the last penalty of the law. In a state of confinement and seclusion, however, nothing but time would have been necessary to reveal the true nature of his case.

§ 299. Homicidal monomania presents us with one of those remarkable phenomena, the existence of which men are slow to believe, long after the evidence in its favor has accumulated to such an extent as to render incredulity any thing but a virtue. The facts themselves cannot be denied, and the various methods of explaining them on the hypothesis of a sound understanding, though every phase of human character and every spring of human action has been resorted to for the purpose, are little calculated to diminish the confidence of impartial minds in the correctness of the above views. Strongly impressed as we are with their importance, we may have devoted more attention to the objections that have been urged against them, than they really deserve; we shall, therefore, say but little more on this part of the subject. Against Georget's proposition relative to the homicide committed by Henriette Cornier, that "an act so atrocious, so contrary to human nature, committed without interest, without passion, opposed to the natural character of the individual, is evidently an act of madness;"[1] it has been seriously objected that though we may be unable to discover motives, yet this is not a positive proof that there actually are no motives. We do not hesitate to say that sometimes the character of the act itself furnishes sufficient evidence of its having been prompted by insanity, even when the closest investigation of the bodily and mental condition of the party fails to detect other proofs of its existence. A man named Greensmith (§ 26), was tried and convicted in England in 1837, for the murder of his four children. It appeared in evidence that he was a kind father, and a sober, industrious man;

[1] Discussion médico-légale sur la Folie, 126.

that he took affectionate leave of his children before he destroyed them, and again before he finally left them; that he calmly and deliberately strangled them one after the other, and evinced neither fear, nor repentance, nor mental agitation. The motive he assigned for the act was, that he thought it would be better for him and for his family that he should destroy his children and be executed for the act, than let them go to the workhouse. Stronger evidence of insanity than such conduct furnishes, could not be had. The judge and jury, however, thought otherwise, although they had, besides, the testimony of an eminent physician of a lunatic asylum, who stated his belief, as the result of his observation of the accused, that he was laboring under insane delusion, and that the act was the direct offspring of that delusion. In 1848, a man was tried in England, for murder, having, one night, cut the throats of his wife and child, and attempted suicide. When questioned, he said "that trouble, dread of poverty and destitution had made him do it, fearing his wife and child would starve when he was dead." This was the only delusion he held, and it was hardly that, for it had some foundation in fact. A physician said that he acted under an uncontrollable impulse.[1] Does the man, who like Hadfield imagines that he is to be sacrificed for the salvation of the world, and to that end shoots at the king, or he who murders his neighbor in the belief that his victim and others are conspiring against his life (§ 10), evince a more extensive derangement of the mental powers, than these poor creatures who destroy their dear offspring in the imaginary apprehension of coming want? It seems as if nothing but the most slavish and puerile regard for technicalities, could so blind one to the clearest manifestation of truth as to lead him to return an affirmative to this question.

§ 300. By those who delight not in metaphysical subtleties, a more summary, if not more philosophical, explanation of homicidal monomania has been furnished in the idea that it is to be attributed to an instinct of ferocity; to unnatural

[1] *Reg.* v. *Barton*, 3 Cox, C. C. 275.

depravity of character; to a radical perversity. That such qualities do exist as the too common result of a defective constitution, or a vicious education, is proved by the testimony of every day's experience, even if we had not the best authority for believing that the heart may be "desperately wicked." But even where they exist to the fullest extent, the actions to which they prompt have always some immediate motive, slight as it may be, of pleasure sought, or pain avoided; or if they can claim no higher title than that of *instinct*, it is one of no sudden, transitory character, but a constant and consistent portion of the constitution. It is an anomalous instinct that manifests itself but once or twice in a person's life; and therefore, we cannot, without indulging in the most unwarrantable use of language, apply this term to those uncontrollable, abnormal influences that lead to acts of fury and destruction. What resemblance can we detect between the Domitians and Neros of history, and the Papavoines and Corniers, whose terrible acts have been commemorated in the records of criminal jurisprudence? In the former, this instinct of ferocity appeared in their earliest youth; it imparted a zest to every amusement, and excited ingenuity to contrive new means for heightening the agonies of the wretched victims of their displeasure. In the latter, the character was mild and peaceable, and their days were spent in the quiet and creditable discharge of the duties belonging to their station, till a cloud of melancholy enveloped their minds, and under its shadow they perpetrated a single deed, at the very thought of which they would have previously shuddered with horror. In short, all our knowledge of human nature, all our experience of the past, force us to the conclusion, that "the presence of mental alienation should be admitted in him who commits a homicide without positive interest, without criminal motives, and without a reasonable passion."

§ 301. After what has been said on the subject of homicidal monomania, it will be scarcely necessary to enter into particulars relative to the legal consequences of the other forms of partial moral mania. Completely annulling, as we believe they do, all moral responsibility for acts committed

under their influence, the law can rightfully inflict no punishment on their unfortunate subjects, though it should adopt every measure of precaution that the interests of society require. To punish the thief and the incendiary for acts which are the result of disease, is not only unjust, but it serves to aggravate their disorder, and to prepare them, when their term of punishment has closed, for renewing their depredations on society with increased perseverance. The proper course to pursue with this class of offenders, when brought into courts of justice, is to place them, or obtain a guaranty from their friends that they shall be placed, where judicious medical treatment will be used for the purpose of restoring their moral powers to a sounder condition, and where they will be secluded from society until this end shall be accomplished.

§ 302. If the doctrines here laid down relative to moral insanity and its legal consequences are correct, it would seem to follow as a matter of course, that they should exert their legitimate influence on judicial decisions. Nevertheless, it is contended, — and that too by some who do not question the truth of these doctrines, — that they ought not to have this practical effect, for the reason that insanity would thereby be made the ground of defence in criminal actions, to a most pernicious extent. Stated in the plainest and strongest terms, the objection is, that if these doctrines should be recognized in our courts of justice, and suffered to influence their decisions, almost every criminal would resort to a defence, the tendency of which is invariably to puzzle and distract the minds of the jury, and to produce the acquittal of many a wretch, who would first hear the mention of his own derangement from the lips of ingenious counsel. Now, even if we were disposed to accord to this objection all the foundation that is claimed for it, it would not seem to warrant the inference that is drawn from it. Are we to take from the maniac the defence which the law of nature secures to him, because it may sometimes be offered by those who use it as a means of deception? Are the innocent to be made to suffer for the devices of the

guilty? To avoid this cruel injustice, therefore, without at the same time inflicting a positive evil on society, we would deduce from this objection an inference of a totally different kind. It is, to let the right of the accused party to make his defence be cumbered with no restrictions, expressed or implied; to let the plea of insanity, if he choose to make it, be attentively listened to, the facts urged in its support closely scrutinized, the accused carefully and dispassionately examined, and his character and history investigated. If this duty be performed as it should be, and always may be, the case will seldom happen, when the truth will not be established to the satisfaction of every unprejudiced mind. If the accused be really insane, we have the satisfaction of reflecting, that an enlightened investigation of his case has saved an innocent person from an ignominous fate, while on the other hand, if he be simulating insanity, every doubt will be dissipated as to the justice of his sentence, and the conviction will be strengthened in the popular mind, that the law will prevail over every false pretence, and expose the guilty even in their most secret refuge.[1]

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[1] The following remark of Chief Justice Parker of N. H., shows that this objection is not confirmed by the experience of, at least, one practical lawyer, the value of whose testimony on this, or any other point, need not be indicated by any comment of mine. "There are, undoubtedly, instances in which this kind of defence is attempted from the mere conviction that nothing else can avail, — cases in which the advocate forgets the high duty to which he is called, and excites a prejudice against the case of others, by attempting to procure the escape of a criminal under this false pretence; but such cases are truly rare, and usually unsuccessful." Charge to the grand jury of Merrimack county, N. H., 1838, quoted in 20 American Jurist, 457. Dr. Bell, the Superintendent of the McLean Asylum, Massachusetts, states, "that for one real criminal acquitted on the score of insanity, there have been a dozen maniacs executed for their criminal acts." Dr. Woodward, Superintendent of the Massachusetts Lunatic Hospital, says, "of all the cases that have come to my knowledge, and I have examined the subject with interest for many years, I have known but a single instance in which an individual arraigned for murder, and found not guilty by reason of insanity, has not afterwards shown unequivocal symptoms of insanity in the jails or hospitals where he has been confined; and I regret to say that quite a number who have been executed, have shown as clear evidence of insanity as any of these."

§ 303. The doctrine of moral insanity has, as yet, received no countenance from British courts, whose conservative tendencies do not readily yield to innovations upon established forms and precedents. If, but a few years ago, one of the highest law-officers of England pronounced the "systematic correctness" of an action, to be a proof of sanity sufficient to render all others superfluous, it is not surprising that the idea of moral insanity has been generally considered by the legal profession, as having sprung from the teeming brains of medical theorists. In the fulness of this spirit, Mr. Chitty declares, that, "unless a jury should be satisfied that the *mental faculties* have been *perverted*, or, at least, the faculties of reason and judgment, it is believed, that the party subject to such a *moral* insanity, as it is termed, would not be protected from criminal punishment;" [1] and in the trial of Howison, in 1832, for murder, in Scotland, moral insanity which was pleaded in defence, was declared by the court to be a "groundless theory." [2] In *Reg.* v. *Stokes* (1848), Baron Rolfe said: "It is true, learned speculators in their writings, have laid it down, that men, with a consciousness that they were doing wrong, were irresistibly impelled to commit some unlawful act. But who enabled them to dive into the human heart, and see the real motive that prompted the commission of such deeds?" [3] In *Reg.* v. *Allnut* (1848), the same judge said: "The witnesses called for the defence described the prisoner as acting from uncontrollable impulse, . . . but he must say that it was his opinion that such evidence ought to be scanned by juries with very great jealousy and suspicion, because it might tend to perfect justification of every crime that was committed. What was the meaning of not being able to resist moral influence? Every crime was committed under an influence of such a description, and the object of the law was to compel persons to control these influences; and if it was made an excuse for a person who had committed a crime, that he had been goaded to it by

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[1] Chitty, Medical Jurisprudence, 352.

[2] Sampson, Homicidal Insanity.

[3] 3 Car. & Kir. 185.

some impulse which medical men might choose to say he could not control, he must observe that such a doctrine would be fraught with great danger to society."[1] So too in *Reg.* v. *Barton* (1848), Baron Parke spoke of the doctrine of moral insanity as a "dangerous innovation coming in with the present century," and said, in reference to the plea of an irresistible impulse, "something more than this is necessary to justify an acquittal on the ground of insanity."[2] In *Reg.* v. *Pate* (1850), Baron Alderson said: "The only insanity which excuses a man for his acts, is that species of delusion which conduced to, and drove him to commit the act alleged against him. The jury ought to have clear proof of a formed disease of the mind, a disease existing before the act was committed, and which made the accused incapable of knowing at the time that it was a wrong act for him to do. The law does not acknowledge the doctrine of an uncontrollable impulse, if the person was aware it was a wrong act he was about to commit. A man might say he picked a pocket from some uncontrollable impulse, and in that case, the law would have an uncontrollable impulse to punish him for it."[3] In civil cases too the result has been the same. "I am not aware," says Sir Herbert Jenner Fust, "of any case decided in a court of law, where moral perversion of the feelings unaccompanied with delusion, has been held a sufficient ground to invalidate and nullify the acts of one so affected."[4] In this country, of late years, moral insanity has been often recognized as an established fact, and a valid defence in criminal cases. In *Commonwealth* v. *Rogers*, Chief Justice Shaw of Massachusetts, said: "If then it be proved, to the satisfaction of the jury, that the mind of the accused was in a diseased and unsound state, the question will be, whether the disease existed to so high a degree, that, for the time being, it overwhelmed the reason, conscience, and judgment, and whether the prisoner, in committing the homicide, acted from an irresistible, uncontrollable influence. If so, then the act was not the act of a voluntary agent,

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[1] Taylor, Med. Jur. 645.
[2] 3 Cox, C. C. 275.
[3] London Times, July 12, 1850.
[4] *Frere* v. *Peacock*, 1 Robertson, 448.

but the involuntary act of the body, without the concurrence of a mind directing it."[1] The law as here laid down has been extensively adopted in subsequent criminal trials, consequently securing the impunity of those who have committed criminal acts under an irresistible impulse. In 1846, Chief Justice Gibson, of Pennsylvania, said, in a case he was trying: "There is a moral or homicidal insanity, consisting of an irresistible inclination to kill or to commit some other particular offence. There may be an unseen ligament pressing on the mind, drawing it to consequences which it sees but cannot avoid, and placing it under a coercion which, while its results are clearly perceived, is incapable of resistance. The doctrine which acknowledges this mania is dangerous in its relations, and can be recognized only in the clearest cases. It ought to be shown to have been habitual, or at least to have evinced itself in more than a single instance."[2] In an earlier case, Chief Justice Lewis of the same State, said: "Where its existence is fully established, this species of insanity [moral] relieves from accountability to human laws."[3] In the case of *Kleim* (1846) tried for murder, Mr. Justice Edmonds said: "It must be borne in mind that the moral as well as the intellectual faculties may be so disordered by the disease, as to deprive the mind of its controlling and directing power."[4] A similar view was expressed by Mr. Justice Whiting, in *Freeman's case* (1847).[5] On the contrary, Chief Justice Hornblower, of New Jersey, echoes the doctrine of the English courts. To receive moral insanity as an excuse for crime, he thinks, "would inevitably lead to the most pernicious consequences, and it would very soon come to be a question for the jury, whether the enormity of the act was not, in itself, sufficient evidence of moral insanity; and then, the more horrible the act, the greater would be the evidence of such insanity."[6]

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[1] Trial of Abner Rogers. By Bigelow & Bemis, 277.

[2] Wharton & Stillè, Unsoundness of Mind, 43.

[3] Idem, 44.

[4] Am. Jour. Ins. ii. 245.

[5] Trial of Freeman, (pamph.).

[6] *State* v. *Spencer*, 1 Zabriskie, 196. (1846.)

§ 304. In the form of moral insanity characterized by alternate excitement and depression (§ 171), the patient is strongly disposed to buy and sell, which fact joined with equal eagerness on the part of others to take advantage of it, frequently makes their civil transactions the subject of litigation. In these cases there are so many points to be considered, that it is often difficult to arrive at satisfactory conclusions. It is to be settled, — and perhaps on very meagre evidence, — whether the transaction occurred during the lucid interval: or if it occurred during the period either of excitement or of depression, whether the mental affection were sufficiently grave to obscure the perceptions or weaken the judgment, and if so, whether the other party took advantage of this infirmity to obtain more favorable terms than he otherwise would. It is also to be considered, that although the contracts of these persons may be fair enough independently regarded, yet their number and extent may be so far beyond their means, as to prove highly inconvenient, if not ruinous. The following account of a suit arising out of one of this class of contracts, will give a better idea of the various questions which they open, as well as the principles of law applicable to them, than any general discussion.

§ 305. At a session of the Supreme Judicial Court of Massachusetts, at Northampton, August, 1848, a suit was brought by the guardian of Josiah Allis, against Billings and others, for the purpose of annulling a contract made several years previous, whereby the plaintiff conveyed to the defendants his interest in certain mills, on the ground that the former was then insane and that the latter were guilty of fraud. It appeared in evidence that Allis, then about fifty years old, and the son of a farmer, was attacked in 1819 with mania, under the form of high though not furious excitement. He recovered, apparently, in the course of two or three months, but every year since, had been visited by a similar attack which was invariably followed by a period of depression, and this by a period of apparent restoration to his natural condition. In 1822 he married his first wife by whom he had two daughters now married. In 1829 his father died,

leaving him executor of his will and residuary legatee to nearly all his property. In 1833 his wife died. In March, 1834, he made a contract with Bodwell, the husband of his only sister, whereby the latter was induced to move upon Allis's farm, and maintain him and his family. At the end of a year this contract was dissolved by mutual consent. On March 21st, 1834, he made a contract for the sale of the mills which it was the object of this suit to avoid. For his interest in the property, being one half, he received $4,000, and a release from certain unsettled claims which, he supposed, might amount to $500. In this year his mother died. In March, 1835, he sold his homestead for $4,600, with the expectation of receiving $500 more. In the fall of the next year he married his second wife. In November, 1842, his oldest daughter, and the next year, his other daughter, were married. In 1843 he commenced a suit against the purchaser of his homestead, for avoidance of the contract. He obtained a verdict, but subsequent law proceedings were instituted, and the matter was still pending. In the latter part of 1843, he was placed under guardianship. On July 6th, 1844, he was sent to the Worcester lunatic hospital, where he stayed six weeks.

Bearing these incidents and dates in mind, we shall more easily understand the evidence respecting his mental condition, every particular of which is here faithfully given.

§ 306. It was abundantly proved by the evidence, that Allis was a subject of periodical insanity, each attack being characterized by a turn of excitement and depression, an interval intervening between the attacks, quite free from both. They occurred every year. At most there was but one year in which their occurrence was called in question. It appears that the excited turns usually commenced in the middle, or latter part of summer, continuing from one to three months. While under their influence, he was noisy, boisterous, and talkative. The various other manifestations of this condition, as related by the witnesses, were, for the most part, referred to particular attacks, and were probably confined to them. In this manner, it was stated, that he would drive

about rapidly and carelessly, shouting and hallooing; that he indulged in wild and incoherent expressions, and was observed rambling about without hat, coat, or shoes. At different times, too, he entertained some strange fancies which were not far from being real delusions. He professed to be able to walk on the water; to catch a person's breath in his teeth; to have command of angels; to tame a ferocious woodchuck by looking in his eye; and to hold up through a storm a whole broadside of a house frame which they were raising. At times he had great fears of thieves and devils, and would carry about a double-barrelled gun to protect himself. Once he spoke of these devils as brushing by him at an evening meeting. At another, he thought a fellow boarder at the hotel had been robbed of a large sum. With two or three exceptions, the excitement was never so high as to require his confinement to the house, nor did it always prevent him from managing his affairs. It was said he was inclined to make purchases, generally of fancy articles quite unsuitable to his condition, but only one or two instances were related of his indulging in foolish speculations, and those were of trifling amount.

§ 307. Depression immediately succeeded the excitement, and continued until spring. Once it was spoken of as disappearing in March; and at another time, in April. This also seems to have varied in severity. At one time, he is described as being still, sitting in company for hours without saying a word, shy, and avoiding his friends. In many of the depressed turns he was filled with vague fears and apprehensions, thought he was coming to want, and was disposed to suicide. In others, he was able to attend to his customary business.

§ 308. His daughters testified that within their recollection (then respectively twenty-five and twenty-three years old), he had never been otherwise than excited or depressed; yet it was abundantly shown by a cloud of witnesses who were in the habit of seeing him, every day or two, for many years, that there were well-marked intervals between his attacks, when he was apparently free from excitement or

depression. It was their concurrent testimony, that in these intervals, his manners were natural and proper, his conduct and conversation correct, and nothing in either to arrest the observation of others. He managed the farm, both before and after his father's death, with no very obvious lack of prudence and intelligence, and creditably discharged the duties of a parent, husband, and citizen. Various business transactions of his at one time or another, were described by the witnesses as having been performed with at least ordinary discretion and sagacity; and those who had these dealings with him observed nothing strange or unusual in his appearance. He hired and paid his workmen, bought and sold his cattle, procured the necessary supplies of food and clothing for his family, placed his children at school away from home, paid the bills for their board and tuition, married twice, bought and sold real estate, lent money, received payments, obtained discounts at the bank, and once (in 1832), was chosen by the parish as its agent for disposing of some lands. In all these transactions, the defendants undertook to show, that he evinced an ordinary share of shrewdness and intelligence; and in regard to many of them, certainly, this was the fact. Instances were mentioned of his giving too much for his purchases, and of buying some things which he did not need, but nearly, if not quite all, these transactions occurred when he was confessedly in his excited state. One of them, which occurred in the spring of 1842, referred to the purchase of an old shop for a needy neighbor, and was first related in such a manner, as to convey the impression that it was deeply tinctured with folly. The testimony of the neighbor himself, however, presented the matter in a very different light. It appeared that he owned a lot of land, very near Allis's house, which it had been proposed to purchase for a burying-place for the use of the town. Allis being loath to have a burying-place so near him, suggested to the witness, that he had better put up a house on it. "I replied," said the latter, "that I had no funds, and then he offered to assist me. The next morning he came and proposed to buy for me a certain old shop near by, which might be made into a

house, and could be obtained, he thought, for $100." He succeeded in getting it for $90, and had it removed to the lot in question, but failed to supply the funds necessary for converting it into a house. Thus the land was not sold for a burying-place, and he did no more than was necessary to defeat the project. Many of the witnesses who had dealings with him, and spoke of him as evincing nothing strange or unusual in his manner, and appearing like other men, had seen him in his excited and depressed states, and declared that in them, he appeared very differently. Instances of excitement were related, which apparently occurred while in his rational or lucid intervals, but they were transitory, and seemed to have been caused by sudden provocations, or some other special causes. In this connection it is proper to state, that following the custom of the times, he frequently, if not excessively, used ardent spirits; and it was testified that drinking always excited him.

§ 309. The evidence respecting Allis's mental condition about the time of the transaction in question, requires particular attention. In August, 1833, he went on a pleasure excursion to Saratoga, stayed two or three weeks, and came back highly excited. In September he bought a piece of land of his nephew; he attended auctions, and was disposed to bid off every thing that was sold. In that month or the next he went abroad to purchase cattle, for the purpose of fattening them. He was disposed, says a witness, to give whatever was asked, and actually did pay high prices. He said, when he returned home, that he had got them for a song. In October, his wife died; she was sick when he left home to buy cattle, and he told a young man who lived with him, that if she died, he must procure a coffin. Soon after, he became depressed; was troubled at finding he had bought more cattle than he had the means of feeding, and solicited his brother-in-law to help him out of his troubles. A witness who took some of the cattle to keep for him, said that Allis applied to him and made the bargain. He was to keep them from 25th of November to the early part of February, at $1.17 per pair, Allis furnishing grain, and witness hay. "He

came often," said the witness, "to see the cattle; talked about them as other men do; appeared, in all respects, like other men. Said he would pay when he got returns, and did pay in the course of two or three weeks. I saw nothing like excitement or depression." In March, 1834, he conversed with a witness about the mills; said they were not profitable; that there was always something to be done on them, and that he thought of selling them. He said he had been offered $4,000 for his part, and asked witness's opinion about the price. The witness observed nothing wild or incoherent in his manner; he was as usual when about his business. In March, if not before, he began to negotiate the arrangement with his brother-in-law, referred to in the beginning of this notice, which ended in a contract whereby the latter was to receive all Allis's real estate excepting the mills, and which was valued at between $8,000 and $9,000, maintaining him and his daughters, and giving the latter $2,000 each. His reasons for this step were, as appears from the evidence, that by the death of his wife, he was left with two young children, and an aged mother sick; that he was unable to get any suitable person to take charge of his family; and if his brother-in-law should prove a gainer by the arrangement, it would only turn a portion of his father's property into his sister's family. The brother-in-law went in March, and said he thought Allis continued depressed until the first of April, but soon went out to work with him, and appeared to be in his natural condition during the summer. He also consulted with his brother respecting the sale of the mills; told him what was offered and his reasons for selling.

§ 310. The evidence respecting the character of the act, inasmuch as it will affect our estimate of his mental capacity, remains to be considered. He felt perplexed by his business and overburdened with cares. His brother, with whom he often spoke of his intention to sell the mills, told him it would be a judicious step and relieve him of care. Both this witness and another whom he consulted, expressed their satisfaction with the price. The fact of his being indebted to the defendants to the amount of $500, or indeed to any

amount, was neither proved nor disproved. If not so indebted, then he received at the rate of $8,000 for the whole property; otherwise at the rate of $9,000. A few witnesses rated the mills at $10,000, in 1834; one at $12,000. A larger number fixed their value at $6,000; at this sum, they were assessed on the tax book of the town that year.

§ 311. Dr. Lee, assistant physician of the lunatic hospital at Worcester, testified that Allis entered that institution July 6th, 1844; that he was highly excited, and continued so four days; that this excitement, then, rather rapidly passed into depression, in which state he continued so long as he remained, which was six weeks. His opinion upon the evidence was, that the fact of periodical insanity was established, but not that of occasional sanity. He was satisfied of Allis's insanity in the spring of 1834. Dr. Woodward, late superintendent of the hospital at Worcester, coincided with Dr. Lee in the opinion that Allis had no lucid intervals, and must have been insane in the spring of 1834. Buying and selling, he thought, no proof, one way or the other, because insane men are capable of doing certain business. He admitted, however, that, if Allis on his return from the hospital, had talked with his family on the subject of his will, and had set down coolly and deliberately and made a proper will, the presumption would have been in its favor. The author testified that in his opinion the existence of lucid intervals was abundantly proved; that in these intervals he was as capable of transacting business as a person ever is in a lucid interval, and that the contract in question was made in one of them. It should be stated in this connection, that the first two medical witnesses had heard none of the defendants' witnesses, and not all of the plaintiff's; while the latter had heard all of the plaintiff's, and most of the defendants' witnesses.

§ 312. The charge of the court (Mr. Justice Dewey) to the jury, contained some instructions that deserve the attention of the medical jurist. The jury were told that the precise point of inquiry for them was the state of Allis's mind on the 21st of March, 1834, and that his previous and subse-

quent states were only important as elucidating that inquiry. It was also stated that acts done in a lucid interval will be sustained by the law, and that the question of fraud is of little weight, except as connected with that of sanity and of the consideration. In regard to the burden of proof, the ordinary doctrine was given, namely, that if insanity is alleged, it must be proved; that if habitual insanity be proved, the party who contends that the act was done in a lucid interval must prove it; that if a party exhibits only temporary ebullition of insanity, he cannot be presumed to be always insane. The court also instructed the jury that Allis must have had sufficient capacity to judge of the character and value of the property sold, and the law required no more. On the point of affirmation the court said that the contract was not void, but merely voidable, and therefore capable of ratification, and that, though it were the act of an insane man, it might stand if confirmed. If Allis, therefore, after recovering his reason, having in his recollection and knowledge the nature, extent, and time of the contract, and all the circumstances before his mind; having recognized the sale by permitting possession on the part of the defendants; having received instalments on the notes given for the purchase-money, knowing it to be the consideration of the sale of his part of the mills, he would be bound by it.

The jury returned a verdict for the defendants, and thus the contract was not disturbed.

§ 313. In this case the plaintiff claimed relief on the ground of his own insanity and the fraud of the other party, and the defendants undertook to prove that neither allegation was true. Indeed, the whole course of the proceedings showed that neither party regarded these two points as independent of each other, and not inseparably involved in the question of the merits of the case. The plaintiff disclaimed any desire to avail himself of his insanity. Whether sane or insane, he was willing the contract should stand, if a fair price had been paid for the property; and yet the burden of his testimony had reference to his mental condition. The defendants, on the other hand, while they endeavored to

establish his competency, were equally careful to show that they had paid the full value of the property. It was well understood that the stronger the proof of incompetency, the easier it would be to prove the fraud; and *vice versa.*

§ 314. It was not denied that Allis was insane a portion of every year; nor was it denied, except by his daughters, that for a portion of every year, he showed no very obvious manifestations of disease, and was, apparently, at least, in his natural condition of mind. The question was whether these restorations were real, and not apparent merely; a complete intermission of the disease, a *lucid interval*, as it is somewhat technically called, or only a transitory remission in the severity of the symptoms. The difference of opinion on this point between the medical witnesses, may be accounted for, perhaps, in the fact, that they formed their judgment upon different data. Taking the evidence of both parties together, it is difficult to conceive of stronger proof than it furnished, that Allis's periodical restorations fairly amounted to what are called *lucid intervals.* The states of excitement and depression were scarcely more strongly testified to, than an interval which was marked by neither. Many of the same persons who observed him in the former states, also observed him in the latter, and were struck by the contrast they exhibited. If, then, for months together, he was neither excited nor depressed, and entertained no delusions, wherein was he insane? When we consider, too, that he resumed his customary duties, and appeared to his friends and neighbors to be like himself, it may be doubted whether we have, in a great majority of cases, more satisfactory proof of recovery.

§ 315. The disbelief of two of the experts in his sanity, seemed to be a matter of inference, rather than of direct proof. The intervals were so short compared with the duration and frequency of the attacks, that there was hardly sufficient time, they thought, for the mind to have been restored to a state of sanity. If by sanity they meant the restoration of the mind to a state of perfect health, such as those enjoy who have never been insane, no one would be disposed to

disagree with them. We are not aware, however, that the *lucid interval* as understood by medical authorities, implies exactly such a restoration as that. Without canvassing the various definitions that have been given of this state, it is enough that they agree in the fact, that the individual clearly and correctly recognizes his true conditions and relations, all delusions having vanished, and the affections returned to their natural current. This does not imply that he has recovered the original vigor of his mind and his capacity for transacting unusual or important business, with his original promptitude and correctness. Indeed, a degree of restoration like this, is possessed by few patients who are discharged from our hospitals as *recovered.* To prove the occurrence of a lucid interval, it seems hardly reasonable to require evidence of a degree of capacity which can only be predicated of a mind that, for years, has enjoyed complete exemption from disease. Dr. Woodward declared, as has already been observed, that buying and selling, even with a certain degree of shrewdness, was no proof of sanity, as such transactions are often performed by the inmates of asylums. The fact thus broadly stated, is undoubtedly true, and we do not recollect any particular transaction of Allis which might not be performed by some unequivocally insane persons. But the question of sanity or competence cannot be settled by reference to a single act, — except perhaps as regards that particular act. A broader view of the individual is necessary for this purpose. If he buys and sells for months together; if he manages his affairs with prudence; if no delusions possess his mind; if to his friends and neighbors he seems to have regained his natural character; if, in short, the indications of sanity appear in his general habit and not merely in a particular act, he must be regarded as sane. It is because the very reverse of this is true, that the inmate of the asylum is deemed to be insane, though he may occasionally do a very shrewd thing. He is, perhaps, the prey of delusions, or his affections are grossly perverted, or his shattered understanding needs the constant support and guidance of sounder minds. To meet every instance of shrewd transaction by the assertion that many

persons of unquestioned insanity do the same things, can only produce a confusion of ideas. There is another fact of the deepest significance in this connection. Year after year he had been seen by his father, under whose roof he lived, stricken down by annual attacks of insanity. And yet by this father who knew his mental infirmities better than any one else, he was made the executor of his will, and residuary legatee of the burden of his estate, amounting to nearly $20,000. What stronger evidence could we have, that for a large part of every year, he enjoyed his ordinary health and competence? Besides, are his two marriages to be regarded as having no bearing on the question of his mental condition? Had he no lucid intervals when they were contracted?

§ 316. The admission that Allis had lucid intervals, does not necessarily settle the question of his sanity or competence. True, the general doctrine of the law, whatever may be its practice, is, that in the lucid interval the individual is fully himself again, and restored to all his privileges and responsibilities. This implies that the mind is restored to a degree of integrity which the present state of our pathological knowledge on the subject fails to establish. For common purposes and ordinary occasions, it may be abundantly adequate, but the weakness and irritability which are induced by numerous and frequent attacks, unfit it for extraordinary efforts. So long as the individual confines himself to the beaten track of his customary thoughts and pursuits, he shows no want of capacity; but let him embark in new undertakings, assume responsibilities of unusual magnitude, or be subjected to provocations peculiarly calculated to try his power of self-control, and his mind is very liable to be led astray. He may rightly appreciate the value of his property and manage it very judiciously, and yet be far more easily overreached by dishonest men, than if he had never been insane. To regard all persons in a lucid interval as either completely responsible, or completely irresponsible, for their civil or criminal acts, would be manifestly unjust. A better rule would be to permit them the exercise of all legal rights,

and protect them from the fraudulent practices of those who would take advantage of their infirmity.

§ 317. Admitting the general fact that Allis had lucid intervals, the next question was whether the period when the contract for the sale of the property was made, was embraced in one of them. By two witnesses he was described as being depressed as late as April, when he began to manifest his natural condition. Allis's case was not of that kind in which the transitions are very rapid and abrupt, — a single day or night dividing the different states from each other. The change was slower, and it was impossible to fix upon a particular day as that on which the depression completely passed away, and the individual resumed his natural character. If the plaintiff were lying in the deepest shadow of despondency, as he undoubtedly had been at times, then of course, no one would contend that he was in a lucid interval. If, on the other hand, the cloud had fairly rolled away from his understanding, though his animal spirits had not quite risen to their natural buoyancy, it certainly does admit of a question whether he may not be correctly said, for any practical purpose, to have been in a lucid interval.

§ 318. It remains, then, to be ascertained whether, on the 21st of March, 1834, he was suffering under a degree of depression sufficiently severe to exert a controlling influence over his views and calculations. On this point, the testimony of the man who kept his cattle for him, and of the other witnesses with whom he conversed respecting his projected sale of the mills, is conclusive. They saw nothing in him like excitement or depression, and thought his manifestations were natural. The only controlling influence which this depression could exert over the contract, was supposed to arise from the feeling of poverty by which it was accompanied. Two witnesses testified that during the winter he felt poor, but no particulars respecting the feeling were given, and it did not appear whether it continued into March. Even admitting that it did, we have no reason to believe that it affected his estimates of the value of property; nor do we see why it should have induced him to sell at a less price

than he otherwise would. Presumptively it would seem as if the poorer he felt, the more he would endeavor to get. It is difficult, however, to see any connection at all between this feeling and the sale of the mills. Converting his mills into promissory notes would make him no richer, nor remove in any degree the feeling of poverty. Considering, therefore, that he was admitted by the plaintiff's witnesses to have come out of his depressed state by the first of April; that other witnesses saw nothing unnatural in his appearance weeks previously; and that this morbid feeling, if it existed at all, must have been very slight, the lucid interval may be fairly said to have embraced the 21st of March.

§ 319. Another and a conclusive proof that the contract was made in a lucid interval, is to be found in the various affirmations, as the lawyers call them, by which it was recognized. Year after year, until 1841, he continued to receive the annual interest and instalments upon his notes, in the month of June; and neither then, nor at any other time during those seven years, did he complain that he had made the contract when he was not aware exactly of what he was doing; or that the defendants had taken advantage of his morbid feeling of poverty, to obtain the property at an inadequate price. The effect of this fact can be avoided only by denying that he enjoyed a single lucid moment subsequent to March, 1834, and this would hardly be thought of.

§ 320. None of these facts are necessarily incompatible with fraud on the part of the defendants, because it is safe to presume that in the lucid interval, the mind is deprived of some of its original vigor, and in consequence thereof, the individual may be made the dupe of dishonest and designing men. Acts performed in this state, therefore, should be viewed with the utmost jealousy, and much less evidence of fraud should be necessary to annul them, than if the mental soundness had never been called in question. Leaving out of view the amount of Allis's indebtedness to the defendants, in regard to which, however, there was no direct evidence at all, the contract was singularly clear from suspicious

circumstances. Allis was desirous of selling the mills, because he regarded them as a source of trouble and vexation. Had his mind been in a perfectly healthy condition, they probably would not have been regarded in this light, but the fact was no less real, nor did it furnish a less rational motive for the transaction. It certainly was not a very strange thing that a person who was in a state of excitement or depression a considerable portion of every year, should come to the conclusion that his interests would be promoted by having this property in some other shape. His brother-in-law, who was probably more capable than any one else of advising him, thought it a judicious step. Under different circumstances, it might have been otherwise. Had his health been good, or had he been under guardianship, the mill property might have been rendered more profitable, than its value invested in any other way. Here the case was very different — sufficiently so to account for the different course which Allis pursued.

§ 321. There was nothing in the nature of the contract that required an extraordinary mental effort. He had always been acquainted with the mills; they were partly owned by himself, as they had been by his father before him; with their expenses and earnings he was perfectly familiar; the condition of the buildings was obvious; mills had been bought and sold in the vicinity, and thus he was furnished with an additional means of comparison for judging of the value of his own; in short, it was a species of property with the value and nature of which he must have been perfectly well acquainted. Neither was the idea of selling them a sudden one. He had contemplated the sale for some time previous, mentioned his intentions to his friends, and deliberately executed the contract for the transfer of the property. On the part of the defendants, so far as the evidence indicated, the transaction was an open and an honest one. The alternative before them was, either to allow a stranger to come into the joint ownership, or to purchase Allis's half themselves. It seems that the price they offered was an average of the different estimates of the value of the prop-

erty made fourteen years afterwards. The negotiation was not done in a corner. Allis took ample time to consider the matter, conversed with and received the advice of his friends on the subject, deliberately consummated the bargain, and for seven years continued to affirm it by receiving the annual payments on the notes.

CHAPTER IX.

DEMENTIA.

§ 322. This form of insanity is attended by a general enfeeblement of the moral and intellectual faculties which were originally sound and well-developed, in consequence of age or disease, and is characterized by forgetfulness of the past, indifference to the present and future, and a certain childishness of disposition. The apparent similarity of this state to that of imbecility or idiocy, renders it necessary that they should be accurately distinguished; for nothing could be more improper or unjust, than to view them merely as different shades of the same mental condition. Idiocy and the higher degrees of imbecility are congenital or nearly so, and consist in a destitution of powers that were never possessed. Little or nothing is remembered, because little or nothing has left any impression upon the mind, and no advance is made in knowledge, because the faculties necessary for obtaining it have never existed. The proprieties and decencies of life are unobserved, for the simple reason that their moral relations have never been discerned, and their indifference to the most pressing wants is to be attributed to the absence of the most common instincts of our nature. The idiot is restless, uneasy, and inattentive, because the faculties that direct the attention, and draw from its application valuable results, have been utterly denied. In idiocy and imbecility the manners and conversation strongly resemble those of childhood; in dementia they never lose the impress of manhood, however disjointed and absurd they may be. The former appear at an early age of life; the latter

never takes place till after the age of puberty, except occasionally as a sequel of wounds or diseases of the head, and generally increases with time, from the slightest possible impairment of mental energy to the most complete fatuity. In dementia the past is forgotten, or but indistinctly and unconnectedly brought up to the mind; the attention wanders from one thing to another; the affairs of the present possess no interest; and the moral and social affections are inactive, because the faculties, in consequence of pathological changes in the brain, have fallen into a state of inertia that prevents their ordinary manifestations. The whole condition betrays the existence, not of physical imperfection, but of physical weakness (many of the bodily functions also frequently being enfeebled), and consequently it may sometimes be cured, or temporarily relieved. When once firmly seated, it is not incompatible with length of years; and after death, we may find, on examination, lesions of structure, or diminutions of size, which are accidental, the result of diseased action, and not original malconformations. The above comparison of mental deficiency with dementia shows, that they depend on two very different conditions of the brain, and consequently must display very different moral and intellectual manifestations; from which we are warranted in inferring that in regard to their medico-legal relations, they cannot properly be placed on the same ground.

§ 323. Dementia is distinguished from general mania, the only other affection with which it is liable to be confounded, by characters that cannot mislead the least practised observer. The latter arises from an exaltation of vital power, from a morbid excess of activity, by which the cerebral functions are not only changed from their healthy condition, but are performed with unusual force and rapidity. The maniac is irrational from an inability to discern the ordinary characters and relations of things, amid the mass of ideas that crowd upon his mind in mingled confusion; while in dementia, the reasoning faculty is impaired by a loss of its original strength, whereby it not only mistakes the nature of things, but is unable, from want of power, to rise to the con-

templation of general truths. The reasoning of the maniac does not so much fail in the force and logic of its arguments, as in the incorrectness of its assumptions; but in dementia the attempt to reason is prevented by the paucity of ideas, and that feebleness of the perceptive powers, in consequence of which they do not faithfully represent the impressions received from without. In mania, when the memory fails, it is because new ideas have crowded into the mind, and are mingled up and confounded with the past; in dementia the same effect is produced by an obliteration of past impressions as soon as they are made, from a want of sufficient power to retain them. In the former, the mental operations are characterized by hurry and confusion; in the latter, by extreme slowness and frequent apparent suspension of the thinking process. In the former, the habits and affections undergo a great change, the conduct becoming strange and inconsistent from the beginning, and the persons and things that once pleased and interested, viewed with indifference or aversion. In the latter, the moral habits and natural feelings, so far as they are manifested at all, lose none of their ordinary character. The temper may be more irritable, but the moral disposition evinces none of that perversity which characterizes mania.

§ 324. In dementia the mind is susceptible of only feeble and transitory impressions, and manifests but little reflection even upon these. They come and go without leaving any trace of their presence behind them. The attention is incapable of more than a momentary effort, one idea succeeding another with but little connection or coherence. The mind has lost the power of comparison, and abstract ideas are utterly beyond its grasp. The memory is peculiarly weak, events the most recent and most nearly connected with the individual being rapidly forgotten. The language of the demented is not only incoherent, but they are much inclined to repeat insulated words and phrases without the slightest meaning. "It seems," says Esquirol, "as if they were listening to imaginary tales which they repeat in obedience to an involuntary or automatic impulse excited by their old

habits or fortuitous associations with actual impressions."[1] The mind is often occupied by hallucinations which continue a longer or shorter time, and disappear to be succeeded by others. The useful or ornamental arts which they may have practised with skill and followed with ardor, and the various other employments of life, seem to be utterly forgotten as if they had never been thought of. Their time is spent either in moving about with restless activity, or passing days, weeks, or months, in the same spot, in utter vacuity of thought or purpose; in pouring forth an incessant flow of words at the top of their voice, or uttering low, muttering sounds, consisting of scarcely articulate words and broken phrases; in singing, crying, or laughing.

§ 325. Though often irascible and self-willed, their anger is momentary, and thus they readily yield to the direction of others. The moral powers, in fact, seem to be possessed of too little energy to maintain resolution, or cherish the passions. Their feebleness of purpose and passive obedience to the will of others, strikingly contrast with the pertinacity and savage fury often evinced by the maniac. With the remembrance of their friends and former employments, there also disappears all trace of the social and domestic affections. All interest in the concerns of others is lost; and family, friends, and relations are viewed with the indifference of perfect strangers, and nothing is able to awaken an emotion of pleasure or pain.

§ 326. The derangement of the intellectual powers is sometimes indicated by remarkable changes of the countenance. The skin is pale, dry, and wrinkled; the eyes sunken, dull, and moistened with tears; the pupils dilated; the look uncertain and wandering; the cheeks hollow and emaciated; and the whole face destitute of expression, and indicative of decay. The organic functions suffer but little; the appetite for food is so great that the patient seems to be constantly eating, and the quantity consumed is enormous. Affections

[1] Maladies Mentales, ii. 220.

of the nervous system, however, particularly paralysis, are not unfrequent complications of dementia.

§ 327. The above description is applicable to dementia only when fully developed and before it has passed into the state of fatuity in which it often terminates. This form of insanity appears under two different degrees of severity, which are designated as *acute* and *chronic*. The former is a sequel of temporary errors of regimen, of fevers, hemorrhages, metastases, suppression of customary evacuations, and the debilitating treatment of mania. It differs from the latter in being more rapid in its progress, and in its successive stages not being so well distinguished from one another. It is readily cured by regimen, exercise, bathing, tonics, antispasmodics, or simply by removing the exciting cause. It sometimes terminates in an explosion of acute mania, which then becomes critical.

§ 328. Chronic dementia is a sequel of mania (of which it is the usual termination) when life continues long enough, of apoplexy, epilepsy, masturbation, and drunkenness; or it may occur idiopathically, and then it usually accompanies old age. This form of the disorder, or senile dementia, is so often the subject of medico-legal inquiries, especially in connection with wills, that it deserves particular attention. Senile dementia, it must be recollected, is something more than that mere loss of mental power which results from the natural decay of the faculties; it is attended with those pathological changes also which are essential to the production of insanity. The mind is not only feeble, but it is deranged. Were it not so, every old man would labor under a certain degree of dementia. The first symptom which indicates the approach of this affection, is generally an impairment of the memory of recent occurrences. The events of early life have lost none of their distinctness, while recent impressions are feebly made, and in a short time mostly forgotten. While the visits of his friends are forgotten beyond the day or week they are made, the patient may talk of their former interviews, and relate the most trivial details concerning them. From this weakness of memory seems to arise,

oftentimes, the first appearance of mental alienation. The patient forgetting the intermediate ideas, the connection between those he does remember, and that order and filiation of them necessary to sound reasoning, are destroyed; and hence those gaps in his ideas, and those inconsistencies of conduct which convey the impression of mental derangement. Coincident with the failure of the memory, or very shortly afterwards, there is a diminution of the ordinary ability of recognizing external objects, which arises not so much from weakness of the organs of sensation, as of the organs of perception within. That is, the impressions of sound, light, touch, etc., are well enough received, but the qualities of form, size, weight, color, etc., are imperfectly discerned. Objects not very different are mistaken for one another, from an inability to perceive at the first sight the qualities that distinguish them, though the individual may recognize his mistake when it is pointed out to him.

§ 329. Thus far there is nothing that can properly be called mental derangement; the pathological changes in the brain have only occasioned a diminution of the natural power and activity of the mind. The first symptom indicative of derangement (and it is the next which is observed), is a degree of incoherence in the ideas, like that of dreams. It may not appear for days or weeks together, or only on certain occasions. The above symptoms increase in intensity more or less rapidly till complete dementia is produced, when all the moral and intellectual powers are involved in this state of decay and derangement. The memory of recent impressions fades away as fast as they are formed, and the past is beheld with considerable indistinctness and confusion, though events and acquaintances of early life are not yet forgotten. The patient is often at a loss to know where he is, or thinks himself at home when in another house, and wonders why he is not engaged in his usual occupations. Places, times, and circumstances are forgotton, or incorrectly remembered. His friends are not easily distinguished; morning, noon, and evening, yesterday and to-morrow are being constantly blended together; and he will get up in the night, mistake

the light of candles for that of day, and persist in calling it morning. Objects the most dissimilar are mistaken for one another, and consequently his notions are often the most grotesque and absurd. The intellect gradually becomes incapable of discerning the relations of cause and effect, and of comparing ideas together; in short, any thing like an effort of reflection is beyond its powers. The person is unable to follow the conversation, unless it be of the simplest ideas, and particularly addressed to him.

§ 330. Although such is the ordinary course of senile dementia, it sometimes begins with a general nervous excitement, accompanied by an excitement of some particular function which is exerted with a new and unaccustomed energy that deceives the old man and imposes on his friends. Thus, some are irritated by the slightest circumstances, and are very active and ready to undertake any thing. Others experience venereal desires that have been long since extinguished, exciting them to conduct directly contrary to their ordinary habits. Others who had previously been temperate and sober, manifest an appetite for high-seasoned dishes and intoxicating drinks. These symptoms of excitement, however, are soon succeeded by those of dementia, and the transition is sometimes quite sudden, especially when the patient is restrained from gratifying his unreasonable desires.

§ 331. The same decay which the bodily powers exhibit as they proceed to their natural termination in death, is always participated by the mental; but it sometimes happens that the latter are irretrievably affected long before the former have shown any symptoms of faltering in their course. The causes of this inversion of the natural order of decay, so far as they are external, are to be found probably in the great irregularity of exercise, both of kind and duration, to which the brain is subjected by the habits and wants of a highly civilized condition, whereby its healthy elasticity and vigor are so impaired, that it needs only the first touch of decay to lose forever the nicely adjusted balance of its faculties. The transition from the greatest mental exertion to the

most tedious inactivity, from the various phases of excitement to the irksome sameness of ennui, from the stimulus afforded by the performance of a thousand duties, and the glow that is constantly kindled by the hopes of the future, to the monotony too often occasioned by the loss of business, friends, and the cares of long-accustomed pursuits, is of such frequent occurrence, that every thing like regular and proper exercise which is as indispensable to the health of the brain as it is to that of every other organ, is but imperfectly practised by a large proportion of men.

§ 332. In the later periods of life, — and particularly if the constitution be weakened by sickness or dissipation, — any exertion of the mind far beyond its power to sustain, is liable to be rapidly followed by a state of dementia. The same effect is produced when after many years of unremitting attention to certain pursuits, the mind is suddenly deprived of the objects on which it rested, and thrown upon itself to furnish the means of excitement in the declining years of life, when novelty presents no allurements, and the circle of earthly prospects is being constantly narrowed. Take an individual from the stir and bustle of a city residence; from the unceasing strife of competition in the pursuit of wealth or honor; throw down the goal on which for years his eye has rested, though ever receding from his grasp; place him in the country, at a distance from familiar faces and scenes; and unless his mind be informed with various knowledge, or warmed by an interest in the moral concerns of his fellow men around him, it will sink into that state of inactivity so favorable for the operation of the predisposing causes of this disease.

§ 333. It must not be supposed that old age is subject to no other kind of insanity than that of dementia, for mania, even of the severest description, is not uncommon at this period, and the importance of distinguishing between them, in a legal point of view, must be immediately obvious. Not only may the mind remain competent to the discharge of some of the civil duties of life, in mania, but there is always a prospect of its restoration to health. The characteristic

symptoms, as well as the exciting causes that we have described above, if carefully observed, will generally prevent us from committing the serious mistake of confounding them together, as is too often done, with scarcely a thought of the impropriety of the practice.

CHAPTER X.

LEGAL CONSEQUENCES OF DEMENTIA.

§ 334. In its last stages, dementia does not differ, of course, in respect to its legal relations, from general intellectual mania. It is only while the mind is in its transition-state, if we may use the expression, passing from its sound and natural condition to the enfeeblement and total extinction of its reflective powers — and the entire change may occupy months and years in its progress — that its legal capacity is ever called in question. The successive steps of this disorder are so gradual and oftentimes affect the powers so unequally, that it is not strange that so much diversity of opinion should arise respecting the capacity of the mind which is the subject of it, or that groundless suspicion of improper influence should be so frequently excited. It must be considered, too, as a circumstance calculated to favor this effect, that the judgment is debarred from forming an unbiased decision, by suggestions of interest or jealousy which lead it to see lapses of the mind that would otherwise have appeared to be nothing more than that natural loss of energy, suffered by the mind as it "draws near to its eternal home." Most people, too, are so little accustomed to observe and analyze the mental phenomena, and so little acquainted with the physiological laws that govern their manifestations, that circumstances are often adduced as indications of unequivocal insanity, which only evince some normal peculiarities of the senile understanding. They need only to be put on the proper bias, to confound the natural decay of the mental faculties with that derangement that depends exclusively on pathological affections; so strongly do they resemble each other to

the superficial observer. By how many would Bichat's beautiful picture of the closing scenes of old age, be mistaken to represent the defaced and shattered temple that has been prostrated by the touch of disease. "Seated near the fire and concentrated within himself, a stranger to every thing without him, he passes his days there, deprived of desire, of passion, and sensation; speaking little, because he is determined by nothing to break his silence, yet happy in feeling that he still exists, when almost every other sentiment is gone." [1] Far greater, then, must be the necessity of caution in distinguishing between such degrees of capacity as exist in the early and those of the later stages of dementia, and where, too, the causes of error are so much more numerous. The deafness that generally accompanies the early stages, disables the individual from participating in or listening to the conversation of those around him, and thus gives to his countenance an expression of dulness and stupidity that might easily mislead one not particularly acquainted with him, while in fact he needs only to be properly addressed, to display a mind that has not yet ceased to think with some degree of accuracy and vigor. The latter fact, however, will be known only to his intimate friends, while the former is conveyed to the mass of common observers who are always ready to decide upon a person's mental capacity, from an occasional glimpse of his manner, or a few remarks on the most ordinary topics.

§ 335. A judge is seldom required to decide questions of more delicacy,— questions that demand such nice and cautious balancing of evidence, such penetration into motives and biases, such a profound knowledge of the mental manifestations as affected by disease, — than those of mental capacity in old age, where the mind is confessedly laboring under some kind or degree of impairment. The standard by which witnesses' opinions are formed in such cases is so different, and the pertinacity with which each one clings to his own conclusions, — in proportion generally to his igno-

[1] Sur la Vie et le Mort, pt. 1, c. x.

rance of the subject, — is so strong, that nothing but a great display of the above-mentioned qualities will enable the judge to perform his duty with credit to himself, and satisfaction to others. Unless he can state the grounds of his opinions, they are no better than surmises, and he fails of accomplishing one of the most desirable objects of the law — that of establishing and confirming the popular confidence in its decisions. Difficult as this duty is, it will be very much lightened by attending to some of those points which can always be ascertained, and which have an important bearing on the question at issue.

§ 336. Though some of the perceptive powers may preserve their wonted activity through the whole of the disease; yet it is in these that the disorder is first manifested, and that long before the higher powers of the understanding have materially suffered. The memory of persons, things, and dates, and especially of recent impressions, is exceedingly treacherous, and so striking is this impairment to those unaccustomed to look beneath the surface of appearances, that when they find they are not recognized, though once well enough known; that past events and the actors engaged in them are either forgotten, or singularly entangled and confused; and that a certain listlessness and absence of mind take the place of former animation and attentiveness; they summarily conclude that for all business purposes, the patient is utterly incapacitated. The impressions produced by a single short interview have no chance of being corrected by subsequent opportunities, or by more philosophical observations, and the final opinion is adopted and authoritatively propounded, that the individual in question did not possess legal capacity. If he take no part in the conversation, and appear scarcely to know what is passing around him, we are not to draw unfavorable conclusions relative to his mental condition, until we ascertain, if possible, that there are no peculiar reasons why he should remain silent and alone, and that he is no longer capable of pursuing a train of thought of some length and complexity. If he have forgotten the names and circumstances of those once familiar, but whom

he has not been in the habit of seeing recently, it does not follow that he has also forgotten those whose relations to him have kept them within the sphere of his daily observation, and made them the objects of his thoughts. An old servant or tenant whose countenance may not have been seen for weeks or months, is not to be compared in this respect, with the near relative who is frequently in his company, and always regarded with feelings of interest and affection. However certain it may be that he has lost all sense of the ordinary proprieties of life, it needs further evidence to prove that the persons and interests, which have been always nearest to his heart and connected with the great purposes of his life, have utterly faded from his mind. The evidence of those, therefore, who are qualified both by their habits of intimacy with the person whose mental capacity is in question, and by their intelligence and education, to appreciate the changes his mind may have undergone, is far more to be relied on than that of people of a different description, who make up their opinion hastily from a few casual and perhaps trivial circumstances. The great point to be determined is, not whether he was apt to forget the names of people in whom he felt no particular interest, nor the dates of events which concerned him little, but whether in conversation about his affairs, his friends and relatives, he evinced sufficient knowledge of both, to be able to dispose of the former with a sound and untrammelled judgment. It is a fact that many of those old men who appear so stupid, and who astonish the stranger by the singularities of their conduct, need only to have their attention fairly fixed on their property, their business, or their family, to understand them perfectly well, and to display their sagacity in the remarks they make. In the case of *Kindleside* v. *Harrison*,[1] which we shall briefly notice, in illustration of these remarks, the reader may obtain a better idea than can otherwise be conveyed, of the kind of evidence generally produced in cases of senile dementia, and derive instruction and high intellect-

[1] 2 Phillimore, 449.

ual gratification from the clearness and ability with which it is sifted and stamped with its proper value, in the judgment of the court, Sir John Nicholl.

§ 337. The points contested in this case were four codicils to the will of an old gentleman, on the ground that at the time of making them, he was incapable, by reason of mental decay, of understanding their nature and effect. It was testified by some of the servants of his brother, who lived at a little distance from him, and by those of the lady with whom he, the deceased, resided, that during the two or three years within which the codicils were made, he frequently did not know people with whom he had previously been well acquainted, without being told who they were; that he would go about the house and garden looking around, and appearing not to know what he was about. On one occasion, he not only did not recognize a certain person, but could not be made to understand who he was, and it was testified by a very different kind of witness, that the deceased asked him how old was witness's father (though he had been dead sixteen years and had been his partner in business), and soon after, he inquired of the witness after his health, as if he were addressing another person. Several other similar lapses of memory and various appearances of childishness in his conduct, were also revealed by the evidence, amply sufficient, no doubt, to induce superficial observers to believe that he was mentally incapacitated from disposing of property. It appeared, however, that he was in the habit of giving, in favor of his brother's butler, drafts accurately signed and filled up; that at Christmas time, he gave the servants Christmas boxes and the usual amount of money, and entered the sums in his account book; that he received a farmer's bills for corn and paid them with drafts on his banker which he wrote himself, going through the whole business correctly, and that he docketed the bills and receipts on the back with the name of the person to whom paid, and the amount of the bill, making corresponding entries also in his private account book; that he signed twenty drafts, at least, one morning for payment of his brother's debts, without in-

struction or assistance, subscribing his own name as executor of his brother; that he would detect errors in the casting up of other people's accounts; that he discharged his physician's bills correctly; and, in short, that he managed his affairs, and that prudently and correctly, to the last. It was also testified that it was his practice to read aloud to the family the psalms and lessons of the day; that he was fond of a little fun, and played at whist remarkably well. That a person might have done all this and yet been unsound in mind, is certainly not impossible; but it was far beyond the power of a mind so broken up by old age and the invasion of disease, as to be incapable of altering testamentary dispositions previously made. This consideration, and the fact that the circumstances of the case furnished abundant reasons for the alteration, induced the court to decide in favor of the capacity of the testator.

§ 338. In this country, where such cases are decided by juries who are not responsible for their decisions, we sometimes meet with extraordinary verdicts. The case of *Dennet and wife* v. *Dow, Executor*, recently decided in Maine, after a protracted litigation, is calculated to excite serious reflections in the minds of all who are accustomed to regard the testamentary act as too sacred to be disturbed by any other than the clearest evidence of incompetency. It appears that Stephen Neal, who died in December, 1836, aged seventy-four years, left a will, dated 29th of October, 1835, in which his nephew John Neal, was made residuary legatee to nearly the whole of his property. From the decree of the probate judge approving this will, an appeal was entered by the natural heirs (the daughter of the testator and her husband), and tried before the supreme court in November, 1838; and again, in consequence of a successful application for a new trial, in December, 1840, the verdict being, in each trial, against the will, on the ground of insanity. Before noticing the evidence relative to his mental condition, it will be better to mention some acts in which the testator was a party concerned. April 15th, 1834, he was placed under guardianship, as being *non compos*, but the application which was made by

some prominent members of the Society of Friends, to which he also belonged, was accompanied by a written request from him that the measure might be taken, and no inquiry was made into his mental condition. The guardian having taken him home to his own house, and observed him closely for several months, came to the conclusion that he was not unsound, and on his setting forth the facts, the letters of guardianship were revoked, September, 1834. In November, 1834, he conveyed to the appellants divers stocks and portions of real estate, amounting to about one half of his whole property. In December, 1834, he made a will which was found after his death uncancelled, in which he constituted the Society of Friends in Portland residuary legatee of nearly all his remaining property. In July, 1835, the Friends, by their committee, applied to have him placed under guardianship on the ground of his being *non compos mentis*. This application having been dismissed in October, 1835, it was immediately renewed, and again dismissed December 2d, 1835. On the 29th of October, 1835, he made the will in dispute, agreeing essentially with the other just mentioned, excepting the clause respecting the residuary legatee, in which John Neal is substituted for the Society of Friends. In February, 1836, his last illness commenced; he was placed under guardianship upon application of the Friends, 25th of April, 1836, and died in December of the same year.

§ 339. As the evidence touching the mental condition of the testator, was unusually multifarious, rambling, and inappropriate, we must confine ourselves to those facts which have any real connection with this point.[1] In favor of his mental capacity, it was testified by the person who drew up

[1] For these I am indebted to the notes of the Courts (Mr. Justice Shepley on the first trial, and Chief Justice Weston, on the last), which were politely submitted to my inspection by those gentlemen. As the evidence at the two trials was essentially the same, except that some additional facts came out at the last, I have made no distinction between it, only using those notes in which it is most fully reported. As the verdicts were alike, there seems to be no impropriety in this course. I have given every fact which had any bearing on the state of the testator's mind.

the will, that he did it from a draft originally in testator's handwriting; that they had considerable conversation about the items; and that he had no doubt of his entire competency. One of the subscribing witnesses, who was also a neighbor and in the habit of doing business with him, had no doubt of his competency. While under the first guardianship and during the year 1835, he made bargains and contracts of various kinds, such as for sale of land, for board, for rent with his tenants, for services, etc., all of which appeared to be shrewd and well-considered. The woman with whom he boarded a few weeks, immediately after the first guardianship was discharged, testified that he used to purchase for the table, he keeping an account and she also; and that when they settled, she found him exact to a cent, and very close. The accounts with his tenants were entered in a little memorandum-book, addition and subtraction made, credits given, etc. After making a contract for board in November, 1834, by which he was to provide the fuel, he struck out the word firewood, and inserted "coal, to be delivered at the wharf," in order to save the charge of truckage. In July, 1835, when land speculations were rife, he refused an offer of two thousand six hundred dollars, and half profits, for a lot of land, preferring two thousand eight hundred dollars, part in cash, and the balance secured by mortgage. It appears, too, that the purchaser, having soon after sold the land for five thousand dollars, induced the testator to change the papers, and receive from the last purchaser notes amounting to three thousand five hundred dollars, secured by a mortgage on the land. He showed uncommon watchfulness about security, insisting upon the purchaser's wife signing a relinquishment of dower in the mortgage, until satisfied by legal inquiry that it was not necessary. He insisted, too, upon having the deed carried down at night and recorded, lest possibly an attachment might be slipped in, as he had known such a case. On being assured of the purchaser's solvency, he gave up the point, and waited until the next morning. Hiring a man to dig his potatoes by the bushel in October, 1834, and finding that he made more than day's wages, he

insisted on changing the bargain and paying him by the day. Another witness who had known him for fifty years, met him one day while under the first guardianship, and the testator began to converse about the value of stocks and the comparative value of bank and insurance stocks, observing that he owned both, and thought the former safer, though the latter might be more profitable. Neither then nor afterwards, for he was in the habit of meeting testator frequently at his son's house, did he observe any thing to lead him to suspect that the testator was unsound or incompetent. One of his nieces often saw him during the summers of 1833, '34, and '35. At one time he fenced their land-lots which were contiguous; bought boards, used her old posts to save expense, and kept the accounts. He also bought trees, gave her some, and directed her how to plant them. An architect conversed with him several times in 1835 about some houses he was building for his nephew, and showed him plans with which he was pleased, though he criticized them, and suggested some sensible alterations in the manner of laying the stone. In the autumn of 1834, he bargained with a witness for some stones to be used in making a cellar drain; and conversed very sensibly on the different kinds and qualities of stone and the manner of splitting them. About this time he conversed with considerable acuteness respecting a young child's memory. The child knew its aunt, he said, not because he remembered her countenance, but because she resembled his mother; and when it was objected that the resemblance was not very strong, he replied that the child might perceive it though an adult might not, and that probably the resemblance was in the sound of their voices, rather than their features. This child died in September, 1835, and for some time afterwards, he frequently spoke of it, and with feelings of affection. It appears that until his last sickness, he always immediately recognized his friends and acquaintances, and manifested an interest in their welfare.

§ 340. To show that the will was a rational act, as well as rationally done, a memorandum-book was produced, containing, in the handwriting of the first guardian, a schedule

of the property he had conveyed to his children, and beneath it, in his own hand, and subscribed with his name, he expressed the design not to give them any thing more, saying, "he had amply provided them with the means of a comfortable subsistence, provided that they exercise proper industry and economy; and without these all my property could not suffice them, which, therefore, I have thought proper to dispose of in another manner." He expressed the same views in conversation with different witnesses. It also appeared that he was not on good terms with his children, from whom he had received, or at least thought he had received, much unkind treatment. As reasons for altering his testamentary dispositions, we have the two attempts of the Friends to place him under guardianship, which, of course, were as little calculated to secure his regard for them, as the treatment of his children was to increase his affection for them. It also appeared in evidence that the Society had "dealt with his wife," and turned her out of meeting, on the representations of his own daughter.

§ 341. On the other hand, in proof of his incompetency, it was testified by one of the subscribing witnesses, that he "did not think him of sound mind," though he could give no other reason for his opinion than "the appearance of the man." He could state no facts nor conversation evincing unsoundness of mind, though before and after the execution of the will, the testator was in the habit of buying groceries at his shop. He also admitted that the testator "always appeared to know what he was about." The remaining subscribing witness "did not consider him so sound as it was desirable he should be in such an important transaction," though he admitted that "he was pretty close in making a bargain, and was a saving, prudent man in his calculations." He told stories and conversed correctly on old affairs, but on recent transactions, was not so connected. This witness also mentioned some other facts indicative, in his opinion, of mental unsoundness, which will be presently noticed. In July, 1835, he offered to the city treasurer, in payment of his taxes, a scrap of paper, apparently a bill of purchases,

and insisted that it was as good as money, and would be taken at the bank. But it appeared that he had received a check upon a bank, but his sight being poor, and his spectacles missing, he had mistaken for it something of no importance. One evening he entered a house next his own and sat down, but he discovered the mistake himself the moment he heard a strange voice. Once when the meeting for worship was over, and the business meeting had begun, he asked, in a loud whisper, an old friend of his who dealt in wool, what he gave for wool then. On being answered that he should wait till after meeting before talking on such subjects, he nodded assent and was silent. Several times he went out of his house without his hat, and in one or two instances, he inquired the way to a house or street with which he had been previously well acquainted, and then started off in an opposite direction. Some of the entries in the memorandum-book were repeated, but they were all correct to a cent. Once, in 1833, after paying the balance of an account, he entirely forgot it in fifteen or twenty minutes, and when reminded of it, said, I am forgetful; and in 1835, he would ask the same question several times in succession, without being aware that it had been asked and answered. Once he undertook to write a deed (a business he was accustomed to), boggled over, and finally gave it up. Then he took another blank, got confused, and the witness had to write it himself. In 1834, when the witness carried to him money to pay a note, he had forgotten the note entirely, was unable to find it, and requested the witness to write a receipt for him to sign. The money he undertook to count, but merely tumbled it over, and laid it down, when the witness counted it over to him, bill by bill. On purchasing things at the shops, he would take his change without counting it. It was testified that when at table he required his food to be cut up for him; that he would attempt to spread cheese on his bread, mistaking it for butter; would pour his tea into a cup-plate instead of a saucer; and put his sugar into the plate. A stray cow coming into the yard, he said it was one he had lately bought. Asked a witness if his mother's shed was

much injured in the storm, alluding to his aunt's shed, which had been blown down. He spoke of having some chairs and tables in a town at some distance, and wanted the witness to ask the stage-driver to bring them down, as he might, a part at a time. One witness testified that in the autumn of 1835, after the execution of the will, he rode out with him at a little distance from town; that he seemed lost — did not know where he was, even when he got to his son's tanyard; that he would rave about his children and their ill-treatment of him, and then go to see them and be cheerful with them, make no complaints, and come away happy. He admitted, however, that they drove around by an unusual road, and that on returning, while yet at a little distance from town, testator asked where they were, when he replied, pointing over the bridge to Dennet's tanyard, "Don't thee know that place? That is Oliver's tanyard." He spoke of certain property as his, after he had sold it. A female witness, who lived in the same house with him in the autumn of 1835, said that he could not dress himself unassisted; that she had seen him try to put on his wife's stays; that he used to bring bits of paper and ask her to sew them together, calling it dividing his property; that he talked of being buried at the head of his bed; that he called patching windows, tailoring; and that he made up a fire on the floor and filled the room with smoke. It appeared, however, that being large, clumsy, and wearing a loose wrapper, he was sometimes embarrassed in putting on his pantaloons; that his wife's stays were in fact a flannel waist much resembling the flannel waistcoat he always wore; that the bits of paper he had sewed together were, on one occasion at least, vouchers of his guardian's accounts, which he had stitched through and through, in order to preserve them; that he had strips of paper sewed together and used for a measure; that the hearth was very large, and one leg of one andiron stood off the hearth on the floor. There was evidence of a want of cleanliness, and neglect of the decencies of life, indicative of mental unsoundness. He was seen in the street with the flap of his pantaloons wholly or partly down, and he some-

times disregarded the calls of nature, or attended to them in improper places. It was testified, however, in explanation of these facts, that his hands being swollen and clumsy, and the button-holes of his pantaloons much worn, he had some difficulty in buttoning and in keeping them buttoned; that the uncleanliness was not habitual, but limited to occasions when he was suffering from diarrhœa, and that other instances of impropriety, which had been alleged, occurred during his last illness, when his mental unsoundness was admitted by the other party. It also appeared that he was somewhat intemperate in the use of spirituous liquors.

§ 342. No one, at all acquainted with the habits of old age and with the effect of senile dementia on the mind, can entertain a doubt of the testator's competency to make his will. True, he was more forgetful of the present than of the past; he frequently forgot what he had just before said or done; and he sometimes disregarded the common observances of life. All this, however, may be said of multitudes of old men whose competency for any business is never questioned by those who know them best. However weak may have been the mind of this old man, he still was acquainted with the value of property, especially of his own; he recognized his relatives and friends; was always aware of the exact nature of their relations towards him, and of their respective claims on his bounty; he still was capable of feeling the sting of filial ingratitude, and of being actuated by motives of ordinary prudence and discretion. If his mind were not sufficiently vigorous to engage in contracts and speculations of large magnitude, it was none the less able to bequeathe his property, the kind and amount of which he perfectly understood, to relatives and friends whom he still recognized and loved. The will was a rational act, rationally done, and there was not a tittle of evidence to show that the testator was under improper influences.

§ 343. The court, at each trial, refrained from any comments on the evidence relating to the testator's mental condition, and the jury were left to their own unenlightened and unassisted deliberations. There were peculiar reasons, per-

haps, for taking this course, in the present case, but we may be allowed to question its propriety as a general rule of practice. In cases like these, which are characterized by the abundance and discrepancy of the evidence, it needs a cool, tenacious, and intelligent mind to recapitulate this evidence; to sift, to analyze, weigh, and finally stamp it with its proper value. The jury, it is true, are sole judges of the facts, and if the question here were, whether certain facts offered in evidence were true or false, not a remark might be required of the court. But since they have to do with a very different question, that is, whether these facts warrant certain inferences relative to mental capacity, they are unable to answer it correctly, we apprehend, without the light that is derived from superior penetration and attainments. The knowledge necessary for this purpose is of a technical kind, which a jury cannot be expected to possess, and the very abundance of the evidence is calculated to fill their minds with uncertainty and confusion. If they can hear the opinions of experts — of persons who have given especial attention to this branch of knowledge — respecting the precise value of all these facts considered in relation to the point they are designed to establish, then indeed they would be in a condition to form conclusions of their own. But since this is not always practicable,[1] are they to be left to float about on a sea of conjecture, without star or compass to guide their course? Must a jury, not one of whom, perhaps, ever observed a case of insanity, or even studied the operations of the sane mind, take upon themselves to say that certain facts do, or do not

[1] Nothing can more strongly illustrate the necessity of some such measure as we have suggested (§ 46), than a fact that occurred in this case. The appellees were desirous that the evidence relating to the testator's mental condition, should be heard by some one particularly acquainted with the subject of insanity, who might testify, on the strength of such knowledge, whether the evidence showed him to have been incapable of making a valid will. The attendance of such a witness could not be obtained, for one of the gentlemen applied to — and they were the nearest — resided at a distance of 120, and another of 250 miles. Had it been otherwise, we might not have seen the most sacred of legal acts annulled on the most trivial grounds.

prove the presence of testamentary capacity; in other words, to decide upon professional questions of acknowledged difficulty? The really intelligent and conscientious juror, distracted by an appalling mass of evidence, much of which is irrelevant and contradictory, which he may try in vain to unravel and arrange, and puzzled by questions he never considered before, will and ought to look to the court for assistance.

§ 344. The principle laid down by the court, at the first trial, that a *disposing mind* means "so much mind and memory as would enable him to transact common business with that intelligence which belongs to the weakest class of sound minds," may be theoretically correct, but it seems to be of too abstract a nature to be practically applied by jurors. To compare one mind with another of different calibre, is a task for which they are altogether unfitted by their previous tastes, habits, and studies. Justice merely requires that the strength of the mind should be equal to the purpose to which it is applied. If this simple principle be distinctly presented to the minds of the jury, there are few so dull as to be unable to give it a practical application. It is not only reasonable, but it has the merit of having been repeatedly recognized in courts of law, until it has now obtained all the force of established authority. "He may not have sufficient strength of memory and vigor of intellect, to make and to digest all the parts of a contract, and yet be competent to direct the distribution of his property by will." [1] "A man may be capable of making a will, and yet incapable of making a contract, or to manage his estate." [2]

§ 345. We are to bear in mind, however, that testamentary dispositions generally imply an exercise of memory. The

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[1] *Stevens and wife* v. *Vancleve*, 4 Wash. C. C. R. 262.

[2] *Harrison* v. *Rowan*, 3 Wash. C. C. R. 580. Nowhere has the subject of testamentary capacity been treated with so much good sense and regard to scientific truth, as in the charges of the court from which the above quotations are made. With the progress of sound views on this subject, the correctness of the principles there laid down will only be the more firmly established.

mind must be able to bring up before it scenes and persons connected with the past as well as the present, for without such ability, persons may be overlooked who would otherwise have held a prominent place in the act, and transactions forgotten which might naturally be supposed to have an effect upon its dispositions. A will which makes no mention of relatives who had a natural claim on the bounty of the testator, and in regard to whom, he apparently entertained only the kindest feelings, creates a suspicion that his memory was at fault, and unless the fact is satisfactorily explained, a strong presumption is raised against the validity of the will. Many old men who have begun to lose their faculties, have a passion for making wills, and so far as the form is concerned, they are able to do it correctly, but they are often governed by the whim of the moment rather than any definite views of the claims which others may have upon them, and not having them brought to their notice by any one else, they are liable to overlook them unintentionally.

CHAPTER XI.

FEBRILE DELIRIUM.

§ 346. CEREBRAL affection, of some kind or other, we have considered as essential to the existence of insanity — as constituting in fact the whole disease; but there is another form of mental derangement of very common occurrence, in which the cerebral affection is only an accidental symptom of severe disease in the brain or some other organ. The functions of the brain are disturbed in each, but they differ so widely in their causes, progress, and termination, that the propriety of distinguishing them from each other for medico-legal, as well as therapeutical purposes, is universally recognized. Few diseases terminate in death without presenting at some period or other of their progress, but more particularly towards their close, more or less disturbance of the mental faculties; organic diseases of the brain, especially acute inflammation of its membranes and its periphery, are generally accompanied with delirium; and it is sometimes a symptom of acute disease in other organs, in consequence of the cerebral irritation which they sympathetically produce. It is seldom entirely absent in fevers of any severity, and is readily determined by inflammations of the mucous and serous membranes, particularly of the alimentary canal. In inflammation of the lungs, liver, spleen, and kidneys, it appears only towards the last period of the disease when it is approaching a fatal termination. Surgical operations, too, that prove fatal, are ordinarily attended at last with delirium. In chronic diseases, such as cancer, dropsy, consumption, the mind is seldom impaired, except that occasionally, during the final struggle, it wanders over the mingled and broken images

of the past. Delirium is also produced by intoxicating agents, when it simulates mania more perfectly than when it arises from other causes; but this form of the affection will be discussed in a different place.

§ 347. Delirium sometimes occurs suddenly, but generally comes on gradually, and is preceded by premonitory symptoms, such as pain or throbbing in the head, heat of the scalp, and flushing of the cheeks. Its first appearance is manifested by a propensity of the patient to talk during sleep, and a momentary forgetfulness of his situation and of things about him, on waking from it. After being fully aroused, however, and his senses collected, the mind is comparatively clear and tranquil, till the next slumber, when the same scene is repeated. Gradually, the mental disorder becomes more intense, and the intervals between its returns of shorter duration, until they are scarcely, or not at all perceptible. The patient lies on his back, his eyes, if open, presenting a dull and listless look, and is almost constantly talking to himself in a low, muttering tone. Regardless of persons or things around him, and scarcely capable of recognizing them when aroused by his attendants, his mind retires within itself to dwell upon the scenes and events of the past, which glide before it in wild and disorderly array, while the tongue feebly records the varying impressions, in the form of disjointed, incoherent discourse, or of senseless rhapsody. In the delirium which occurs towards the end of chronic diseases, the discourse is often more coherent and continuous, though the mind is no less absorbed in its own reveries. As the disorder advances, the voice becomes more indistinct, the fingers are constantly picking at the bed-clothes, the evacuations are passed insensibly, and the patient is incapable of being aroused to any further effort of attention. In some cases, delirium is attended with a greater degree of nervous and vascular excitement which more or less modifies the above-mentioned symptoms. The eyes are open, dry, and blood-shot, intently gazing into vacancy, as if fixed on some object which is really present to the mind of the patient; the skin is hotter and drier; and he is more restless and intractable.

He talks more loudly, occasionally breaking out into cries and vociferations, and tosses about in bed, frequently endeavoring to get up, though without any particular object in view.

§ 348. While delirium thus shuts out all ideas and images connected with the present, it sometimes revives the impressions of the past, which had seemed long before to have been consigned to utter oblivion, in a manner unknown in a state of health. A case once occurred in St. Thomas's hospital, of a patient who, when he began to rally, after a considerable injury of the head, spoke a language that nobody could understand, but which was, at last, ascertained to be Welsh. It appeared that he was a Welshman, and had been from his native country about thirty years, during which period he had entirely forgotten his native tongue, and acquired the English language. But when he recovered from the accident, he had forgotten the language he had been so long and recently in the habit of speaking, and acquired that which he had originally learned and lost.[1] Dr. Rush mentions, among many other similar instances, that the old Swedes of Philadelphia, when on their death-beds, would always pray in their native tongue, though they had not spoken it for fifty or sixty years, and had probably forgotten it before they were sick.[2]

§ 349. When delirium, or more properly speaking, the disease on which it depends, proves fatal, it usually passes into coma. Occasionally, however, it disappears some days or hours before death, and leaves the mind in possession of its natural soundness. Though enfeebled by disease, and therefore incapable of much exertion of his faculties, the patient is rational and intelligent, recognizes perfectly well his relations to others, and on familiar subjects, can arrange his ideas without dictation or guidance.

§ 350. So closely does delirium resemble mania to the casual observer, and so important is it that they should be

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[1] Tupper's Inquiry into Gall's System, 35.

[2] On Diseases of the Mind, 282.

distinguished from each other, that it may be well to indicate some of the most common and prominent features of each. In mania, the patient recognizes persons and things, and is perfectly conscious of and remembers what is passing around him. In delirium, he can seldom distinguish one person or thing from another, and, as if fully occupied with the images that crowd upon his memory, gives no attention to those that are presented from without. In delirium, there is an entire abolition of the reasoning power; there is no attempt at reasoning at all; the ideas are all and equally insane; no single train of thought escapes the morbid influence, nor does a single operation of the mind reveal a glimpse of its natural vigor and acuteness. In mania, however false and absurd the ideas may be, we are never at a loss to discover patches of coherence, and some semblance of logical sequence in the discourse. The patient still reasons, though he reasons incorrectly. In mania, the muscular power is not perceptibly diminished, and the individual moves about with his ordinary ability. Delirium is invariably attended with great muscular debility; the patient is confined to his bed, and is capable of only a momentary effort of exertion. In mania, sensation is not necessarily impaired, and in most instances, the maniac sees, hears, and feels with all his natural acuteness. In delirium, sensation is greatly impaired, and this avenue to the understanding seems to be entirely closed. In mania, many of the bodily functions are undisturbed, and the appearance of the patient might not, at first sight, convey the impression of disease. In delirium, every function suffers, and the whole aspect of the patient is indicative of disease. Mania exists alone and independent of any other disorder, while delirium is only an unessential symptom of some other disease. Being a symptom only, the latter maintains certain relations with the disease on which it depends; it is relieved when that is relieved, and is aggravated when that increases in severity. Mania, though it undoubtedly tends to shorten life, is not immediately dangerous, whereas the disease on which delirium depends, speedily terminates in death, or restoration to health.

Mania seldom occurs till after the age of puberty; delirium attacks all periods alike, from early childhood to extreme old age. It must be borne in mind, however, that the above distinctive features are not always present. A form of mania is occasionally seen, in which the mental aberrations and some of the physical symptoms are remarkably like those of delirium.

CHAPTER XII.

LEGAL CONSEQUENCES OF DELIRIUM.

§ 351. TESTAMENTARY dispositions made during the intervals of febrile delirium, are often contested on the ground of incapacity, especially where there is any suspicion, real or pretended, of improper influence on the testator's mind. These cases are sometimes very embarrassing, and it is impossible to come to a conclusion upon the direct evidence respecting the state of mind; nothing more can be attained than an approximation to correctness, by a careful investigation of the attending circumstances. When the delirium accompanies only the daily exacerbations of the fever, and disappears with them, there can be no doubt of the mind's being in a suitable condition, during the intervals, for devising property, but not for transacting other business of importance. The existence of delirium at any period of a disease will be sufficient to throw suspicion on any contracts entered into during such disease; and unless it can be shown that the delirium was but an occasional symptom, and of short duration when it occurred, and that the mind of the patient at other times was perfectly calm and rational, their validity is liable to be destroyed. When these two conditions are reversed, that of delirium being the habitual, and the lucid intervals the occasional state, the mind *may* have sufficient capacity to make a will; but, certainly, no other civil act which it might perform ought to be held valid, for the same reason that the acts of imbeciles are avoided. Georget, however, does not hesitate to express his belief, that under these circumstances, the reason is not so restored that the patient can be declared capable even of making a will, and

we readily admit that it is often questionable whether the mind is sufficiently steady and collected to comprehend the relations of property, or appreciate the claims of kindred and friends. A case related by Dr. Woodward, the superintendent of the Lunatic Asylum at Worcester, while giving his evidence in court on one occasion, strongly confirms the correctness of Georget's views. A legal gentleman, in the course of an acute pneumonic affection, began to have slight delirium on waking in the morning, but it was observed at no other time. About this time he remarked to his physicians that if they considered him in danger, he wished to know it, as he was desirous of altering his will, which he had previously made. Though not considering him to be in much danger, they approved of the plan, and the alteration was made. A few months after his recovery, he accidentally met with the will among his papers, but had no recollection of having made it, and was much surprised and dissatisfied with its dispositions, for they did great injustice to two of his sons. Still we would not make the disqualification universal, for cases not unfrequently happen in which, after days of constant delirium, reason for a while resumes her dominion and the patient converses with his accustomed fluency and wisdom, describing his feelings, giving directions to his family, and alluding to the past with a clearness and accuracy that leave no doubt on the minds of those around him, of his perfect sanity. A safer practice probably would be, to be governed in our decision of this point by the circumstances that attend the making of the will, the previous intentions of the testator, and the nature of his disease.[1]

§ 352. The law requires that in this affection, as in mania, the occurrence of lucid intervals should be proved beyond a reasonable doubt, but as delirium is merely an adventitious symptom, and not, like mania, the habitual state of the

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[1] It must be recollected that the question is, not whether the mind possesses its ordinary soundness and vigor, for we know it is always enfeebled, but whether it retains what may be called a testamentary capacity. See ante, §§ 119, 336.

patient, it will be satisfied with much less proof in the former than in the latter affection. Sir John Nicholl has very justly observed, that "in cases of permanent, proper insanity, the proof of a lucid interval is a matter of extreme difficulty, and for this among other reasons, namely; that the patient so affected is not unfrequently *rational* to all *outward* appearance, without any real abatement of his malady; so that in truth and substance, he is just as insane in his apparently rational, as he is in his visible raving fits. But the *apparently* rational intervals of persons merely delirious, for the most part, are *really* such. Delirium is a fluctuating state of mind, created by temporary excitement; in the absence of which, to be ascertained by the *appearance* of the patient, the patient is, most commonly, *really* sane. Hence, as also indeed, from their greater presumed frequency in most instances in cases of delirium, the probabilities, *a priori*, in favor of a lucid interval, are infinitely stronger in a case of delirium, than in one of permanent proper insanity; and the difficulty of proving a lucid interval is less, in the same exact proportion, in the former, than it is in the latter case, and has always been so held by this court." [1]

§ 353. In the case from which the above passage is taken, the testatrix, a widow lady, died of some acute disease after an illness of about ten days, during the two or three last of which she was more or less delirious. Her will was made on the evening of the day preceding her death, and its validity was opposed on the ground that she did not possess a testamentary capacity at the time of its execution. The evidence of the two consulting physicians who visited her about four o'clock, which was but a few hours prior to the execution of the will, was decidedly unfavorable to her testamentary capacity. One considered it "doubtful whether

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[1] *Brogden* v. *Brown*, 2 Addams, 441. If the reader is desirous of extending his knowledge of this subject, he will be well rewarded for a careful perusal of this and the following cases, in which the luminous expositions of Sir John Nicholl cannot fail to please and convince. *Evans* v. *Knight*, 1 Addams, 229; *Lemann* v. *Bonsall*, ibid. 383.

she was capable of making a will or not; his opinion rather was that she was not." He saw her once or twice afterwards, when she was "quite delirious and clearly incapable." The other physicians who saw her at four o'clock, conceived her "quite incapable of any complicated act; undoubtedly of any thing that required fixed attention, or any exercise of mental faculty." The attending physician, however, attributed the delirium to the paroxysms of severe pain suffered by the deceased, it being scarcely perceptible when these were absent, and believed that in the intervals she had perfect capacity. It appeared, too, that the will, which had been prepared from instructions just before received from her, was read over to the deceased, placed before her while she was sitting up in bed, and subscribed by her in the usual form with a dash below. The validity of the will was established.

§ 354. In another case, the testator who died on Friday, the 24th of April, of an attack of pneumonia, during the latter stages of which he had considerable delirium, made his testamentary dispositions on the 21st. One of the physicians deposed that when he saw the deceased on the 21st, "he was not in a state of sound mind, memory, and understanding, or capable of doing any act requiring the exercise of thought, judgment, and reflection." Another, who saw him for the first and only time on the 23d, thought it was extremely "improbable that the deceased should have been free from wandering and mental affection, on a day so shortly before he saw him, as the 21st." It appeared, on the other hand, that he gave instructions for a will without any suggestions whatever from the solicitor who reduced them to writing, and that after they were read to him, he approved and subscribed them. It was also deposed by other witnesses, that when the solicitor came, and while giving him instructions, he appeared rational and conducted with propriety. The court pronounced in favor of the deceased's testamentary capacity.[1]

[1] *Evans* v. *Knight and Moore*, 1 Addams, 229.

§ 355. In cases where the validity of testamentary dispositions is impugned on the ground of mental incapacity produced by delirium, or indeed by any other disorder, it is the practice of the English ecclesiastical courts, not to confine their attention exclusively to the evidence directly relating to the mental condition of the testator, but to consider all the circumstances connected with the testamentary act; for the object is not so much to settle the question of soundness and unsoundness in general, as it is in reference to that particular act. This principle is — and it is one that is well-grounded in the common experience of men — that a person may be capable of testamentary acts, while technically and really unsound, and incapable of doing other acts requiring much reflection and deliberation. This principle is particularly applicable in cases of delirium where the transitions from a state of senseless raving to that in which the mind is calm, perfectly rational, and conscious of its condition, are very rapid, and where in the lucid interval, the mind, though weak, is clear and unclouded by any of those peculiar views or notions which often characterize the lucid intervals in mania. Accordingly, the testamentary capacity is to be determined, in a great measure, by the nature of the act itself. If it be agreeable to instructions or declarations previously expressed, when unquestionably sound in mind; if it be consonant to the general tenor of his affections; if it be consistent and coherent, one part with another; and if it have been obtained by the exercise of no improper influence; it will be established, even though the medical evidence may throw strong doubts on the capacity of the testator. On the contrary, when these conditions are absent, or are replaced by others of an opposite description, it will as generally be annulled, however plain and positive may be the evidence in favor of his capacity.[1]

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[1] In illustration of these remarks, the reader is referred to *Cook* v. *Goude and Bennett*, 1 Haggard, 577; *King and Thwaits* v. *Farley*, ibid. 502; *Waters* v. *Howlett*, 3 Haggard, 790; *Bird* v. *Bird*, 2 Haggard, 142; *Martin* v. *Wotton*, 1 Lee, 130; *Bittleston*, by her guardian, v. *Clark*, 2 Lee, 229; *Marsh* v. *Tyrrel*, 2 Haggard, 84; *Hoby* v. *Hoby*, 1 Haggard, 146.

§ 356. In some affections of the head, and they may be primary or sympathetic, the patient lies in a comatose state from which he may be aroused, when he will recognize persons, and answer questions correctly respecting his feelings, but drop asleep again as soon as they cease to excite him. That the mind is much embarrassed, certainly, cannot be doubted, and it is well known that when the patient recovers, he has, ordinarily, very little idea of what passed at those times; indeed, he is generally unconscious of every thing he either said or did. It would be a bold assertion to say that the mind, under these circumstances, is legally capable of making testamentary dispositions, and they ought, therefore, to receive no favor from courts. In cases of injury to the head, it is not uncommon for the patient — after rallying from its immediate effect — to answer questions rationally, to appear collected and intelligent, in short to have fully recovered his senses, though he may subsequently declare that he is utterly unconscious of what were his acts, thoughts, or feelings at that time. Few, even among medical men, who observe a person under such circumstances, would have any hesitation in expressing their belief in his testamentary capacity, though the event would show that they had labored under a serious error.

CHAPTER XIII.

APOPLEXY AND PARALYSIS WITH THEIR LEGAL CONSEQUENCES.

§ 357. With little or no preliminary disorder, a person suddenly falls down, with loss of sensation and the power of motion. He lies totally unconscious of persons or things; he breathes slowly and laboriously; and, with the exception sometimes of a little convulsive action in some part of the body, he remains perfectly quiescent. This state of things continues for a period varying from a few minutes to a few days, when it terminates, either in death or a more or less complete restoration of the ordinary condition. This is an attack of apoplexy. Again, a person is stricken with a loss of the power of motion, either in a very limited series of muscles, like those of the eye or tongue, or in those of the whole or a large part of the body. Sensation — except that of feeling — and consciousness are not perceptibly affected. This is an attack of paralysis. The pathological conditions in which these two diseases originate, are, unquestionably, very nearly allied, insomuch that the latter has been often described as only a minor degree of the former. It is certain that all the phenomena of paralysis often occur as a sequel of apoplexy.

§ 358. Restoration, after an attack of apoplexy, as just stated, is more or less complete. The person may come to himself, and be, to all appearance, entirely himself again; or he may exhibit some lesion of motion, sensation, or intellect, which may gradually or never disappear. The lesion of motion may affect the muscles that belong to the vocal organs, so that the speech is thick, and difficult, if not entirely suppressed; it may affect the muscles of a single limb,

the arm or leg, rendering them powerless; it may affect all the voluntary muscles on one side of the median line of the body, or those of the lower extremities only, the upper remaining unchanged, and *vice versa*. In the affected parts, sensation is generally blunted. The patient may also exhibit some impairment of intellect, varying from a little defect of memory to entire abolition of the mental faculties. After a while all these various impairments may disappear, apparently. The cripple regains the use of his limbs; the organs of speech readily utter the thoughts; and the mind resumes its customary activity and strength.

§ 359. These affections originate in some pathological condition of the brain. Thus far there can be no doubt, but beyond this our knowledge is very imperfect. After death from apoplexy, we may find extravasations of blood or serum in the brain, or we may find in it scarcely any deviations from the normal state, — certainly none that could be regarded as an adequate cause of the fatal result. After death from paralysis of some duration, the brain usually exhibits well-marked lesions of some kind or other, but without any uniformity of character whatever. Two cases apparently similar during life, present nothing in common, in the pathological condition of the brain, as apparent to the senses. The reason is, no doubt, that the essential pathological change common to both, is of too subtle a nature to be revealed by the ordinary methods, while the lesions actually presented are subsequent results, controlled by causes other than those which determine the character of the disorder.

§ 360. Paralytics often make wills or contracts which become the subject of litigation, their validity being contested on the ground of mental incompetence. It is a matter of much importance therefore, in a medico-legal point of view, to understand how the mind is affected in paralytic affections. Of course, we are obliged, in regard to these as well as other affections, when required to decide upon the mental capacity, to be governed by those general principles universally applicable, rather than by any characters peculiar to the diseases in question. The latter, however, often throw much

light upon the points at issue, and ought not to be neglected in this class of investigations.

§ 361. It is sometimes asserted that attacks of apoplexy and of paralysis are *invariably* followed by more or less of permanent mental impairment. It has also been recently maintained that in a large class of paralytic cases, and those of apparently the severest description, mental impairment is the exception rather than the rule.[1] Neither of these extreme views expresses exactly the truth, — as it is maintained with little diversity of opinion, by writers and observers of the highest authority, — that, while a case of paralysis occasionally occurs in which no mental impairment can be detected by any practicable test, it is more or less obvious, in by far the greater number of cases. The most common manifestation of this impairment is a diminution of intellectual power. The patient may seem to be in perfect possession of his senses, so long as his mind is occupied with matters of trivial importance, while quite incapable of those higher efforts which were easy enough before the attack. He is incapable of any prolonged exercise of thought; he is unable to discern unusual or complicated relations with his ordinary quickness, if he does at all; he more readily defers to the judgment of others, and is willing to follow where once he was accustomed to lead. This, it will be observed, is a kind of impairment which would be discerned only by those well acquainted with his mental characteristics, and maintaining habits of intimacy with him after the attack. The casual observer sees no impairment, simply because it is not obtruded upon his notice, and he has not the opportunities that would enable him to detect it, and thus he misleads himself and others into the belief that it does not actually exist.

§ 362. There is often, as a sequel of paralysis, a grade of general intellectual enfeeblement, obvious enough to the

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[1] "To what degree are the intellectual faculties affected in cases of Apoplexy and Hemiplegia?" By B. McCready, M. D. New York Journal of Medicine, September, 1857.

casual observer. The patient may observe the common formalities of life, but his demeanor, his discourse, his occupations, all betray the fact that the original power of the mind is broken, its perceptions dimmed, and its grasp feeble and uncertain. The only special intellectual impairment ever occurring in cases of this kind, is the complete or partial loss of speech that sometimes follows apoplectic attacks. This affection has been already described (§ 161), and here I need only indicate its bearings upon the question of mental capacity. It is supposed to proceed sometimes, entirely from a loss of the power of articulation, the intellect being untouched. This is, certainly, a hasty generalization, because the power of testing the intellect of a person more or less unable to speak, must be exceedingly limited. The same objection lies against the other generalization, that the intellect may be untouched sometimes, in the far larger class of cases where it is admitted that the defect in question depends upon the loss of the memory of words. On this point, we can scarcely say more than that, under the circumstances, our limited means of information, sometimes enables us to see no appreciable defect of the reasoning powers. Of course, the more complete the loss of the power of language, the more difficult will it be to establish any conclusions relative to the mental condition. Where the patient is unable to articulate a word, and is unable or unwilling to write, it is quite impossible to conceive of any tests that would place the fact of the mental integrity beyond a doubt. The opposite conclusion can be far more easily settled.

§ 363. When a person loses the power of language, in the way here indicated, he will endeavor to supply the defect, according as his understanding is unaffected by the stroke. For this purpose he will resort to signs, writing, and the making of words by means of block letters, or the letters of a printed page. If the right hand is paralyzed, he will use his left, until by perseverance he has acquired considerable facility of writing. In cases, happily rare, where the defect extends both to written and spoken language, and the thoughts can be expressed by pantomime only, the manner

in which this is used will furnish some clew to the mental capacity. If highly expressive, it is a proof, no doubt, that the understanding retains some degree of strength and activity, but it can never, by any possibility, place beyond a doubt, the complete exemption of the intellect from the effects of disease. If, on the contrary, the patient never resorts to signs, or to a very few, and shows no improvement in the use of them, the conclusion is irresistible that the mind is in a state of dementia. In cases where the hearing is unaffected, and there is reason to suppose that the patient understands both spoken and written language, while he makes but little or no attempt to communicate his thoughts by letters, we cannot avoid the conviction that, for all rational purposes, the mind is gone.

§ 364. Valuable indications respecting the mental condition in this class of cases, may be derived from the manners and habits of the patient. To the practised observer there will always be discerned a wide difference in this respect, between one who has lost his mind with his power of speech, and another who with his loss of speech, retains his mind in its original integrity. This is a matter which hardly admits of definition or description, and therefore, the reliance which is deservedly placed upon it, can scarcely be appreciated by any but those who have observed the phenomena of dementia on a large scale. One of them may be referred to here as particularly worthy of attention, because it would be a conclusive test in cases that might otherwise be doubtful. In the graver forms of dementia, the patient occasionally neglects to obey the calls of nature in a suitable manner, although a vigilant attendant will generally obviate this disagreeable incident by observing the symptoms of uneasiness, and leading him, in season, to the place of relief. By one of the medical gentlemen whose opinion was obtained in a celebrated will-case lately adjudicated in a neighboring State, this symptom was confidently relied on as a conclusive proof of dementia. It could not have arisen, in the case in question, he thought, from paralysis of the sphincter muscles, because, in the first place, the paralytic difficulty was hemi-

plegia, not paraplegia, in which the influence of the will over these muscles is suspended; and in the second place, such an affection would necessarily give rise to unseasonable evacuations habitually, not occasionally. Neither could it have proceeded from morbid irritability of the rectum or bladder, for such an affection would have led to unusual frequency of the evacuations, — a fact which did not appear in the evidence. It would also have been accompanied by other indications of disease that would have forced themselves upon the notice of the medical attendant, and required some measures of relief. The only other possible cause of this disregard of the promptings of nature, is dementia, — that mental condition in which the individual is too careless of propriety, too indolent or too irresolute to act properly upon the impressions which he perceives. He is aware of what is coming, he fumbles about his pantaloons, looks towards the customary place of relief, or eats with redoubled quickness if he happens to be at his meal, but if his attendant is out of the way, or fails to recognize these premonitory signs, he readily ceases to trouble himself about the matter, and lets things take their course.[1] Who, much conversant with the insane, will fail to be impressed with the correctness of this diagnosis?

§ 365. In testing the capacity of one deprived of the use of speech by cerebral lesions, we must guard against the common error, not unfrequently made, even by cultivated and intelligent men, with confounding incidents expressive of only the most common wants and affections of our nature with such as imply some effort of the reflective powers. A large portion of our movements — those connected with the simple routine of life — become automatic and are performed without much exercise of mind. The ability to comprehend questions relative to trivial matters of fact, to execute messages, even to play games of skill, indicate but little mind, and yet it is just this kind of intelligence which is often supposed to prove the complete integrity of the mind. Another common mistake, in testing the mental powers of paralytics,

[1] Dr. L. V. Bell, Opinion in the Parish Will Case, iv. 484.

of whatever class, is that of concluding that, because the patient comprehends the terms of a proposition, he necessarily comprehends the merits of the case which it involves. A man may be very well aware that he owns a certain estate, and that some one is ready to buy at a certain price, and yet be quite incompetent to decide whether or not, under all the circumstances of the case, this price would be a fair one. In making his will, he might be aware of the existence of all his relatives, and recognize their natural claims upon his bounty, while incompetent to distribute that bounty upon any principles of equity and fairness. Surely, something more is necessary in such things than the mere comprehension of language, and yet large amounts of property have been disposed of to one and another upon a principle of discrimination calculated to excite suspicion, where it is doubtful if the testator, himself deprived of the power of speech, understood even the language in which these dispositions were suggested by others.

§ 366. Neither are we too hastily to conclude that expressions of assent or dissent imply a correct understanding of the merits or the terms of a proposition. By persons of shattered intellect, such expressions are often used automatically, and are utterly unreliable unless carefully tested by varying the form of the question. A paralytic recently under my observation, would converse, for a few moments, intelligently and pertinently; he had the air and demeanor of a gentleman, and he observed tolerably well the little proprieties of life. As far as the train of thought was mechanical, so to speak, he got on pretty well; but the moment any effort was needed, he utterly failed. He would assent to any proposition, or dissent from it, according to the form in which it was put. For instance: "Major" (he had held a commission in the French army, under Louis Philippe), "you were in the battle of Waterloo, I believe?" "O, yes, I was there." "In Jerome's division, in the assault on Hougoumont." "Yes, I was with Jerome." "But how could that be, Major? The battle of Waterloo was fought before you were born. You could not have been there." "O, no, I was not there."

§ 367. The temper and disposition often suffer, in common with the intellect, in consequence of paralytic attacks. The patient becomes irritable and peevish, not easily pleased, and impatient of salutary restriction. He loses his self-possession, and the least emotion is accompanied by immoderate weeping or laughter. Dependent upon others for assistance and comfort, a little adroitness readily subjects him to their will, and makes him execute their purposes.

§ 368. The effect of time on the immediate consequences of apoplexy and paralysis — the loss of speech, of the use of the limbs, of the moral and intellectual vigor — is various. They may remain unchanged for months or years, until increased by another attack; they may completely or partially disappear, either under the restorative influences of the constitution, or perseverance in the use of appropriate means. This kind of improvement is a fact of much medico-legal importance, and indicates the necessity of a careful discrimination of its different stages.[1]

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[1] The REPORTS abound with cases in which the patient and his acts were subjected to judicial examination, among which, as particularly worthy of attention, are *Clark* v. *Fisher*, 1 Paige, 171; *King and Thwaits* v. *Farley*, 1 Haggard, 502; *Marsh* v. *Tyrrel*, 2 Haggard, 84; *Croft* v. *Day*, 1 Curteis, 782. Never, however, have the phenomena of apoplexy and paralysis, whether in their medical or psychological relations, and the acts of the patient, been more thoroughly investigated, or with a larger comprehension of all the usual questions which such a proceeding raises, than they were in a case lately (1857) adjudicated in the city of New York, and printed, though not published, in 4 vols. entitled the "PARISH WILL CASE."

CHAPTER XIV.

DURATION AND CURABILITY OF INSANITY.

§ 369. With the exception of that kind of dementia that occurs at other periods of life than that of old age, mania is the only form of insanity that admits of a cure; and though its duration is various, the probability of this event is almost entirely destroyed within a comparatively short space of time. This is abundantly evident from the statistics of madness that have been published from time to time by the heads of various lunatic establishments. Esquirol concludes, on data furnished by the returns of the principal French and English hospitals, that the absolute number of recoveries from madness is about one in three; and also that the number of recoveries varies in different establishments, from one in four, to one in two or two and a half of the whole number of persons affected. Prichard regards this computation of recoveries as much below what really takes place under favorable circumstances, and the reports of American hospitals confirm the correctness of his opinion. Such, however, is the imperfection of statistics on this subject, that we can speak with but little confidence respecting the proportion of recoveries. We only know that in cases subjected to judicious treatment soon after the attack, recovery takes place in the proportion of six or eight to ten; while in those which have continued a couple of years, there is little prospect of recovery. Pinel, in a memoir presented to the Institute in 1800, was led to conclude from a selection of cases expressly chosen for this purpose, that a greater number of recoveries takes place in the first month than in any succeeding one, and that the mean time of the duration of the dis

ease when cured, is between five and six months. Esquirol, however, gives a table of recoveries at the Salpetrière during ten years, which shows a little longer term to insanity. Out of two thousand and five patients, twelve hundred and twenty-three were cured, namely, six hundred and four during the first year; four hundred and ninety-seven in the second; eighty-six in the third; and forty-one in the seven succeeding years; from which it appears that eleven twelfths of the number of cures is obtained within the first two years; that the mean duration of cases cured is a little short of one year; and that after the third year, the probability of a cure is scarcely more than one in thirty. M. Desportes states, from observations made at the Bicêtre and Salpetrière, that of the whole number of recoveries in 1822, 1823, and 1824, seven hundred and forty-six took place in the first year, and one hundred and eighteen only from the second to the seventh year.[1]

§ 370. Recovery from insanity generally takes place gradually, though occasionally the disease may suddenly disappear, especially on the occurrence of certain moral or physical impressions. Pinel relates the case of a literary gentleman who, in a paroxysm of suicidal mania resolved to go and jump into the river. On arriving at the bridge, he was attacked by robbers, against whom he defended himself vigorously, beat them off, forgot the purpose of his excursion, and returned home cured. Dr. Rush relates that one of his patients, for whom he had recommended gentle exercise on horseback, was suddenly cured in consequence of the fright experienced from her horse running away in one of her excursions. He was stopped by a gate, and when her attendants came up they found her entirely restored to reason. Several other cases of recovery are related, produced by a similar cause. Esquirol speaks of having cured a girl at once, by the terror she experienced at the sight of the actual cautery which he was about to apply. He also mentions the case of a girl who, after being insane ten years, suddenly ran to her

[1] Esquirol, Des mal. ment. i. 94.

mother's bed, exclaiming, as she embraced her, "Mother, mother, I am well." She had become insane in consequence of a suppression of the menses which at last made their appearance on the evening preceding her cure. Prichard states that several instances of sudden cure from the same cause, have occurred in some of the English hospitals. Insanity has been sometimes cured by an attack of fever. A number of maniacs were once cured, in the Pennsylvania hospital, by a malignant fever which appeared in that establishment. Direct appeals to the reasoning power have sometimes been followed by immediate recovery. Pinel relates the case of a watchmaker who became deranged, and believed that he had been guillotined, and that in consequence of the mixing of the heads of other victims, his own had been replaced by another. When the miracle of St. Denis was mentioned, who carried his head under his arm and kissed it as he went, he contended for the possibility of the fact, by appealing to his own case, when one of his companions burst into a loud laugh, saying, "What a fool you are; how could St. Denis kiss his own head? was it with his heel?" The absurdity of the idea struck his mind, and he never after spoke of the misplacement. Dr. Cox speaks of a patient who believed that he was the Holy Ghost. Another asked him, "Are there two Holy Ghosts? how can you be the Holy Ghost and I be so too?" He appeared surprised, and after pausing awhile said, "But are you the Holy Ghost?" and when the other replied, "Did you not know that I was?" he answered, "I did not know it before; then I cannot be the Holy Ghost."[1] It is probable that in nearly if not quite all these cases of sudden recovery by means of mental impressions, the disease was declining, and that its termination was hastened only by these impressions.

§ 371. Partial intellectual mania is said to be cured with much more difficulty than general mania, and the latter is more easily cured when the sequel of some violent cause, than when it has come on gradually from some steadily continued influence. Among the circumstances favorable to

[1] Spurzheim on Insanity, 294.

recovery may be mentioned a constitution not greatly debilitated by excesses of any kind, good moral and intellectual education, the absence of hereditary predisposition, and an early medical treatment.

§ 372. The above facts and considerations will furnish the data, on which the physician is to form an opinion relative to the duration and curability of any given case of insanity. While in very many cases incurability is almost certain, and there can be no hesitation in certifying the same, there are none in regard to which we can predict a certain recovery. The utmost we can say in the most favorable cases is, that the patient will probably recover, and the physician cannot be too cautious how he commits his own reputation and the interests and happiness of others, by the expression of hasty and positive opinions.[1] Idiocy, imbecility, and senile dementia admit neither of cure nor amelioration, and when mania is of more than two years' standing, and especially if other circumstances are not favorable, it may be safely said there is but little hope of cure, but never that the case is beyond all hope. It should be borne in mind that persons, after years of insanity, have sometimes recovered their reason shortly before death.

§ 373. An important feature of insanity in a medico-legal point of view, is its tendency to relapse during convalescence, and to recurrence after being perfectly cured. The general rule is, that a brain which has once been the seat of the maniacal action is far more liable to its recurrence, than one which has not. Many recover the full strength and activity of their mental faculties, but the majority, Prichard thinks, are curable only to a certain extent. "They remain," says Esquirol, "in such a state of susceptibility that the slightest causes give rise to relapses, and they only preserve their

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[1] If proof be required of the propriety of this warning, the reader will find a memorable one, in Wraxhall's (Posthumous Memoirs) lively description of the contradictory statements and dogmatic assertions into which the medical attendants of George III. were betrayed by party zeal, and which resulted in the confusion and disgrace of some respectable physicians.

sanity by continuing to live in a house where no mental agitation or inquietude, no unfortunate contingency is likely to fall to their lot, and throw them back to their former state. There are other individuals whose faculties have sustained such a shock, that they are never capable of returning to the sphere which they have held in society. They are perfectly rational, but have not sufficient mental capacity to become again military officers, to conduct commercial affairs, or to fulfil the duties belonging to their appointments."[1] The proportion of cases in which insanity is recurrent, is estimated by writers at from one tenth to one sixth; Esquirol estimates it at one twentieth. In those cases where the mind on recovery regains its usual capability, this disposition to recurrence is by no means so strong, as when it is left in a weak and irritable state, and it diminishes with the length of the interval after the recovery. This feature of insanity should ever be borne in mind by the physician, when required to give his opinion on the propriety of removing the interdiction of an insane person who is apparently restored to health. He should seriously consider the risk the patient runs, by entering again on the busy scenes of life, and enduring the anxiety and excitement attendant on the management of his affairs, of renewing that cerebral irritation which the quiet and repose of seclusion have temporarily subdued. In criminal cases also, it should lead to a thorough and candid investigation of the plea of insanity urged in defence of those who have previously suffered from it, and it should be satisfactorily settled whether or not the circumstances attending the criminal act were likely to reproduce that pathological condition on which insanity depends. If it should prove that they were of that nature, and that the individual had but *recently* recovered from an attack of insanity, then it would indicate a confidence that springs from some other source than a just appreciation of the phenomenon of insanity under consideration, to presume, nevertheless, the continuance of mental soundness and, consequently, of moral responsibility.

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[1] Des maladies mentales, i. 96.

§ 374. We are also to bear in mind, that a considerable number recover only to a certain point. They recover so far as to be free from all delusions, to maintain unremitting self-control, and transact their customary business correctly and shrewdly, but never regain confidence in those who favored their confinement or restraint, though their part in it was prompted by kindness and managed discreetly and considerately. This state of feeling varies from tacit distrust and aversion to a deep malignity that leads to violence and litigation. Having regained all their natural shrewdness, they have no difficulty in enlisting the sympathies of those — and they constitute the greater part of mankind — who are ever ready to yield their faith to any statement that is uttered with a certain plausibility of manner. Whether actuated by a kind of pride that refuses to acknowledge that they have been the subjects of so humbling an infirmity as insanity, or an obscurity in their recollections of the past, that leads them to mingle the real and imaginary, and confound the scenes with the cause of their suffering, they persist in referring the mental tortures they endured, to the measures that were meant for their mitigation, and attributing their various discomforts to the cruelty or neglect of others, rather than to the disordered condition of their own minds. Even when they fail to convince the world that they were never insane, — for of this fact there may have been too many witnesses, — they often leave the impression that they have been unjustly, if not cruelly dealt with.[1]

§ 375. It has been already remarked that in most in-

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[1] A memorable case of this description — memorable for the success which followed the representations of the patient, and the utter groundlessness of the charges which he brought — occurred in Philadelphia in 1849. A man named Hinchman who was placed in the Friends' Asylum for the insane in Frankford, because, as the evidence showed beyond a doubt, he was violently and dangerously insane, brought an action of conspiracy against every individual the least concerned in the measure, — his mother, sister, cousins, the sheriff, a passing traveller, the physicians of the asylum and the physician who signed the certificate, and others, — and he succeeded in obtaining heavy damages.

stances, recovery takes place gradually, and is completed only after a period, more or less long, of convalescence. Nothing, therefore, can be more chimerical than the idea of fixing on any precise moment when all disease has departed and perfect health is established; and yet this is what we are called upon to do when required to determine, as we sometimes are in criminal cases, at what time the accused began to be responsible. To contend that a convalescent maniac may be irresponsible one day and responsible the next, would be no less absurd than to say to one recovering from inflammation of the lungs, that, as he valued his life, he must not leave his room to-day, though to-morrow he might safely expose himself to the severest inclemency of the weather; and to believe that the former is perfectly sound, because laboring under no hallucination and attacked by no fits of fury, would be as erroneous, as to consider the respiratory functions of the latter sound and vigorous, because we hear no cough and see no difficulty of breathing. The time that has elapsed since the unequivocal insanity of the accused, is therefore an important element in the determination of his mental soundness. Just as exposure to bad weather, a week after an attack of inflammation of lungs had begun to subside, would be more likely to reproduce the disease, than it would a month afterwards; so the longer the time since an attack of insanity has been apparently cured, the less likely is the cerebral irritation to be renewed by sudden provocations or other causes that tend to produce it. Ample time must be allowed to cover the period of convalescence, and if it be difficult to fix upon the exact duration of this state, so much greater the necessity of caution in determining the responsibility of the accused. Here it is often a merit to doubt, and justice requires that the accused should have the benefit of our doubts.

CHAPTER XV.

LUCID INTERVALS.

§ 376. It is well known that many diseases — especially of the class called *nervous* — observe a law of periodicity which is not uncommon in the actions of the animal economy. One effect of this curious law consists in an intermission of the outward manifestations of the disease, so complete as to bear the appearance of a perfect cure, and this, in the present state of our knowledge, is all that we can, with certainty, say of it. As to the change that takes place in the organic condition of the part affected, during the intermission, we can at best hazard nothing more than a rude conjecture. We have no warrant for believing that the pathological affection itself entirely disappears with the symptoms that arise from it, and perhaps never shall have, until we are able to explain why, after such disappearance, the tendency of the disease to return at certain intervals should still remain; or, in other words, wherein the final, perfect cure differs from the temporary intermission. But in view of the established fact that organic disease often exists without producing its ordinary symptoms, or revealing itself by any appreciable signs, it seems the more probable supposition, that the pathological condition of the affected organs does not disappear entirely during the intermission, but continues with perhaps a modified intensity.

§ 377. The slightest examination will convince us, that in the most complete intermission of any disease that affects the whole system to some extent, the patient is far from enjoying sound health, or free from every indication of morbid action. A greater contrast in the matter of health,

can scarcely be presented in the same individual, than that between the paroxysm and the intermission of a quotidian fever; yet none will say, after the former has passed off, and the patient, is longer shaking with cold nor parched with heat, is able to arise and give some attention to his duties, that he is entirely well. Better, no doubt, he is; but his mind is weak, his stomach declines its once favorite food, a little exertion overcomes him, a certain *malaise* not easily described, pervades his whole system, and which, though not excessively painful, is something very different from the buoyant sensation of health. We are therefore bound to believe, that the disease still exists, though its external aspect has changed. And here it may be as well to remark, that we must not be led by an abuse of language to attribute *that* to the disease — to the pathological condition — which belongs only to one of its symptoms. When the epileptic, a few days after one of his frightful convulsions, appears to have regained his customary health, no intelligent physician imagines that the proximate cause of this disturbance has vanished with the fit, leaving the organ it affected as sound as ever. The fit itself which is a mere symptom, is indeed of periodical occurrence, but the pathological condition on which it depends, continues, slowly and surely though imperceptibly, to undermine the powers of the constitution. The general expression of all our knowledge on the subject of the intermission of diseases is, then, that certain pathological conditions give rise, among other phenomena, to some that disappear for a time, only to recur after an interval of more or less duration.

§ 378. That insanity, or rather mania, is one of the diseases that are subject in some respects, to this law of periodicity, is universally admitted; but to what extent the law operates, is a point on which there is much diversity of opinion. There are few cases in which we may not observe various periods in their course, when the severity of the symptoms is greatly alleviated; when calmness takes the place of fury, and a quiet and sober demeanor succeeds to noisy and restless agitation; when reason, driven from her

throne, seems to be retracing her steps and struggling for her lost dominion. In all this, however, there is nothing different from what occurs in many, if not the greater proportion of chronic diseases. In mania, but in no other form of insanity, this abatement of the severity of the symptoms may amount to a complete intermission, when the patient is conscious of his true condition, converses rationally, and admits his having been insane. But, that the intermissions of mania are ever so complete that the mind is restored to its original integrity, or so sudden as to justify the statement of Baron Rolfe, that "such is the nature of the mind that it might be one minute sane, and another minute insane,"[1] would seem scarcely probable, from the fact, that the very seat of the pathological changes is the material organ on which the manifestations of the mental phenomena depend. For if the mind be rendered as sound as before the attack, it necessarily follows that the brain is equally restored, since in point of health they stand to each other in the relation of cause and effect. But as there is no proof that such is the case, and as the supposition is not supported by what we know of pathological actions, we have no right, at present, to conclude that the physical condition on which mania depends is entirely removed during the intermission. We are thus led to scrutinize a little more closely these periodical restorations of the insane mind, or *lucid intervals*, as they are called, in order to ascertain if possible, what is the actual state of the mind at these times. But before doing this, it will be proper to show what is understood in law by lucid intervals, as explained by eminent legal authorities.

§ 379. D'Aguesseau, in his pleading in the case of the Abbé d'Orleans, says, "It must not be a superficial tranquillity, a shadow of repose, but on the contrary a profound tranquillity, a real repose; it must be, not a mere ray of reason, which only makes its absence more apparent when it is gone, — not a flash of lightning, which pierces through the darkness only to render it more gloomy and dismal, — not

[1] *Reg.* v. *Layton*, 6 Cox, C. C. 149.

a glimmering which joins the night to the day; but a perfect light, a lively and continued lustre, a full and entire day interposed between the two separate nights of the fury which precedes and follows it; and, to use another image, it is not a deceitful and faithless stillness which follows or forebodes a storm, but a sure and steadfast tranquillity for a time, a real calm, a perfect serenity; in fine, without looking for so many metaphors to represent our idea, it must be not a mere diminution, a remission of the complaint, but a kind of temporary cure, an intermission so clearly marked, as in every respect to resemble the restoration of health."[1]

§ 380. Many years after, Lord Thurlow, in the court of chancery, thus stated his views of the condition of mind necessary to constitute a lucid interval. "By a perfect interval, I do not mean a cooler moment, an abatement of pain or violence, or of a higher state of torture, — a mind relieved from excessive pressure; but an interval in which the mind, having thrown off the disease, had recovered its general habit."[2]

§ 381. Here, then, is the lucid interval as clearly and minutely described, as a profusion of words and metaphors could do it, and as such it was believed by these authorities, no doubt, to have a real existence. In the early periods of the English law, the doctrine of lucid intervals was universally admitted, and they seem to have been considered not a rare, but a very common phenomenon of mental derangement. Indeed, judging from the frequent mention made of them in all discussions on the subject, and from the fact that *idiocy* and *lunacy* — which latter was considered, as its name would lead us to suspect, to be of an intermittent nature — constituted, for a long time, the only division of mental diseases, it will not, perhaps, be too strong an expression to say, that they were viewed as an essential feature of mania. This, however, was in the infancy of medical science, before the phenomena of mania — which, until recently,

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[1] Pothier on Obligations, by Evans, Appendix, 579.

[2] *Attorney-General* v. *Parnther*, 3 Brown's Ch. Cases, 234.

has always been less understood than other diseases — were thoroughly and accurately observed, and the men whose ideas we have just quoted had no practical acquaintance with the disorder whose phases they so vividly described. Before adopting their views, then, it will be proper to inquire how far they are supported by the investigations of modern medical science.

§ 382. While the doctrine of lucid intervals, as explained by the language above quoted, is upheld by scarcely a single eminent name in the medical profession, we find that their existence is either denied altogether, or they are regarded as being only a remission, instead of an intermission of the disease; an abatement of the severity of the symptoms, not a temporary cure. Mr. Haslam, who is no mean authority on any question connected with insanity, emphatically declares, that, "as a constant observer of this disease for more than twenty-five years, I cannot affirm that the lunatics, with whom I have had daily intercourse, have manifested alternations of insanity and reason. They may at intervals become more tranquil, and less disposed to obtrude their distempered fancies into notice. For a time their minds may be less active, and the succession of their thoughts consequently more deliberate; they may endeavor to effect some desirable purpose, and artfully conceal their real opinions, but they have not abandoned, nor renounced their distempered notions. It is as unnecessary to repeat that a few coherent sentences do not constitute the sanity of the intellect; as that the sounding of one or two notes of a keyed instrument could ascertain it to be in tune." [1]

§ 383. Strong as this testimony is, and true, no doubt, as the result of an individual's experience, it cannot be denied that others, whose opportunities have not been less than Mr. Haslam's, have distinctly recognized the existence of intervals, when the patient not only becomes more tranquil and reserved, but is conscious of having been mad, and perceives the folly of the delusions that have engrossed his

[1] Medical Jurisprudence, as it relates to Insanity, 224.

thoughts. But so far are they from attributing to the mind, during their occurrence, that degree of soundness which is contended for in the passages above quoted, that they have taken great care to inculcate a very different doctrine. "The mania," says Foderè, "which is accompanied by fury, is very often periodical; that is, as if granting an occasional truce to the patient, it appears only at certain epochs, between which he enjoys all his reason, and seems to conduct and judge in all respects like other men, if we except in regard to certain ideas the thought of which may at any time occasion a fresh paroxysm." [1]

§ 384. Georget, while he speaks of lucid intervals "as returns to reason," is careful to add, that, "in this state, patients frequently experience some degree of *malaise*, some disturbance of their ideas, and weakness of mind, which prevents them from fixing their attention, for any length of time, on a particular subject; from engaging in reading, writing, or attending to their affairs." [2]

§ 385. "There are few cases of mania or melancholy," says Dr. Reid, "where the light of reason does not now and then shine out between the clouds. In fevers of the mind as well as those of the body, there occur frequent intermissions. But the mere interruption of a disorder is not to be mistaken for its cure, or its ultimate conclusion. Little stress ought to be laid upon those occasional and uncertain disentanglements of intellect, in which the patient is for a time only, extricated from the labyrinth of his morbid hallucinations. Madmen may show, at starts, more sense than ordinary men." [3]

§ 386. Dr. Combe, in one of the most philosophical treatises on Insanity, which the present century has produced, expresses similar views in the most explicit and forcible language. "But however calm and rational the patient may appear to be, during the lucid intervals, as they

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[1] De Médecine Légale, i. 205, § 140.

[2] Des Maladies Mentales, 46.

[3] Essays on Hypochondriacal and other Nervous Affections: 21st Essay.

are called, and while enjoying the quietude of domestic society, or the limited range of a well-regulated asylum, it must never be supposed, that he is in as perfect possession of his senses, as if he had never been ill. In ordinary circumstances and under ordinary excitement, his perceptions may be accurate, and his judgment perfectly sound; but a degree of irritability of brain remains behind, which renders him unable to withstand any unusual emotion, any sudden provocation, or any unexpected and pressing emergency. Were not this the case, it is manifest that he would not be more liable to a fresh paroxysm, than if he had never been attacked. And the opposite is notoriously the fact; for relapses are always to be dreaded, not only after a lucid interval, but even after perfect recovery. And it is but just as well as proper to keep this in mind, as it has too often happened, that the lunatic has been visited with the heaviest responsibility, for acts committed during such an interval, which, previous to the first attack of the disease, he would have shrunk from with horror." [1]

§ 387. With the views of these distinguished observers before us, what are we to think of the doctrine, that in the lucid intervals the mind is restored to its natural strength and soundness; that it is capable of as great intellectual exertions, and of holding as tight a rein over the passions; that it is as able to resist foreign influence and to act on its own determination, with its ordinary prudence and forecast; that "having thrown off the disease, it has recovered its general habit," or that it has undergone a "temporary cure"? Sounder pathology was never written, than is contained in the extract from Dr. Combe, and no physician, who has been much conversant with the insane, will be disposed to question its correctness. Foderè goes a step further and hazards a theory which is plausible, at least, to explain the pathological causes that produce this alternation of paroxysms and lucid intervals. The former state, he considers, is attended by an excessive plethora of the blood-vessels of the brain,

[1] Observations on Mental Derangement, 241.

and the latter by a relaxed, atonic condition of these vessels, which is an effect of their previous forcible distension. In this condition they are liable to be suddenly engorged by exciting causes, such as intemperance in eating or drinking, anger, violent exercise, insolation, etc.; or in consequence of a certain predisposition of constitution.[1] Indeed, it is well known, that the return of the paroxysms is often retarded by regulated diet, bleeding, quiet, seclusion, kind treatment, and the absence of the above-named stimuli. It is thus shown, conclusively, that in every lucid interval, there remains some unsoundness of the material organ of the mind, which may be designated generally as a morbid irritability, which, on the application of the slightest exciting cause, may produce an outbreak of mania in all its original severity.

§ 388. The principle of law, which holds the civil responsibilities of the insane to be unimpaired during the lucid interval, we are willing to admit, is generally correct. It should be the duty of courts, however, to view their acts done at such times, with the most watchful jealousy, because their minds, though left free from all delusion, are nevertheless weak and irritable, and they may be easily induced by the arts of unprincipled men, to enter into transactions, the folly of which would have been obvious enough to them before they began to be insane. Although inclined to believe that the restoration of the mind during the lucid interval is far from being so perfect, as it is represented by the legal authorities above quoted, yet we do not hesitate to say, that the proof of its occurrence should be as strong as they require it. D'Aguesseau, in continuation of the remarks above quoted, declares, that, "as it is impossible to judge in a moment of the quality of an interval, it is requisite that there should be a sufficient length of time for giving a perfect assurance of the temporary reëstablishment of reason, which it is not possible to define in general, and which depends upon the different kinds of fury, but it is certain there must be a time and a considerable time." Lord Thurlow, also, on

[1] De Médicine Légale, i. 208, § 140.

the same occasion which elicited his views of the nature of the lucid interval, says, that "the evidence in support of the allegation of a lucid interval, after derangement at any period has been established, should be as strong and demonstrative of such fact, as where the object of the proof is to establish derangement.[1] The evidence in such a case, applying to stated intervals, ought to go to the state and habit of the person, and not to the accidental interview of an individual,

[1] It appears from a note in 1 Beck's Med. Juris. 586, that Lord Eldon dissented from this proposition, and thus stated his objections to it to Lord Thurlow himself. "I have seen you exercising the duties of Lord Chancellor with ample sufficiency of mind and understanding, and with the greatest ability. Now if Providence should afflict you with a fever, which should have the effect of taking away that sanity of mind for a considerable time (for it does not signify whether it is the disease insanity, or a fever that makes you insane), would any one say, that it required such very strong evidence to show that your mind was restored to the power of performing such an act as making a will, — an act, to the performance of which a person of ordinary intelligence is competent?" We are not informed how this objection struck Lord Thurlow, but we trust that no reader of the present work will be at a loss to perceive its weakness for a moment. It does signify every thing, whether it is the disease insanity or a fever that makes one insane, for the delirium of fever is but a casual symptom of that disease, and, together with the pathological condition that gave rise to it, is presumed to disappear with the main disorder on which it depends. This is the ordinary course of nature. On the contrary, mental alienation is the essential, the pathognomic, and, oftentimes, the only clearly discernible symptom of mania, and its disappearance furnishes the only intimation perhaps that we have of the cure of this disease. Thus our means of deciding this point being so small, we are necessarily led to require stronger evidence of their certainty, than of the restoration of the mind in fever, because the latter is confirmed by a multitude of symptoms. Recovery from an attack of fever is a phenomenon, that any one can see, but not such is recovery from an attack of mania; because, though the insane delusions or conduct by which it was manifested may disappear, it remains to be determined in every case, whether they are not purposely concealed from observation, or proper opportunity has been offered to the patient to bring them forward. Just as the existence of mania requires stronger proof than that of the delirium of fever, so does recovery from the former require stronger proof than recovery from the latter.

The views expressed in this note were subsequently maintained by Mr. Justice Dewey, in *Hix* v. *Whittemore*, 4 Metcalf, 545.

or to the degree of self-possession in any particular act." It may be well to inquire how far these views are sustained by subsequent decisions.

§ 389. In law and equity courts there seems to have been little disposition, in civil cases, to question their correctness.[1] In the ecclesiastical courts, however, there has occurred some discrepancy of opinion, both as to the exact nature of the lucid interval, and the kind of proof required to establish its existence. In a commendable respect for the sacred character of testamentary acts, they have assumed considerable latitude, and, no doubt, very properly, in their construction of lucid intervals; but occasionally they have gone further than even the truths of pathology will warrant.

§ 390. In *Cartwright* v. *Cartwright*,[2] the deceased, a single woman, made her will on the 14th of August, 1775, which will was contested on the ground of the insanity of the testator. "It was proved in general," says the court, "that her habit and condition of body, and her manner, for several months before the date of the will, was that of a person afflicted with many of the worst symptoms of that dreadful disease, and continued so certainly after making the will." It appears from the evidence, that for some time previous to the date of the will, she was very importunate for the use of pen, ink, and paper, which, however, were withheld from her by the direction of her physician, Dr. Battie, who was eminent for his knowledge and treatment of mental disorders. Her importunity continuing, he at length consented, in order to quiet and pacify her, that she might have them, observing that it did not signify what she might write, as she was not fit to make a proper use of pen, ink, and paper. These being carried to her, her hands, which had been constantly tied, were loosed, and she sat down to a bureau to write. Her attendants, who were watching her outside the door, saw her write on several pieces of paper in succession, which she tore up and threw into the grate, walking up and down the

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[1] See *Hall* v. *Warren*, 9 Vesey; exparte *Holyland*, 11 Vesey.

[2] 1 Phillimore, 90.

room in a wild and ferocious manner, and muttering to herself. After one or two hours spent in this manner, she finally succeeded in writing a will that suited her, though it occupied but a few lines. Such are the facts that have any bearing on the point at issue. It was decided by the court, Sir William Wynne, that she had a lucid interval while making the will, the validity of which was consequently established. The grounds of this decision were, that the will made a natural and consistent distribution of her property, and, in short, that it was "a rational act rationally done;" hence it was to be inferred, that her mind was visited by a lucid interval, at the moment of making it. "For," says the court, "I think the strongest and best proof, that can arise as to a lucid interval, is that which arises from the act itself; that I look upon as the thing to be first examined, and if it can be proved and established, that it is a rational act rationally done, the whole case is proved." It seems to have occurred to the court, that some catenation must be made out between such an act and a lucid interval; and it being in evidence, that, at times, she would converse rationally, we have the following deductions therefrom. "If she could converse rationally, that is a lucid interval; and that she did so and had lucid intervals, I think is completely established." The fact is, that the court, throughout its whole judgment, confounded testamentary capacity with a lucid interval, without once seeming to be aware that though the will might be a rational act, and, therefore, perhaps valid, it by no means followed, that a lucid interval had taken place. What it considered as such here scarcely amounted to the kind of remission described by Mr. Haslam (§ 328), for not a single fact appears in the evidence, from which we can infer any alteration whatever in the state of her disease. True, the court thought that her reason had returned, because, though released from the confinement of a strait waistcoat, and trusted with a candle, she did no mischief and did not abuse her liberty; but such things would have little weight with medical men, especially at the present day. Nothing, indeed, can be more chimeri-

cal, because so utterly contradicted by all that we know of insanity, than this idea of a lucid interval of a few minutes' duration suddenly interposed amid years of mania, and as suddenly disappearing.[1] The point particularly insisted upon by the judge is, that she would sometimes converse rationally, as indeed most insane people do. "If," he says, "she had particular subjects or topics in her mind, and at such times would converse rationally upon them, and when those topics were out of her mind would fly into outrages of frenzy and extravagance, does that all show that at the former time she was deprived of rational capacity?" He does not seem to be aware, that madmen are every day doing rational acts, and that it would not be surprising if wills should sometimes be found among the number.

§ 391. We have no fault to find with the principle of law which makes these wills valid, but we would have the ground on which such validity is established, distinctly understood to be the character of the act, not the condition of the testator's mind; and if, in the above case, the court had been contented with proving the will to be a rational act, and thence inferring testamentary capacity, there would have been nothing to complain of. It is important that on subjects like medical jurisprudence, language should be used with strict adherence to its original and proper signification; and therefore when a *lucid interval* is defined by competent authority to be a "temporary cure" of the disease, a recovery of the mind's general habit, the occurrence of which must be proved by the "state and habit," of the person, observed during a sufficient length of time, we have to complain, that the term is applied by others to a mere remission

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[1] Its consequences seem to render it as pernicious as it is absurd. In the trial of Hadfield for shooting at the king, Lord Kenyon, after admitting that he was insane both before and after the act, and that it was improbable he had recovered his senses in the interim, declared, that "were they to run into nicety, proof might be demanded of his insanity, at the precise moment when the act was committed!" as if such proof were not utterly beyond the reach of human means.

in the violence of the symptoms, which lasts but a few minutes, and is proved by a single coherent act.

§ 392. The construction here put upon the lucid interval, not only conflicts with the opinions of the eminent authorities we have quoted, but has not been countenanced by subsequent decisions even in the ecclesiastical courts. In a recent case, where the testamentary acts of an insane person were propounded by the executors who endeavored to prove the occurrence of a lucid interval at the time of their execution, the court, Sir John Nicholl, decided that the proof was not sufficient, though it was unquestionably stronger than in the case of *Cartwright* v. *Cartwright.* The surgeon of the testator who saw him once within the period — a little more than ten months — that included the two wills in question, and commenced a frequent attendance on him between two and three months afterwards, deposed, that on none of these occasions did he exhibit any symptoms of insanity, but "conducted himself, and talked and discoursed in a rational manner, and was in the full possession of his mental faculties." The solicitor who took the instructions for the last will, considered him of sound mind, and deposed that neither of the witnesses treated him as a person of diseased intellect or of unsound mind. In the testamentary dispositions themselves, there was nothing to negative the idea of the most perfect soundness of mind. In view of the fact, however, that the testator was so deranged that he was attended by a keeper from a lunatic asylum, till within a few months of the date of the first will, and frequently manifested absurd delusions during the period including both wills, the above proof was not considered as sufficient for the purpose, reasoning upon the general principles of insanity. "It is clear," said the court, "that persons essentially insane may be calm, may do acts, hold conversations, and even pass in general society as perfectly sane. It often requires close examination by persons skilled in the disorder, to discover and ascertain whether or not the mental derangement is removed, and the mind again become perfectly sound. When there is calmness, when

there is rationality on ordinary subjects, those who see the party usually conclude that his recovery is perfect. . . . . Where there is not actual recovery, and a return to the management of himself and his concerns by the unfortunate individual, the proof of a lucid interval is extremely difficult." [1] Whatever confidence the civil law may repose in the evidence furnished by the character of the testamentary act touching the mental condition of the testator, it is distinctly enough inculcated in the above quotations, that such evidence is not necessarily to prevail over that which is drawn from his daily walk and conversation. When, however, sanity is confessedly doubtful merely, then "the agent is to be *inferred* rational, from the character broadly taken of his act." [2]

§ 393. It has been admitted, that, with certain reservations, the civil responsibilities of the insane are unimpaired during the lucid interval, because the mind is sufficiently restored to enable the individual to act with tolerable discretion in his civil relations. In respect to crime, however, the matter is altogether different, for reasons that will not be without their force, we trust, to those who have attentively considered the preceding remarks. These reasons are, that the crimes which are alleged to have been committed in a lucid interval are generally the result of the momentary excitement produced by sudden provocations; that these provocations put an end to the temporary cure, by immediately reproducing that pathological condition of the brain called *irritation*, and that this irritation is the essential cause

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[1] *Groom and Thomas* v. *Thomas and Thomas*, 2 Hagg. 433. In *White* v. *Driver*, 1 Phillimore, 84, however, a lucid interval was held to be established, on much less proof than was offered in the above case, though far more, certainly, than was admitted in *Cartwright* v. *Cartwright*. In a more recent case, *Chambers* v. *The Queen's Proctor*, 2 Curteis, 415, the court, as if following the principle laid down in *Cartwright* v. *Cartwright*, established the will of a man who was admitted to have entertained insane delusions during the three days immediately preceding its execution, and to have committed suicide the next day after.

[2] *Scruby and Finch* v. *Fordham*, 1 Addams, 74.

of mental derangement which absolves from all the legal consequences of crime. The conclusion is, therefore, that we ought never perhaps to convict for a crime committed during the lucid interval, because there is every probability, that the individual was under the influence of that cerebral irritation which makes a man insane. The difference between a person in the lucid interval and one who has never been insane, on which we particularly insist, is, that while in the latter, provocations stimulate the passions to the highest degree of which they are capable in a state of health, though still more or less under his control, they produce in the former a pathological change which deprives him of every thing like moral liberty. It is scarcely necessary to do more than barely state these views, since their correctness seems to have been universally recognized in practice, not a single case having occurred, so far as can be ascertained, where a person has been convicted of crime committed during a lucid interval. Burdened as the criminal law is with false principles on the subject of insanity, the time has gone by when juries will return a verdict of *guilty* against one who is admitted to have been insane, shortly before and after the criminal act with which he is charged.[1]

§ 394. We should be careful not to confound the period intervening between the perfect cure of one attack of insanity and the occurrence of another attack, with a lucid interval.

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[1] We have been so long accustomed to the severity that characterizes the spirit of the English criminal law, that we look with no little jealousy on any attempt to circumscribe the range of its operation. In Germany, however, where no such influence is felt, more humane and scientific views on the subject of responsibility during the lucid interval have found distinguished supporters. "The state of the mind during the lucid interval is such," says Dr. Friedreich, "that a circumstance which would have passed unnoticed at any other time, here excites the individual to violent, illegal acts." "Who can positively decide whether the criminal act really happened during a lucid interval, or was the result of a paroxysm prematurely provoked by some internal or external cause of excitement (for during the lucid interval, the susceptibility to excitement is greatly increased), and which paroxysm might not have occurred at all without such provocation." — *Ueber Zurechnung im* lucido intervallo, *Neues Archiv des Criminalrechts*, xiv. 268.

The renewal of the disease does not prove that it never has been cured, for in this respect, insanity follows the same pathological laws as gout, rheumatism, colic, or any other disease. True, persons who have experienced repeated attacks of insanity, generally labor under a certain irritability of the nervous system, which should lead us to be cautious in forming opinions relative to their moral liberty under particular circumstances. Whether the absence of the disease arise from a lucid interval, or a complete cure, the occurrence of certain exciting causes equally exposes the patient to a renewed attack of the disease in all its original severity. Whenever, therefore, the criminal acts of one subject to repeated acts of insanity, are called in question, and it appears that the accused was under the influence of violent or harassing moral emotions, such as anger, grief, or sense of responsibility; or of certain physiological conditions, such as menstruation, lactation, or the repulsion of other diseases; or exposed to the noxious influence of certain physical agents, such as insolation, deprivation of sleep, or blows on the head, we are justified in considering him as not having been morally free at the time when the act was committed. If, on the other hand, there appear to have been no causes of this kind in operation, and the usual signs of insanity were not present, and especially if the act obviously serves some interest of the accused, we can hardly avoid the conclusion, that he is responsible for his criminal acts.

CHAPTER XVI.

SIMULATED INSANITY.

§ 395. The supposed insurmountable difficulty of distinguishing between feigned and real insanity has conduced, probably more than all other causes together, to bind the legal profession to the most rigid construction and application of the common law relative to this disease, and is always put forward in objection to the more humane doctrines that have been inculcated in the present work. That some difficulty has been experienced, and given rise to much perplexity and mistake, cannot be denied; but it is to be considered, whether it has not arisen, less from the obscurity of the subject, than from the imperfect means that have been generally applied to its elucidation. The opinions of physicians, which are ordinarily taken in doubtful cases, have been received with a deference that was warranted more by general professional reputation, than by superior knowledge of this particular disease. The treatment of insanity is now so much confined to the heads of extensive establishments in which its subjects are congregated, that opportunities for studying it are comparatively limited in ordinary practice, so that a physician may be justly celebrated in the knowledge and treatment of other diseases, and at the same time be poorly qualified to decide upon questions relative to insanity, especially when every effort is made to perplex and mystify his mind. This truth cannot be disguised, and though physicians are frequently unwilling to believe it, and are disposed to act on the popular notion that all medical subjects are equally familiar to them, this is no reason why courts and juries should ever forget it. Nothing, indeed, requires a

severer exercise of a physician's knowledge and tact, than a case of simulated insanity; but the same might be said with quite as much truth, of other diseases that men have been led to feign, but which, nevertheless, are every day investigated and understood.

§ 396. The workings of an insane mind — such as attract the popular notice — are apparently so confused and discordant, so wild and unnatural, as to have given rise to the notion as prevalent as it is unfounded, that insanity may be easily imitated. The method that is in madness, the constant and consistent reference to the predominant idea, which the practised observer detects amid the greatest irregularity of conduct and language, is one of those essential features in certain forms of the disease, which is generally overlooked, or at least very unsuccessfully imitated. Those who have been longest acquainted with the manners of the insane, and whose practical acquaintance with the disease furnishes the most satisfactory guaranty of the correctness of their opinions, assure us that insanity is not easily feigned, and consequently that no attempt at imposition can long escape the efforts of one properly qualified to expose it. Georget does not believe, "that a person who has not made the insane a subject of study, can simulate madness so as to deceive a physician well acquainted with the disease." [1] Mr. Haslam declares, that, "to sustain the character of a paroxysm of active insanity, would require a continuity of exertion beyond the power of a sane person." [2] Dr. Conolly affirms, "that he can hardly imagine a case which would be proof against an efficient system of observation." [3] Another writer, while admitting that attempts to deceive are sometimes successful, on account of the imperfect knowledge of the operations of the mind in health and disease possessed by medical men in general, observes, however, that when we consider the "very peculiar complex phenomena which

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[1] Des Maladies Mentales, 60.

[2] Medical Jurisprudence as it relates to Insanity, 322.

[3] Inquiry concerning the Indications of Insanity, 467.

characterize true madness, and reflect on the general ignorance of those who attempt to imitate them, we have no right to expect such a finished picture as could impose on persons well acquainted with the real disease." [1] With such authority before us, to urge as an objection against the free admission of insanity in excuse for crime, the extreme difficulty of detecting attempts to feign it, can no longer be any thing more than the plea of ignorance or indolence. The only effect such difficulty should have on the minds of those who are to form their opinions by the evidence they hear, should be to impress them with a stronger sense of the necessity of an intimate, practical acquaintance with insanity on the part of the medical witness, and convince them that without this qualification, the testimony of the physician is but little better than that of any one else. We shall now notice those features of insanity the knowledge of which, either from their not being generally obvious, or not easily simulated, will enable us to distinguish the reality from the imitation; and as general mania is oftener chosen than any other form of mental derangement, for the purpose of deception, we shall begin with that.

§ 397. The grand fault committed by impostors is, that in their anxiety to produce an imitation that shall deceive, they overdo the character they assume, and present nothing but a clumsy caricature. The representations of mania put forth in the works of novelists and poets, with a few such admirable exceptions as the Lear and Hamlet of Shakspeare, are, of all their attempts to copy nature, the least like their model. If, then, men of education, who may have had some opportunities for observing the disease, have after all so imperfect a picture of its phenomena in their mind, what success could be expected from the attempts of persons who, for the most part, assume their task upon the spur of the occasion with little preparation, and who have derived all their ideas of madness from a casual visit to an insane hospital, or from observing the manœuvres of some roving

[1] Cyclopædia of Practical Medicine: Article, Feigned Diseases, 146.

maniac? With such, insanity is but another name for wildness, fury, and unlimited irregularity, and consequently under the thin disguise they assume, there can readily be detected a constant effort to impress on the beholder the conviction they are anxious to produce, by the mere force of noise and disorder. The really insane, except in the acute stage of the disease, are, generally speaking, not readily recognized as such by a stranger, and they retain so much of the rational as to require an effort to detect the impairment of their faculties. In feigned cases, all this is very different; the person is determined that his derangement shall not be overlooked for want of numerous and obvious manifestations of its existence. Under this impression, the impostor is constantly guilty of some word or act grossly inconsistent with real insanity, and affording an easy clew to the truth of the case.

§ 398. Generally, after the acute stage has passed off, a maniac has no difficulty in remembering his friends and acquaintances, the places he has been accustomed to frequent, names, dates, and events, and the occurrences of his life. The ordinary relations of things are, with some exceptions, as easily and clearly perceived as ever, and his discrimination of character seems to be marked by his usual shrewdness. His replies to questions, though they may sometimes indicate delusion or extravagant notions, generally have some relation to the subject, and show that it has occupied his attention. Now a person simulating mania will frequently deny all knowledge of men or things, with whom he has always been familiar, especially whenever he imagines that such ignorance, if believed, may be considered as a proof of his innocence. The very names, dates, and transactions, with which he has been most lately and intimately conversant, he will, for the same reason, refuse to remember, while the real madman will seldom, if ever, forget them, in whatever shapes they may appear to his mind, or with whatever delusions they may be connected. His distorted perceptions may transform his humble dwelling into a princely castle, and the people about him into generals and courtiers ready to execute his slightest orders; but he will never deny

that he has an abode, nor forget the existence or names of those whose station and duties he has so entirely mistaken. Grant his premises, and oftentimes nothing can be urged against the conclusions of the madman's reasoning; but in simulated madness, the common error is to imagine that nothing must be remembered correctly, and that the more inconsistent and absurd the discourse, the better is the attempt at deception sustained. In simulated madness there is also a certain hesitation and appearance of premeditation in the succession of ideas, however incoherent, very different from the abruptness and rapidity with which in real madness the train of thought is changed. This, of itself, is sufficient, in the majority of cases, to reveal the deception to the practised observer of insanity. In simulated mania, the impostor, when requested to repeat his disordered ideas, will generally do it correctly, as if anxious that none of his ravings should escape attention, or be forgotten; while the genuine patient will be apt to wander from the track, or introduce ideas that had not presented themselves before. The following case, which we find in one of Georget's works, will furnish an appropriate illustration of the foregoing remarks, and give an insight into the devices of imposture, to be obtained only from examples.

§ 399. "Jean-Pierre, aged forty-three years, formerly a notary, was brought before the court of assizes of Paris, on the 21st February, 1824, accused of crimes and misconduct, in which cunning and bad faith had been prominently conspicuous. He had already been condemned for forgery; and was now accused of forgery, swindling, and incendiarism. When examined after his arrest, he answered with precision every question that was put to him. But about a month after, he would no longer explain himself, talked incoherently, and finally gave way to acts of fury, breaking and destroying every thing that came in his way, and throwing the furniture out of the window. At the suggestion of the medical men who were called to examine him, Jean-Pierre was sent to the Bicêtre, to be more closely observed. There he became acquainted with another pretended lunatic, ac-

cused also of forgery and swindling, and retained in that house for the same purpose, — that of being observed by the physicians. One night a violent fire broke out at the Bicêtre, in three different places at once, in one of the buildings occupied by the insane, which circumstance led to the suspicion that the fire was the effect of malice. The next day it was discovered that the two supposed madmen had disappeared. Jean-Pierre hid himself in Paris in a house where his wife was employed, and where he was again arrested. Immediately on his escape from the Bicêtre, he wrote a very sensible letter to one of his friends; but scarcely had he been taken when he again assumed the character of a madman. From the indictment, it appears that the person who ran away at the same time with Jean-Pierre, confessed that they had formed the plan of escaping in company, and that they had profited by the occurrence of the fire to put it into execution. He also said that Jean-Pierre had made him swear to reveal nothing; and he seems to have told as a secret to one of the officers of La Force, that the fire was the work of Jean-Pierre.

"All the witnesses, who had had any transactions with, or known any thing of the accused before his arrest, deposed that he always seemed to them rational enough, and even very intelligent in business. One of the prisoners in La Force, who occasionally met and talked with Jean-Pierre, declared that his conversation was often very incoherent, and that in some of the phases of the moon, his mind was much excited. But these observations were made *after* the arrest of the accused. It was his conduct at the trial, however, which, more than any thing else, proved that the madness of Jean-Pierre was only assumed; for there is, perhaps, not one of his answers that would have been given by a madman. The following are a few of them.

"*Q.* How old are you? — *A.* Twenty-six years [he was forty-three].

"*Q.* Have you ever had any business with Messrs. Pellene and Desgranges [two of his dupes]? — *A.* I don't know them.

"*Q.* Do you acknowledge the pretended notarial deed which you gave this witness? — *A.* I do not understand this.

"*Q.* You have acknowledged this deed before the commissary of police? — *A.* It is possible.

"*Q.* Why, the day of your arrest, did you tear up the bill for three thousand eight hundred francs? — *A.* I don't recollect.

"*Q.* You stated in your previous examinations, that it was because the bill had been paid. — *A.* It is possible.

"As to many other of his own depositions the accused answered, in like manner, that he did not recollect any thing about them.

"*Q.* Do you know this witness [the portress of the house he lived in]? — *A.* I don't know that woman.

"*Q.* Can you point out any person who was confined in La Force with you, and who can give any account of your then state of mind? — *A.* I don't understand this.

"*Q.* You made your escape from the Bicêtre? — *A.* Were you there?

"*Q.* At what hour did you escape? — *A.* At one o'clock — three o'clock.

"*Q.* What road did you take? — *A.* That of Meux en Brie. [He took that of Normandy.]

"*Q.* Can you tell us who set the Bicêtre on fire? — *A.* I do not know what you mean.

"*Q.* You wrote a letter to Captain Froyoff the day after your escape from the Bicêtre? — *A.* I did not write that letter. [It was his own handwriting.]

"When charged with setting fire to the Bicêtre, Jean-Pierre uttered the most horrid imprecations, and incessantly interrupted his counsel and the advocate-general in their pleadings, with contradictions, ridiculous remarks, and curses."[1]

§ 400. In commenting on this case, Georget observes, that "among those madmen who have not entirely lost their

[1] Archives général de Méd. viii. 182.

senses, — and Jean-Pierre is not one of this kind, — probably not one will be found who would mistake the persons with whom he has been connected, who would not understand what a notarial act is, who would have forgotten his actions, who would not know what was meant when a memorable event was recalled to him, and who would make such singular answers as those we have quoted. The latter appear as so many contradictions to those who are accustomed to observe the insane. When people have completely lost their reason, they either do not reply to questions at all, or branch off to subjects that have no relation to the questions addressed to them. I have seen patients whose understanding was reduced to a few isolated sensations, and who recognized their parents and friends, and called them by name. Some, it is true, can recognize nobody, but they certainly would not have returned all the answers above mentioned, and their mental disorder would have been otherwise characterized." [1]

§ 401. The change that takes place in the moral character of the insane, in their affections and desires, furnishes an excellent test of the genuineness of any particular case, inasmuch as this fact hardly enters into the popular notions of this disease. Perhaps no character of mania, general or partial, is more common than that inversion of feeling, which is manifested in reference to every person or thing that comes within the circle of the domestic and friendly relations. The feelings of the parent, child, and spouse, seem to be completely eradicated, while family loses its ties, home its endearments, and friends their kind and soothing influence. Suspicion takes the place of confiding trust; jealousy, of love; and fierce and hostile demeanor, of grace and suavity of manner. As the severity of the disease abates, the current of the affections begins to resume its ordinary direction, and no indication of improvement is more to be relied on, than manifestations of regard for those to whom they are bound by ties of intimacy or relationship. The impostor is seldom aware of these facts, and generally evinces no settled

[1] Des Maladies Mentales, 61.

diminution of his attachment to his family or friends. He does not scruple to show his ordinary fondness for his children or parents, or if he happens to be aware of the trait of insanity here described, and has suppressed all such displays, the first menace of injury to these objects of his regard, is sufficient to tear away his disguise, and disclose the rational and affectionate man. In the conspiracies and hostile plans that constantly perplex the madman's brain, his intimate friends bear the most prominent part, while the impostor always pitches upon those as the disturbers of his peace, with whom he has had some previous disagreement, or at least, no particular intimacy.

§ 402. In real, general mania there is usually more or less insensibility to the ordinary proprieties and decencies of life, insomuch that sometimes those who were formerly noted for the purity of their manners, freely indulge in obscene language and filthy practices. Indeed, it seldom happens that in general mania the patient preserves the natural propriety of his conversation and manners; and this departure from the ordinary character will go far to distinguish the real from the simulated disease.

§ 403. If, as we have endeavored to prove elsewhere, mania arises from cerebral disorder, we might reasonably expect to find it giving rise to physical disturbances of more or less moment, and, accordingly, in most cases, it actually is manifested by various pathological symptoms which no device of imposture can ever imitate. To say nothing of the wildness of the eye, and a certain strangeness of expression, as easily recognized when once impressed on the mind, as it is difficult to describe, there is some degree of febrile action which it requires no very labored examination to discover. The pulse will generally be found more frequent than in health, and when this increased frequency is observed in doubtful cases, it will furnish a strong collateral proof of the genuineness of the mental disorder. In the case of a criminal condemned to be executed who was suspected of feigning madness, the opinion of the late Dr. Rush was requested, and when that critical observer of disease found the pulse

twenty beats more frequent than in the natural state, he decided, chiefly on the strength of this fact, that the prisoner was really insane,[1] and such he finally proved to be beyond a doubt. Of course, it is not to be understood that whenever the pulse remains at the natural standard, the plea of madness is fictitious, nor vice versa; it is mentioned merely as a valuable means in connection with others, of arriving at correct conclusions in doubtful cases.

§ 404. Sleeplessness, which is so common in mania, is another of those symptoms, the presence of which may furnish conclusive proof of real insanity, and though its absence would hardly warrant the contrary conclusion, it would certainly produce strong suspicions, and thus give additional weight to less prominent symptoms. In real mania, the patient will be days and even a week without sleep, while the simulator, if aware of this feature of the disease, will be observed, when faithfully watched, not to protract his sleeplessness to any thing like the period which it commonly remains in the real disease. In fact, in spite of all his efforts, sound sleep will invariably overtake him before the second or third day. Impostors almost always attempt to imitate the nocturnal restlessness and disorder of maniacs, but the imitation is as different from the reality, as the occasional disturbance by sound slumbers can make it, — a difference which it would require but little watching to establish.

§ 405. Perhaps there is nothing which of itself furnishes a better test in doubtful cases, than the manner of their invasion. Well-marked, real mania seldom occurs suddenly, but is preceded, as has been elsewhere noticed, by a course of preliminary symptoms which occupy a period of more or less duration, and which, though they do not always suggest to the beholder the suspicion of derangement, will, when the disease has become indubitably established, be recollected as having appeared strange and unaccountable. In simulated insanity, on the contrary, the invasion is as sudden as is most

[1] Introductory Lectures, 369.

frequently the occasion that leads to it. The simulator being unaware of the progressive nature of the invasion, suddenly, in the midst of health, startles his attendants by an outbreak of the most extravagantly wild and furious conduct, while the minutest inquiries will fail to establish the previous existence of any precursory symptoms. No instance of strange, or eccentric conduct or language, not the slightest departure from the individual's natural thoughts and affections, or manner of manifesting them, nor any indications of bodily derangement, will have been observed by those who were about his person. When, therefore, the disease has come on in this manner, it may be safely concluded, if there be any the least ground of suspicion, that the case is one of simulation.

§ 406. When other tests fail, the habits and constitutional peculiarities of the individual may sometimes furnish us with valuable information. If, for instance, the person have indulged in intemperate drinking, the occurrence of mental derangement would be no unnatural sequel to the sudden abstinence from intoxicating drinks to which prisoners are generally subjected. If insanity have been a disease of his family, more especially if it have been manifested in former periods of his life, when there existed no motive for deception, there must be additional evidence strong enough to counterbalance the presumption drawn from this fact, to induce the belief that the case is one of simulation. When, too, the person is well known to possess an irritable, nervous temperament, inordinately excited by moral or physical causes, this fact will very justly raise a bias in his favor, and lead us to require so much additional weight in the proofs of deception; and its force will be strengthened by the consideration, that the circumstances in which he has been recently placed, are of the very kind most calculated to produce the effect to which he is thus predisposed.

§ 407. In real mania there is usually an extreme irritability of temper which makes the person impatient of the least contradiction, and is constantly breaking out into furious gusts of passion, as sudden as the apparent causes

are inadequate to account for them. This feature of mania is not easily imitated, and nothing less than long personal observation of the insane, joined with no inconsiderable powers of mimicry, would enable the simulator to arrive at even an approximation to the reality. When, therefore, the pretended madman maintains his temper under various little annoyances and contradictions, or only displays a clumsily-enacted passion, it may be pretty safely concluded that he is feigning the disease.

§ 408. Generally, persons feigning mania, lack the bold, unflinching look of real maniacs; they never look the physician steadily in the face, nor allow him to fix their eye; and on being accused, their change of countenance plainly betrays that they are conscious of the nature of the charge. Dr. Hennen speaks of an instance where a person feigning madness, confessed that he could not support the inquiring glance of the physician who examined him.[1]

§ 409. It is a well known fact that in real insanity, the system becomes singularly insensible to the power of certain medicines — particularly emetics, drastic purgatives, and opium. A dose of the last article, which would not procure a moment's sleep to a real maniac, would completely overpower the simulator, and in doubtful cases the result of this experiment should be entitled to considerable weight. The same may also be said of experiments on the effect of other narcotics.

§ 410. Partial insanity, in consequence of the superior difficulty of the attempt, is much less frequently simulated, and with a much smaller degree of success, than the general form of the disease. Those who undertake it "are deficient," says Haslam, "in the presiding principle, the ruling delusion, the unfounded aversions, and causeless attachments which characterize insanity, — they are unable to mimic the solemn dignity of characteristic madness, nor recur to those associations which mark this disorder; and they will want the peculiarity of look which so strongly impresses an expe-

[1] Principles of Military Surgery, 364.

rienced observer."[1] The mental and physical peculiarities of partial mania are of a kind that do not obtrude themselves on the observation, and instead of loudly proclaiming the presence of a crazed condition, and soliciting the attention of the beholder, some investigation is required before they are discovered. All this is contrary to the purposes of the simulator, which require that an immediate and powerful impression should be made on those in whose charge he is placed. If, however, in consequence of ignorance or presumption, these difficulties are unknown or under-estimated, and the task of simulating partial madness is assumed, we have only to bear in mind the characteristic features of the affection, to detect the counterfeit almost at a glance. In real monomania the patient seldom troubles himself to make the subject of his delusion square with other notions with which it has more or less relation, and the spectator wonders that he can possibly help observing the inconsistency of his ideas, and that when pointed out to him, he should seem to be indifferent to or unaware of this fact. In the simulator, on the contrary, the experienced physician will detect an unceasing endeavor to soften down the palpable absurdity of his delusions, or reconcile them with correct and rational notions. This too obvious anxiety to produce an impression, strongly contrasts with the reserve and indifference of the real disorder, and will, of itself, furnish almost conclusive proof of simulation. In partial mania, the subject of the delusion, though it may frequently change, completely occupies the mind for a longer or shorter period, and the patient's discourse, when he wanders, will always have some relation to it. When this form of the disease is simulated, the delusions are not only frequently changing, but when questioned concerning them, the person is more likely than not to shape his answer without any reference to the subject, and embrace the opportunity to introduce a new insane idea. Nothing irritates a monomaniac more than to be called insane. He stoutly repels the idea, and maintains the reality and correctness of

[1] Medical Jurisprudence as it relates to Insanity, 323.

his delusions. The simulator, on the contrary, will be but little inclined to discourage a belief which it is his great object to produce. "A real monomaniac," says Marc, "is strongly prejudiced in favor of his opinions, the slightest contradiction excites his temper, while the simulator readily overlooks this essential point in his part, if the contradiction be skilfully managed. The taciturnity peculiar to the real subject of monomania, frequently leaves simulators at fault, since the complaints of the latter, when sure of being seen or heard, and their repugnance at dwelling in solitude, are not met with, or at least, not in the same degree, in the others."[1] In addition to these characteristics of this form of mental derangement, it may be remarked that many of the peculiarities diagnostic of general mania, are often so of partial mania, such as sleeplessness, insensibility to opium, and irritability of temper. According to Marc, monomania that is not characterized by sad, or at least serious ideas, has seldom, if ever, led to criminal acts.

§ 411. Idiocy and imbecility are sometimes simulated, and the imitation would be very likely to deceive those not practically acquainted with these mental affections; but the history of the individual and his physical constitution furnish such conclusive proof of the imposture, that the attempt is less successful than when the other forms of insanity are selected for simulation. In genuine cases, if the affection be congenital, the history of the patient or form of the head will establish this fact. If it have occurred at an after period of life, the circumstances that have occasioned it may be learned from the acquaintances of the patient. If the form of the head present nothing abnormal, it is to be supposed that the mental deficiency, if there be any in reality, is of the acquired kind, so that if the person pretends to have been from birth in his present condition, this of itself would be presumptive proof of imposition. If, however, he is capable of referring his mental deficiency to the influence of any particular adventitious causes, the practitioner can determine for

[1] Dict. Med. Sci. Article, Aliénés.

himself, in a certain measure, how far these alleged causes could have contributed to produce the condition in question. If they appear to be plainly and palpably inadequate, he has a right to conclude that the person is acting the part of an impostor. It sometimes happens that the simulator has had frequent opportunities of observing the manners of an idiot or imbecile, and, possessing some powers of mimicry, is able to give a pretty faithful copy of the example he has studied. But there is a stupid, vacant cast of countenance in these affections, which it is difficult, if not impossible to imitate well enough to deceive one much conversant with this class of beings. Full as difficult is it to imitate the unfixed, uncertain, expressionless look, and the frequently and abruptly fluctuating train of their ideas. Zacchias offers as a test of idiocy, the pusillanimous and submissive character of its subjects, but it is now well known that most idiots are liable, on provocation, to gusts of furious, brutal passion, as transient as they are sudden. Imbecility presents such a diversity of mental deficiency both in kind and degree, that the simulation of it will baffle the scrutiny of the observer, who is not prepared for his task by a considerable acquaintance with the phenomena of the imbecile mind. In the first degree of real imbecility there is a singular mixture of stupidity and shrewdness, in the fraudulent imitation of which the vigilant observer may discover proofs of simulation. He will find that on points directly involving the interest of the simulator, the latter will display the full endowment of the shrewdness compatible with this condition, while he reserves his stupidity for occasions where his own interests are not particularly concerned. In replying to the questions put to him, he will be careful, amid all his display of imbecility, to say nothing likely to favor a belief of his guilt in the matter which has led him to assume the part of an impostor. What he says is intended to leave an impression favorable to his innocence, and this effect he will endeavor to produce as far as he dares. When, therefore, the person replies to inquiries in such a manner as to criminate himself, it may be pretty safely concluded that the imbecility is genuine; and though

the converse of this rule may not be equally true, yet if the whole tenor of his replies has an exculpatory turn, strong ground of suspicion at least is afforded, that all is not right. Imbecility in the first degree will seldom be counterfeited, however, from the simple fact, that the real affection seldom annuls the criminal responsibilities of those who are acknowledged to be its subjects.

§ 412. Senile dementia may be simulated by aged persons, but is so imperfectly known as a distinct form of insanity, that its peculiar features would probably be mingled with those of general and partial mania, and thus lead to an easy detection. If the physician will steadily bear in mind that senile dementia is essentially characterized by deficiency of mental excitement, he will not be long in arriving at the truth in doubtful cases, for the simulator will inevitably indulge in hallucinations, and perform physical movements indicative of excessive mental excitement. The principal points that distinguish this affection from mania may be briefly recapitulated. In senile dementia, the delusions are based on some previous event of life, and though irrational, are not always absurd. The memory decays, first, relative to recent events, and finally, to every thing it had previously stored up. The senses lose their acuteness; the power of recognizing persons, places, and things, fails at last, and has gone forever; and one looks in vain for the least exertion of thought. The whole conduct and language are indicative of complete childishness; and in this second childhood, the necessity of vigilance to prevent the miserable patient from injuring himself or others, is no less imperative than in the first. In mania, the delusions are generally absurd as well as irrational; the memory manifests no decay, except perhaps on subjects that relate to the predominant idea; the strength and accuracy of the senses are unimpaired; persons and things are as readily recognized as ever; and occasionally the mind flashes forth with more than its usual power and vividness. At times the character assumes its natural manliness and dignity, and the individual conducts with a propriety and discretion scarcely to be distinguished from those

of perfect soundness of mind. Bearing in mind these characteristic differences which are so little known to any but medical men, we cannot be easily deceived by the best-managed attempt at simulating senile dementia.

§ 413. It has been already stated (§ 328), that the other forms of dementia are usually the sequel of mania, or other disorders of the nervous system. It must be borne in mind, that the previous disorder is sometimes so mild, so obscure, and so short in its duration, as to be entirely overlooked. When this is the case, the dementia that supervenes is viewed with suspicion, and, unless sufficient time is allowed for its development, it may frequently be mistaken for the effect of simulation. The following case looks like one of this kind, though nothing but further observation and perhaps more information respecting his previous history, could place its true nature beyond the reach of doubt. "I was, a few years ago, requested to see a man confined in gaol for the crime of cutting off his wife's head. This man had made no attempt to deny the deed, or to escape the consequences. For some time after he was taken to prison, his conduct was quiet, and on common subjects he would talk in a common way with his fellow-prisoners. When he was asked about the murder, and reminded that he would certainly be hanged for it, he always said he did not know that he had done any harm. After being confined five or six weeks, he occasionally showed a disposition to be violent; and, on one occasion, put a handkerchief round his neck as if he intended to hang himself. Subsequently he became taciturn, and his demeanor changed to that of an imbecile person, which it was at the time of my seeing him. He wore a woollen cap, which he had taken from one of the other prisoners, and carried a piece of wood about with him, which he represented, by signs, to be his sword; for he would not speak, nor answer any questions; only breaking silence now and then by repeating the word 'cabbage,' without any kind of meaning. He had buttons and other common trinkets tied round his wrist; and he had made a great many attempts to walk out of the hospital of the prison, in

which he was lodged. When a watch or any shining substance was shown to him, he would assume an idiotic smile, and begin to dance." [1]

§ 414. The narrator of this case suspected that the man "was playing a part," though he admits that "the nature of his crime, and his conduct after committing it, went far to support the idea of his insanity, and that his insanity might have been coming on some time before the murder." He remarks, as one ground of his suspicions, that "the mixed character of his mental disorder, and the rapid supervention of idiocy [dementia] on a quiet form of insanity, in a man of thirty-five, seemed to be unusual circumstances." Such circumstances are certainly not very common, but nevertheless, they have been observed. Esquirol recognizes a form of dementia which is complicated more or less with monomania, and distinctly alternating with it. He remarks of a patient whose case he relates, that "though apparently insensible to whatever was passing around him, he still was not entirely deprived of intelligence, and he had great strength of will." [2] The case of Pechot, adjudicated in France within three or four years, was a striking instance of the rapid supervention of dementia on a quiet form of insanity, though the patient was older, it is true, than Dr. Conolly's. Between the time of the commission of the murder in April, for which he was indicted, and that of his trial in the following November, he was frequently observed and examined by a medical commission appointed for the purpose of ascertaining the exact condition of his mind. During the early part of this period, he merely appeared to be deeply dejected, and the commission reported that it was impossible for them to say that his understanding was nowise impaired. At the time of the trial, however, dementia was plainly visible, and then one of the commission stated, that during the first examination, Pechot was undoubtedly in a state of profound melancholy, of which the

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[1] Conolly, Indications of Insanity, 455.

[2] Des Maladies Men. ii. 228.

present dementia was the natural sequel. It also appeared from the evidence, that for some time previous to the murder, his mind was considerably disordered.[1] The other circumstances which raised the suspicion of simulation in the above case, were, that though he would not answer questions, he heard and understood them, — that "although he never looked directly at any one, he was, in reality, very watchful of their movements, even when distant from him," — and that "he always made a sudden run toward the door when anybody opened it to go out." In regard to the last circumstance, we can only say, that it is often seen in every form of insanity; and as it regards the others, it may be sufficient to observe, that the committee, in speaking of Pechot's condition a few days after the murder, stated that he was very reluctant to answer questions, and that "his eye was constantly on the watch, the slightest noise, the least gesture instantly attracting his attention."

§ 415. Homicidal insanity, when the fact of its existence shall be generally recognized, will, undoubtedly, be often falsely pleaded in excuse for crime, and the task imposed on the physician in such cases, will be sometimes a difficult and a delicate one. The characteristic and distinctive features of this affection have been elsewhere stated (§ 257), and it is to a knowledge of them we are to look for the means of detecting its counterfeits; and though our investigation may occasionally result only in doubt and uncertainty, yet, generally, when rightly conducted, it will lead us to the truth.

§ 416. Insanity, characterized by hysteric symptoms, was simulated not long since in the McLean Asylum, Massachusetts, and, considering the youth of the subject, the apparent want of motive, and the severity of the symptoms, it was somewhat curious. The lad, thirteen years old, had fallen on his head about two years and a half previous to admission, and ever since that period, had exhibited some anomalous symptoms of disease, which had been referred by his physi-

[1] Annales d'Hygiène, No. 35. The article is condensed in 22 American Jurist, 27.

cians to derangement of the digestive organs. For the few last months the symptoms were more severe and decided. He refused food for long periods, had spasms, laid with his eyes fixed and legs drawn up, would hold his breath and strike. On admission to the asylum, he presented the appearance of a sickly, emaciated boy under puberty, unable to stand, exhausted by suffering, breathing quick, and passing his evacuations in bed. Every few minutes he had a frightful spasm, commencing with a convulsive shaking of the head, pawing of the hands, and turned-up eyes. Soon his hands would vibrate against his sides and chest; his countenance would be dreadfully distorted, and then would commence a horrid scream that might be heard over the whole premises. In this condition, with occasional remissions, and the addition, at one time, of diarrhœa, he remained for about a month, when the imposture which had been suspected, was detected. Being watched through a hole in a blanket hung before his window, he was observed to jump up and stride about his room as actively as anybody, but at the slightest noise, resuming his old position, screaming and groaning. Dr. Bell finally burst in upon him before he could regain his bed, chided him for his deceit, and bade him walk into the hall. "The spell is broken," says the record, "the feeble knees are made strong, the convulsed and distorted visage is calm and smooth, and the young deceiver goes forth erect, clothed, and in his right mind."

§ 417. Besides a knowledge of the symptoms of insanity, which will enable the physician to detect its simulation, his own ingenuity may often contrive some plan for outwitting the pretender, and entrapping him in his own toils. To perform the part of an insane person, carrying through its numerous and complicated phases, requires an endowment of the imitative powers, seldom bestowed on any, least of all, on those who would have occasion to use it for such purposes, so that the measure of ingenuity by which it is maintained, is scarcely ever a match for the devices which a shrewd and vigilant physician has always at hand. In the case of a girl feigning mania, Foderè informed the keeper, in

her presence, that if she were not better the next day, he should apply a hot iron between her shoulders. This immediately produced a decided amendment. There is related the case of a sailor, whose simulated madness was manifested by a vehement desire to throw himself overboard, which, after being prevented for some time, he was at last permitted to do; immediately on reaching the water, however, he swam vigorously and called loudly for a boat.[1] A device frequently resorted to, is to mention in the hearing of the person some symptom of madness which is easily imitated, as not being present; at a subsequent examination, if the disease is feigned, this symptom will certainly be observed, whether it is or is not a symptom of madness. In some cases, it would be perfectly proper to adopt the suggestion of Marc, to intoxicate him slightly, when, if he be playing a part, he will be likely to forget it, and appear in his real colors. In the English naval and military service, where the medical officer is often called on to deal with feigned insanity, punishment was once much resorted to,[2] on the principle, probably, that if the affection be counterfeited, it will be more efficacious than any thing else in restoring the impostor to his right mind; and if real, it will do good by acting as a powerful derivative. If the latter part of the alternative were true, nothing certainly could be more proper than sound flagellation; but if any thing, more surely than another, will push a case of mental derangement beyond the reach of curative means, it is corporal punishment. The misery thus produced is poorly compensated by the detection of a few cases of imposture. In the following case, however, where something like this kind of treatment was used, it would undoubtedly have been very proper had the disorder actually existed; and as it may serve as a guide to the practitioner in similar instances, a brief notice of it may not be out of place in this connection.

§ 418. Jean Gerard, a bold villain, murdered a woman at

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[1] Cyclop. Pract. Med., Article, Feigned Diseases. [2] Idem.

Lyons in 1829. Immediately after being arrested, he ceased to speak altogether, and appeared to be in a state of fatuity. He laid nearly motionless in his bed, and when food was brought, his attendants raised him up, and it was given to him in that position. His hearing also seemed to be affected. The physicians who were directed to examine him, concluded that if this were actually what it appeared to be, a paralysis of the nerves of the tongue and ear, the actual cautery applied to the soles of the feet, would be a proper remedy. It being used, however, for several days, without any success, it was agreed to apply it to the neck. For two days no effect was produced; but on the third, while preparations were making for its application, Gerard evinced some signs of repugnance to it, and after some urging, he spoke, declaring his innocence of the crime of which he was charged. His simulation was thus exposed.[1]

§ 419. When required to examine and report upon cases of suspected simulation, the medical man cannot be too cautious in arriving at his final decision. The judgment is not to be determined by any single symptom, however striking, but every pathological indication, every possible motive to action, in short, the whole moral, intellectual, and physical history of the individual should be faithfully studied, before we venture to make up our final opinion. Especially should we try to ascertain from the acquaintances of the individual, whether he has evinced mimic powers to any extent, and has ever had an opportunity to observe the manners and discourse of the insane. The mimic power necessary to produce a clever imitation of insanity of any kind, can hardly be supposed to have laid all his life unexercised and unknown, and still less could it be supposed that this power might be so great as to render any personal observation of the disease unnecessary. In the class of persons most likely to simulate insanity, are many whose experience in poor houses, jails, and penitentiaries,

[1] Annales d'Hygiène, ii. 392.

have furnished them with examples of mental disease, which they are able to reproduce, more or less successfully, when the occasion requires. These cases are among the most difficult to detect, because, even a clumsy imitation of a real thing is more fitted to deceive, than any acting not founded on actual experience. In the following case, it is very probable that the man was acting from life rather than any theoretical notions of insanity. "John Jakes was convicted at the Devon Eastern Sessions, 1856, of pocket-picking. Previous convictions having been proved, he was sentenced to four years' penal servitude. On hearing the sentence, he fell down in the dock, as if in a fit of apoplexy. When removed to the jail, he was found to be hemiplegic and apparently mindless. He, however, did some things which did not belong to dementia following apoplexy; for instance, he was designedly filthy, and even ate his own excrements. His insanity was certified by the surgeon of the jail, and by a second medical man, and he was removed to an asylum. Notwithstanding the medical certificates of his insanity, the convicting magistrates, who knew his character as a burglar, and a criminal of great ability, thought he was feigning. Warned by their caution, I examined the man carefully. He had all the symptoms of hemiplegia: the toe dragged in walking, the uncertain grasp of the hand, a slight drawing of the features, the tongue thrust to the paralyzed side — all these symptoms were present in a manner so true to nature, that, if they were feigned, the representation was a consummate piece of acting founded upon accurate observation. In the asylum the patient was not dirty; he was tranquil and apparently demented; he had to be fed, to be dressed, and to be undressed, to be led from place to place; he could not be made to speak; he slept well. On the night of the 17th of August, 1856, he effected his escape from the asylum, in a manner which convinced the magistrates that their opinion of his simulation was just, and that he had succeeded in deceiving some four or five medical men. He converted the handle of a tin cup into a false key, wherewith he unlocked a window-guard; through the window he escaped by night

into the garden, from thence he clambered over a door, eight feet high, and afterwards, over a wall of the same height. He got clear away, probably joined his old associates, and has never been heard of since."[1] It can scarcely be questioned that all this was, as Dr. Bucknill supposes, "a consummate piece of acting, founded upon accurate observation." A person really so demented as to be fed, dressed, and undressed by others, would obviously be incapable of making a key out of a tin cup, not to speak of clambering over a door eight feet high. I doubt if any simulator would think of eating his own excrements, who had not seen or heard of this trait in some insane person, because it forms no part of the popular notions of insanity. Dr. Bell has informed me, that in a case of suspected simulation of raving mania, which he was requested to examine, in the Massachusetts state prison, he found that the person had had the opportunity of observing pretty closely a raving maniac, — a fact which explained some embarrassing traits in the case.

§ 420. Ample time for the investigation should be demanded, and unless it be granted, the physician would be justified in declining altogether the duty assigned him. Opportunities must be provided of observing the simulator, when, thinking himself not watched, he throws off the guise he has assumed (which he will do at such times), and returns to his own proper character. The physician should never forget, however, the extreme perseverance and vigilance with which these people manage their impositions, and not be too easily induced to regard them favorably in consequence of the results which such opportunities may sometimes furnish; for they will often suppose they are watched at times when they have no means of knowing whether they are so or not. Foderè speaks of a girl, undoubtedly a simulator, who committed every kind of indecency in her cell; and another case is related of some French prisoners of war, who carried "their simulation to so exquisite a height, as to eat their own excrement, even when shut up in their cells, suspecting that

[1] Bucknill & Tuke, on Insanity, 334.

they might be overlooked."[1] In suspected cases, therefore, the persons should be strictly, and as far as possible, secretly watched, in order that in their moments of forgetfulness or a sense of security, they may be seen laying aside their false colors, and suddenly assuming their natural manners. That this will happen sooner or later in every case, there cannot be a doubt, for the mind will instinctively seek relief from the painful exertion and sense of restraint, rendered necessary by an elaborate attempt at deception, by throwing off the disguise that has been adopted, and again returning to its natural condition. Again we caution the practitioner not to be in haste to form his opinion, but to wait long and patiently, for opportunities that may shed new light on the difficulties before him.

§ 421. The importance of the last suggestion is strongly exemplified in the following case, related by Professor Monteggia, and translated from the Italian by Marc. We have taken the liberty to abridge somewhat the original narrative. In 1792, a criminal who was confined in the prison of St. Ange, in the province of Lodi, became insane soon after hearing that he had been betrayed by his accomplices. The physicians of the place, who were required to examine him, came to the conclusion that he was feigning madness, though they did not express strong confidence in their opinion. From their report, his disorder seems to have been of rather a quiet form. To any question whatever, he merely uttered the words, *book*, *priest*, *crown*, *crucifix*. Sometimes he seemed, by the motions of his mouth and tongue, desirous of replying to questions, but finally repeated, with a smile, the usual words. Their reasons for considering him to be feigning, were, that the disease appeared suddenly, without any premonition, and was accompanied by irregular symptoms, sometimes appearing to be a melancholy, attended by wandering, sometimes a cheerful mania, and sometimes a complete dementia. It appears that he was noisy at night and quiet by day; that he scattered his food about; that he

[1] Cyclop. Pract. Med., Article, Feigned Diseases.

never sighed; and that he never fixed his eye on any particular object. The physicians, in speaking to one another in his hearing, of these four circumstances, observed, for the purpose of entrapping him, that if just the contrary had happened, they must necessarily have concluded that he was insane. It was soon after observed that he was quiet at night, no longer scattered his food, and did sigh. He seemed reluctant to have his pulse felt, for whenever this was done, he would keep his arm and fingers constantly in motion, though before perfectly at rest. The physicians also said in his presence, that his disorder would certainly be improved by a blister to the neck. At this time he was mute, but shortly after the application, he began to repeat the old words, *book*, *crown*, etc.

§ 422. In July, 1793, he was ordered by the court to be transferred to the prison at Milan, and Prof. M. was requested to examine him and ascertain his mental condition. At this time he appeared to be in a demented, imbecile state, and there was a kind of oddity and apparent affectation in his manners, which at first strongly favored the suspicion of simulation. Though attentive to what was passing around him, he seemed to shrink from observation, and averted his eye the moment it met that of another. When called, he certainly heard the voice, and would start to go in the direction of the sound, but instead of advancing directly, he would wander about the room. He never spoke; the only sound he uttered was a kind of whistle, like th t made by the wind blowing through a keyhole. He was singularly fond of bright and beautiful objects, viewing and touching them with an air of great interest. He collected various trifles of which he was quite fond. He never was completely quiet, but was constantly in motion, or making some gesture. He was never observed to sleep; while in bed, he was continually moving his legs, or some other part of his body, or playing with a rag which he would put upon his eyes or mouth, or twine around his fingers. He loved to put it over the eyes or mouth of others, and then retiring a few steps, would look at them with a smiling air, and utter a

sound expressive of gratification. He would frequently caress those about him, and pinch their cheeks in a friendly manner. He could neither dress nor undress himself alone; being used to eat out of crockery plates, he would refuse food brought to him in any other kind of ware. He would sometimes hide his bread in his bed, and think no more of it. He never seemed to desire, nor to seek for food, though he ate with avidity when he was hungry. Sometimes, instead of eating his soup out of the plate, he would turn it out on the floor, and then take it up with a spoon. He was much annoyed if made to remain long in any one place. When they brought towards him a mirror, he would spit at it, refuse to look at it, and be made quite angry if they persisted in putting it under his eyes. When teased in this manner, he exerted extraordinary strength. When pinched, he appeared not to feel it, and he was seen to take up live coals in his hands, without showing any sign of pain. When his attention was directed to figures on the wall, made by candle-light, he would run as if to catch them in his hands, and express his disappointment by beating his head with his fist. He would never drink wine, but the moment he tasted it, he would spit it out with a strong expression of displeasure.

§ 423. Though inclined to believe, from the examination so far, that the disorder was real and not feigned, yet considering the suspicions of the physicians of St. Ange, some decisive test seemed to be required that would unmask the simulation, if it existed, beyond all doubt. Wine being out of the question, six grains of opium was given him in his soup, but it produced no effect whatever. A few days afterwards he again took six grains of opium, in the morning, and this producing no effect at the end of six hours, six more grains, from a different parcel, was given him. In the evening he appeared as usual. A cracker was fired near him while his eye was turned in another direction, to see if the unexpected explosion would surprise him at all; but it did not, nor did another that was exploded under his shirt. He passed the night as usual, without sleep. No change was observed in him the next morning, but in the evening, he appeared a

little uneasy and looked towards the windows, as if frightened. He went to bed, and about one o'clock in the morning, he raised himself up, heaved some deep sighs, and at last cried out, "My God, I am dying." The physician who was immediately summoned, found him quiet and talking rationally, without any sign of madness. He said, upon inquiry, that he had no idea of what had taken place; he believed, or seemed to believe, that he was still in the prison of St. Ange; and demanded a confessor and an officer of justice, that he might be judicially interrogated. He added, that there had seemed to be persons at the windows, who told him that they had given him poisoned soup in order to kill him. He complained of nausea, though his pulse was natural, and his countenance calm and unaltered. The next day he ate well, and continued to conduct well and appear perfectly rational as long as he remained in the prison, after which he was lost sight of. The narrator of the case concludes that the criminal was really insane, and that he was suddenly cured by the opium; because if he had been feigning, and were finally induced to throw off the mask from the fear of actually dying from the effects of opium, it is not very clear why the first dose had no effect.

§ 424. Marc, in commenting on the above case, observes, "that the reasons which induced the physicians of St. Ange to suspect simulation, may be easily disposed of. Their opinion is founded, first, on the irregularity of the signs of madness; but this fact appears to me by no means to have been established. I see in this patient, so far as the imperfect description enables me to judge, a maniac laboring under a cheerful form of mania, characterized by restlessness and nocturnal noise, followed by a remission with depression and true dementia. Such a complication, however, is frequently observed in maniacs. The circumstance of the patient's being noisy at night, and quiet by day, is rather in favor of the reality of the derangement than otherwise. Is it probable, indeed, that a simulator would choose the time when the imperious want of sleep is most strongly felt, to feign an attack of mania which he could just as well feign during the

day, and sleep, at least, a portion of the night? Besides, those who lived with the prisoner, and even the keepers of the prison of Milan, declared that he had never been seen to sleep, and during the day, was so restless as to be constantly changing his position. It seems to me impossible for a simulator to persist in this manner, and, therefore, I believe that such a complete and long-continued absence of sleep is alone sufficient to prove the reality of the mental perturbation." The sudden invasion of the insanity, he does not regard as a proof of simulation, because this fact, though rare, is not without examples. The oddities of demeanor also, are characteristic of dementia, and could not be counterfeited for any length of time. But the effect of opium was enough to destroy any remaining suspicion of simulation. If he had been simulating, there does not appear to have been a sufficient reason for ceasing when he did. The return of reason was preceded by a hallucination of the sense of hearing; but it is not probable, says Marc, that an Italian bandit could have been so thoroughly acquainted with mental disease, as to have thought of using such a stratagem.

§ 425. A remarkably embarrassing case has been published by Dr. Parchappe, physician of the asylum at Rouen, who was directed by the court to investigate the mental condition of the prisoner, and who, for that purpose, was allowed, as is the custom in France, to examine the evidence given at the preliminary trial. From this it appears, that on the 8th of April, 1845, a man named Lambert was bitten in the hand by a dog that was generally considered to be mad. The same day the wound was cauterized with the actual cautery. The next day he started for Nibas to find some one who could cure him, but stopped at Eu and consulted a lawyer from whom he got a secret remedy for hydrophobia. On the 11th he returned home, having been, during all this period, very anxious and abstracted, saying that he was lost. About one o'clock in the morning of Sunday, the 13th, he was heard *howling* in his room. The persons who went to him found him calm. He told them that he had perspired

and trembled; that this was the first paroxysm of hydrophobia; that he must go directly to Nibas to get cured, as he might be then, but that after the third paroxysm, there could be no help for him. That day he went again to Eu, but the lawyer declined giving him a remedy, and told him he was more likely to be crazy than hydrophobic. The following night he did not go to bed, because, as he said, if he should lie down, a paroxysm would come on. On the 14th, about five o'clock in the morning, he came into the house [he slept over the stables], for the purpose of getting a purse of money, to carry into the fields. He sought for money in every direction, and then displayed it on the kitchen table, singing, laughing, and dancing. He committed these extravagances till noontime, when his mistress ordered him to go to work, which he refused to do. She then told him that, since he would not work, he might quit her service. He replied that it was necessary for him to be quiet that afternoon. He did not dine, but for two or three hours kept repeating that he had money, but it was a great misfortune, because he had stolen it from Dorothy, an old servant of the family, and would have his throat cut for it. In the morning he had had an altercation with his mistress because she had refused him the use of a horse, and called her an old tiger. About half-past two he had collected some money, and by way of preventing him from carrying it away, his mistress struck him with a little walking-stick. Lambert wrested the stick from her, threw her upon the floor, and then went to the kitchen, saying: "This is not the thing; I want the hatchet; I must kill her." With this weapon he returned to her room, and, having frightened away her maid, killed her by repeated blows on the head. In about ten minutes he went into the street, with the hatchet on his shoulder, pursuing every one who came in sight, and crying out, "long live the king, my fortune is made." He overtook a woman, and killed her with two strokes of the hatchet. On approaching another person, he said, "fear not, I do not mean to kill you;" but he raised the hatchet as if to strike him. Presently, he was shot down and secured, but a quarter of an

hour after, he begged to be released, because he had eight more to kill. A witness told him he deserved to be shot, when he replied, "shoot." He appeared calm, and spoke in his ordinary tone. On his way to prison, he uttered cries, and tried to get away. He said to a witness, "that if he died without killing him, he should not die content." "Why," he said, "should he regret having killed his mistress? if he had taken her money, it was only to give it away in charity, which she never would do herself." Here, too, he cried, "long live the king; Jesus, my God; my fortune is made." At nine o'clock he arrived at the prison, where he tried to kick one of the witnesses. Here he soon became taciturn and abstracted, and refused food. Shortly after, he slept. On the 15th he was abstracted and dull, and seemed to be surprised when told of the cause of his arrest and of his wounds. He cursed any one who would harm so good a mistress as his. When examined by the magistrate, he professed not to know that he had been wounded, nor where he was, and denied having killed his mistress. "When was it?" said he; "I have not killed her. If I did, I was mad. Why should I have killed her? People do not kill without a motive." He denied having killed the other woman. "If I did," said he, "I do not remember it." On the 18th, he recognized the hatchet, but denied all knowledge of the murders. He recollected nothing since Sunday. From the 14th of April to the 6th of June, the physician who visited him every day, was unable to discover a single symptom of mental disorder, or of hydrophobia. The prisoner constantly declared that he had no recollection of the murders imputed to him. On the 6th of August, he was visited by Dr. Parchappe, who found him with every appearance of good health, except that he walked with a little difficulty and had a sad expression of countenance. He denied all knowledge of the murders, and of other events subsequent to Sunday, as before stated. He was conscious of his situation, and shed tears. On the 12th of August, he was visited again, with the same result.

§ 426. In regard to Lambert's mental condition, it is ob-

vious that he was either insane or feigning insanity; and if insane, he must have been laboring either under hydrophobia, or ordinary mania. The motiveless character of the acts, the circumstances of atrocity by which they were marked, and the previous good reputation of the prisoner, are at variance with the supposition of intentional crime, in which fact alone could be found any motive for his feigning insanity. We are, therefore, led to the conclusion that he must have been laboring under some form of mental disorder, — either hydrophobia or mania. Although, from the time he was bitten, until the murder, he was evidently suffering with strong apprehensions of hydrophobia, yet, as Dr. Parchappe well observes, he exhibited at no time, a single diagnostic symptom of that disease. His mental disorder must have been a form of acute mania of which his excessive apprehensions of the consequences of the bite, were a powerfully exciting cause. To this idea, which obtained complete possession of his mind, may be attributed the howling on Sunday, — the fact which furnishes the strongest suspicion of simulation. It is more likely to have arisen in this manner, than to have been put forth as the only symptom of an affection which is marked by so many and such well-known traits. By some, the very brief duration of the attack may be regarded as a sufficient objection to this hypothesis. This is certainly an unusual feature of mania, yet its occurrence has been too often witnessed to be considered as problematical (§ 136). Dr. Parchappe is most embarrassed by the complete unconsciousness of Lambert for a period of forty-eight hours, a fact which he conceives to be entirely unsupported by our knowledge of the disease. "In mania and the kindred forms of mental disorder unaccompanied by fever," he says, "the memory is preserved during the disease. . . . After the return of reason, the insane remember all they have said and done and thought." He concludes, therefore, that, although the prisoner had actually suffered an attack of mania, he simulated this unconsciousness when he came to himself, in order the better to escape responsibility for his acts. Without disputing this hypothesis, which may possi-

bly be correct, we are not quite satisfied of the necessity of resorting to it at all, for our own observations do not lead us to agree with Dr. Parchappe, as to the matter of fact. We think we have occasionally met with cases not marked by any febrile movement, in which, after recovery, a certain period was a complete blank in the mind.[1]

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[1] Annales méd. psyco. viii. 228.

CHAPTER XVII.

CONCEALED INSANITY.

§ 427. It sometimes happens, that when maniacs have learned what notions of theirs are accounted insane by others, and have understanding enough left to appreciate the legal consequences of their mental condition, they endeavor to conceal it, for the purpose of avoiding those consequences. If the address and ingenuity which they then manifest have occasionally succeeded in baffling the scrutiny of the most practised experts, it is not strange that common observers should have been frequently deceived, and that some of the medical profession even, with a knowledge of this fact before their eyes, should have been outwitted by their manœuvres. When it is considered that the insanity of many consists in a few insane notions which do not, to appearance, affect their general conduct and conversation, the difficulty of concealing it, by professing to have renounced their belief in these notions, is perhaps not greater than that which attends the accomplishment of most of their designs. Their task, too, is materially lessened, it is to be recollected, by the prevalent error, that madness is inseparable from boisterous behavior and complete disorder of the ideas. At the commencement of the French Revolution, when the mob broke into the lunatic hospitals, for the purpose of liberating those among their inmates whom they supposed to be unjustly confined, one man recounted his wrongs so clearly and connectedly, that he was deemed at once to be a victim of oppression, and ordered to be released. The use he made of his liberty soon convinced these enlightened champions of their race, that those who put him in confine-

ment, had, what they themselves had not, some reason for their measures.[1] Lord Eldon once related, that after repeated conferences and much conversation with a lunatic, he was persuaded of the soundness of his understanding, and prevailed on Lord Thurlow to supersede the commission. The lunatic, calling immediately afterwards on his counsel to thank him for his exertions, convinced him in five minutes, that the worst thing he could have done for his client, was to get rid of the commission.[2] In another place (§ 22) will be found a case which well illustrates the adroitness and perseverance, with which maniacs will sometimes conceal their mental derangement.

§ 428. In England and in this country, the choice of the means for proving the existence of insanity when concealed, is left to individual sagacity. This, no doubt is sufficient, where great practical acquaintance with insanity readily suggests the course best adapted to each particular case; but the great majority of medical men will feel the need of some system or order of proceeding, that will simplify their inquiries, and render them more efficient. The French arrange their means into three general divisions or classes, which are made use of, each in succession, when the preceding class has failed of its object. They are called the *interrogatory*, the *continued observation*, and the *inquest*, and as no better arrangement has ever been offered, it may be well to describe it; and it may be added in passing, that it would materially conduce to our success in inquiries of this kind, if they were always pursued in the course here indicated.

§ 429. *Interrogatory.* — The interrogatory embraces only those means of information, which are applicable in a personal interview with the patient. After learning generally his moral and intellectual character, his education and habits of living, the duration and nature of his mental delusion (if they can be ascertained from his acquaintances), and the state of his relations to others, and after observing the expres-

[1] Pinel, Sur Aliénation mentale, 159.

[2] Ex parte *Holyland*, 11 Vesey, 11.

sion of his countenance, his demeanor and general appearance, we may proceed to a direct examination of his case. In the first place, it is necessary to lull his suspicions and remove his distrust, as far as possible, by a free and courteous deportment, and an air of kindness and unaffected interest in his welfare. He should then be engaged in conversation, which should lead him by easy and imperceptible transitions to the particular subject on which it is alleged his mind is deranged; and the manner in which he treats it should be carefully observed, for if he be really insane on that point, he will probably avow it; while if he is not so, he will take the opportunity to declare his disbelief in the notions imputed to him, and bring forward various considerations to support the truth of his assertions. He should be led to speak of his relatives and friends, especially if they have taken any part in provoking his interdiction, or otherwise interfered in his affairs, and here he will need all his self-control to restrain himself from the angry and revengeful feelings which he entertains towards them. When confined in hospitals or other lunatic establishments, we should not fail to ask how they like their situation, and what they think of their companions; for Georget observes, that many, even of those the least deranged, are such poor observers, or have so little penetration, that they are ignorant of the nature of their abode, and the character of those around them. When the mental disorder is that of imbecility or dementia, we must not confine our questions to the simple topics of their present condition or feelings, for they may be able to answer them clearly and rationally, though subjects requiring a little more reflection or exertion of memory, may be far beyond their comprehension. It not unfrequently happens that the mental deficiency affects the faculties of the mind unequally, degrading some to the scale of idiocy, and leaving others in a state of tolerable strength and development. When, therefore, the capacity of the mind is in question, whether for interdiction or any other purpose, we must not fail to test the soundness of all the faculties, by inquiries relative to the objects with which they are respectively concerned, since, if satisfied with a partial ex-

amination, we may grossly deceive ourselves and injure the interests of others. True, this requires a knowledge of the mental constitution not possessed by every one charged with this kind of investigation; but the deficiency, common as it is, proves nothing against the importance of this knowledge.

§ 430. The importance of the above suggestions is strikingly shown by the case of a young man, B———, noticed by Dr. Abercombie,[1] and Dr. Combe,[2] which occasioned much trouble and litigation to the parties concerned. This person was educated for the church, and had made such proficiency in the study of Latin and Greek, that, for several years, he acted as a tutor in these languages. He also displayed great keenness and adroitness in driving a bargain. When, however, his mind was directed to those studies and topics which require the exercise of the higher powers of the intellect, he was found so deficient that he utterly failed in his second examination before the presbytery, in which his reasoning powers were tasked, though the first, which was in the languages, he passed successfully and creditably. It was found, too, that he was incapable of comprehending the relations of business, or even performing the ordinary duties of life. Accordingly, it appeared in the course of the law-proceedings, that those witnesses who knew him only as a linguist or a purchaser, did not hesitate to pronounce him a capable, clever man; while those who had business transactions with him that called his reflective powers into action, had no doubt whatever of his imbecility.

§ 431. There are few points in regard to which the medical jurist will find it more important to possess correct notions, than the value of the interrogatory as a means of establishing the existence of insanity. In the English courts of chancery, it has been common, especially of late years, to appoint a committee of physicians to examine the party whose mental condition is supposed to require the interference of the court, and thus their report, deciding as it virtually

[1] On the Intellectual Powers, 276. [2] On Mental Derangement, 244.

does, questions of liberty and property, becomes an instrument of much good or much harm. It is a curious and a mortifying fact, that, not unfrequently, different committees have thus examined the same individual, and arrived at opposite results. If they had been composed of persons selected rather on account of professional eminence generally, than for their knowledge of insanity, unanimity of opinion could hardly have been expected; but in fact we always observe among them the names of men whose lives have been devoted to this special department of the profession.[1] Of course, an honest difference of opinion occasionally, is no matter of surprise; but when it becomes so common as it has of late years, we are forced to the conclusion that there is a prevalent mistake touching the precise value of the method employed for obtaining the requisite object.

§ 432. There are many cases, unquestionably, where the insanity of the party would be clearly exposed by means of the interrogatory; but this is not equally true in respect to sanity. In a large proportion of the cases which require such investigation, the interrogatory must prove utterly incompetent for this purpose. If the patient entertain delusions, he may have learned enough of the consequences of avowing them, to keep them to himself in the presence of those who, he well knows, have approached him for the very purpose of drawing them out and turning them to his detriment. If, too, the examiners possess no clew to his delu-

[1] In the celebrated case of Dyce Sombre (London Morning Post, Feb. 26, 1849 and seq.) which was in the court of chancery from 1842 to 1849, a committee of French physicians, not entirely unknown to fame, reported that the party was of sound mind. Shortly after, a committee of two English physicians reported that he was unsound, and incapable of managing his estate. Two or three years after, the same committee, with the addition of two others, examined him again and found no change in his mental condition. Two months after, another English committee of six physicians, examined him, and reported in the strongest terms that he was of sound mind, and capable of managing his property. In the case of Mrs. Cummings (Times, Jan. 8, 1852 and seq.) there was the same lamentable difference between the conclusions to which two medical committees arrived, — both bearing the names of men eminent for their knowledge of insanity.

sions, they have no means of provoking him to utter them, and hence he passes for being sound simply because the chord which is out of tune, has not been touched. Another and a more common reason why the interrogatory should fail, is, that the patient's unsoundness may not manifest itself in delusions, but in gross improprieties of behavior, in foolish and absurd transactions, and the extravagance of all his anticipations. Conversation furnishes no occasion for the display of his mental disorder; but let him go into the world, the master of his own movements, heeding no will but his own, and every day would furnish additional evidence of his incapacity to manage himself or his affairs. Any one who visits a hospital for the insane, may find, at every turn, some patient who converses intelligently and discreetly, and neither in discourse nor behavior, displays a single trace of insanity. Whoever has not met with such cases, can have had but little practical acquaintance with the insane. A woman once came under our care who was reported to have had several previous attacks, but beyond this the history of the case happened to be exceedingly imperfect. For three months her whole discourse and demeanor were without fault or blemish. She was calm and quiet in her ways, affable and intelligent, and exerted a healthy influence upon those around her. In regard to her own case, she complained that she should be banished from society, and especially from that of a young and beloved daughter who was thus cast upon the mercy of strangers, and for no other reason, as she said, but the superior force of a tyrannical husband. She then would launch into long and circumstantial accounts of the sufferings she had experienced, by poverty, sickness, and every species of privation, in consequence of his habitual intemperance. He finally crowned his iniquities two or three years before, she said, by shutting her up in a hospital for the insane. Now all this might or might not have been true. We had no means of deciding. But when she added as a great secret, not to be told to all, that he employed a man to go to the hospital, every day, and beat her soundly with a stick, there was certainly strong reason to suspect a delusion. Towards the end

of the above-named period, she became agitated and irritable, and finally raved. In this condition she continued about six months, when she began to improve quite rapidly, and in the course of a month or two, went home, entirely restored, with her husband whose conduct, she then admitted, had always been most exemplary. Had this woman been submitted to the examination of a committee of physicians, they would unquestionably have reported her as being of sound mind and an unsuitable subject for confinement.

§ 433. When delusions or other indications of insanity, of equivalent value, have been detected by competent observers, we cannot understand why their existence should be denied by other observers, merely because they have failed to detect them. To prove a negative under any circumstances, is no easy matter, but to prove it in the face of an affirmative, requires a course of protracted and varied observation, aided by strong professional sagacity, very different from the hasty examinations we usually witness. Especially should we be cautious in cases of moral insanity, where the very incidents which, viewed precisely as they occurred, furnish indubitable proofs of disease, may be so easily represented by a little false coloring, in a totally different light. Had this caution been duly observed, the world would probably have been spared some of those disagreements which are little calculated to advance its confidence in medical opinions.

§ 434. *Continued observation.* — A systematic course of observations continued for some time, may establish the fact of insanity in doubtful cases, after several personal interviews have completely failed. Opportunities, therefore, should be demanded for visiting the patient freely and frequently; for watching him at times when he supposes himself unobserved; and for exercising a general surveillance over his conduct and conversation. Those about him should be enjoined to watch his movements, and he should often, but cautiously, be led to speak of the motives of those who are anxious to prove his insanity. It often happens, too, that those who are most successful in concealing every indication

of disordered mind, in their conversation, will betray themselves the moment they commit their thoughts to paper. They should be induced, therefore, to write letters to their friends, describing their present situation, and to prepare statements of their wrongs and grievances, and thus we may be readily furnished with instances of incoherence and folly, which the patient had self-command enough to withhold, when put on his guard by questions which he knows well enough are designed to entrap him. "The rapid transitions and odd unions of discordant subjects, the relations of things which have not happened, and could not have happened, are in many cases very remarkable; and a forgetfulness of common modes of spelling, or of the arrangement of letters of words well-known, will be evinced by maniacs who have been well educated, and who would commit no such mistakes but for their malady." [1]

§ 435. *Inquest.* — When the above means fail, our inquiries must take a wider range, and be directed to the previous history of the patient, as made known to us by the testimony of friends and relatives, and those who have been connected with him in business, or had any other good opportunity of becoming acquainted with his mental condition. "The *Inquest*," says Georget, "consists in collecting information respecting the patient's condition before and after the presumed disease, and the causes suspected to have impaired his mind. For this purpose we consult his writings, and recur to the testimony of those who have been about him and conversed with him; who have been able to observe him closely and to witness his insane actions and irrational discourse. We should be particularly careful, however, to require of witnesses facts rather than opinions.[2] We should ascertain if insanity be a disease of the family; if he have already evinced a degree of singularity in his moral and intellectual character, or exaltation of any kind; if he have been exposed to the influence of powerful causes, such as

[1] Conolly, Indications of Insanity, 469.

[2] See *Hathorne* v. *King*, 8 Mass. 371.

chagrins, severe and repeated crosses, reverses of fortune, etc.; if, without any real motive, he has manifested any change of his habits, tastes, or affections; in short, we should inquire into all those circumstances which so frequently precede the development of the disease."[1] We are to look into his business transactions, his management of family affairs, his conduct in the domestic and social relations, and the part he has taken in public scenes and duties. His letters and written communications should be closely scrutinized, especially those that have any reference to the state of his health, or to the legal measures that have been taken against him, for here we may meet with incoherent and foolish ideas, that we have found nowhere else. In short, no source of information likely to enlighten us on the subject of the patient's mental condition, should be suffered to go unexplored. If the means thus indicated are faithfully used — if the whole life of the individual have passed in review before us, and after all, we are unable to prove the patient's insanity beyond a doubt, we are bound to conclude that his mind is sound, or at least, *that he is not a proper subject for legal interference.* This conclusion will be no less proper, even though we still entertain some doubt of his mental soundness, for if he have sufficient self-control and penetration to enable him to conceal his mental impairments and conduct himself rationally, but little harm will probably arise from leaving him at present to his own discretion.

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[1] Des Maladies Mentales, 57.

CHAPTER XVIII.

EPILEPSY AND ITS LEGAL CONSEQUENCES.

§ 436. Epilepsy is a nervous disease characterized by paroxysms of insensibility, unconsciousness, and convulsions. These vary in severity, from that of a simple vertigo, continuing for a few seconds and scarcely discernible by others, to that of a most distressful convulsive fit enduring from five minutes to some hours. They may recur twice or thrice a day for several days together, or once a week, month, or year. They sometimes occur without warning, but, as often perhaps, they are preceded by symptoms indicative of disturbance of the nervous functions; such as, giddiness, pain of the head, drowsiness, frightful dreams, hallucinations of sight or of hearing, vigilance, irritability of temper. So distressing is the condition of many epileptics, says Esquirol, previous to the paroxysm, that they endeavor to hasten its access, and for this purpose resort to spirituous drinks. The cessation of the paroxysm is followed by somnolence, pain in the head, and a sense of weakness. The recurrence of the fits is determined by whatever disturbs the general health, more especially by derangements of those organs in which the series of morbid phenomena takes its origin. Anger, fright, or any strong moral emotion is very liable to produce a paroxysm. A soldier, in mounting a breach, was frightened into a fit of epilepsy by the bursting of a bomb-shell near him. He was soon cured, but at sight of the place, twenty years afterwards, he was thrown into a fit.[1]

§ 437. Epilepsy seldom continues for any length of time

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[1] Esquirol, Des Malad. Ment. i. 297.

without destroying the natural soundness of the mind, rendering the patient listless and forgetful, indisposed and unable to think for himself, yielding without any will of his own to every outward influence, and finally sinking into hopeless fatuity, or becoming incurably maniacal. Esquirol states that of three hundred and thirty-nine epileptics in the Salpetrière, twelve were monomaniacs; sixty-four were maniacal, of whom thirty-four were furious; one hundred and forty-five were imbecile or demented, of whom one hundred and twenty-nine were so only immediately after the fit; eight were idiotic; fifty were habitually rational, but with loss of memory, exaltation of the ideas, sometimes a temporary delirium and a tendency to dementia; sixty had no derangement of intellect, but were very irritable, irascible, obstinate, capricious, and eccentric.[1]

§ 438. From this statement it appears, that of the one hundred and forty-five imbecile or demented epileptics, all but sixteen were so only immediately after the fit, and that this was also the case with three of the thirty-four who were furious. This is a fact of no little importance in a medico-legal point of view, and should never be lost sight of in judicial investigations of the mental condition of epileptics. The maniacal fury of these patients is of the wildest and blindest kind which nothing can tame, the individual acting automatically, as it were, and in a state of unconsciousness. It may continue for minutes, hours, or days. The dementia which is the form of mental derangement to which epileptics are most liable after the fit, is characterized by intellectual stupor and moral depression, in which, however, they have sufficient energy, under some circumstances, to commit acts of violence, of which they retain only an imperfect recollection when they recover. Another direct, though temporary effect of the epileptic fit, is to leave the mind in a morbidly irritable condition, in which the slightest provocation will derange it entirely. Sometimes this irritability is accompanied by a sense of anxiety, distrust, jealousy, and un-

[1] Ibid. i. 284.

founded fear, and sometimes by great activity of the lower propensities.

§ 439. The mental disturbance generally follows the fit immediately, but in many cases it precedes the fit and heralds its approach. And this latter fact is irrespective of the form of the disturbance, which may be fury, excitement, confusion of ideas, or stupidity. The ordinary succession of events, however, is not unfrequently changed. The mental disorder which usually succeeds the fit, may occasionally precede it, in the same individual; generally proportioned to the violence of the physical symptoms, but occasionally most severe when these symptoms have been least violent; and two successive fits may be attended, one by excessive mental disorder, and the other, by scarcely any. An interval of months or even years, may be followed by fits in rapid succession; and an exact regularity of period in the occurrence of the attacks may be replaced by no regularity at all.

§ 440. To determine exactly the mental condition of an epileptic at the moment of his committing a criminal act, in whom the disease has not produced habitual insanity, is often a difficult task. It may have taken place in the absence of any observer, in a fit of fury that rapidly passed away, and which, perhaps, may not have followed any previous paroxysm; or the accused, though subject to the disease, may not have recently suffered an attack, and may have appeared perfectly rational to those around him. The suspicion that the accused was deprived of his moral liberty when committing the criminal act, would be strengthened, if the paroxysms had been recently frequent and severe; if one had shortly preceded or succeeded the act; if he had been habitually subject to mental irritability, or other symptoms of nervous disorder; and by those circumstances generally which would lead to the same conclusion, were the supposed disease a form of moral mania, instead of epilepsy (§ 257). Cases of this kind should be closely scrutinized, and where the accused has been undeniably subject to epilepsy, he should have the benefit of every reasonable doubt that may arise respecting his sanity. Less than this common human-

ity could not ask; more even has sometimes been granted under the operation of milder codes than the English common law.

§ 441. Zacchias contends that epileptics should not be responsible for any acts committed within three days of a fit, both before and after.[1] The principle is undoubtedly sound as it regards criminal acts; and certainly, civil acts performed within two or three days after a fit, deserve to be closely scrutinized. Not unfrequently, however, the intellect may be as clear and strong as usual, up to the very moment of an attack, and, therefore, it would seem as if other and satisfactory reasons should be required for invalidating transactions executed under such circumstances.

§ 442. In the following case, the criminal act was the result of that morbid irritability which sometimes succeeds the paroxysms. Joachim Hoewe, twenty-nine years old, had been an epileptic since his sixth year. Since the age of puberty, the disease had become aggravated, and latterly had attacked him once in three weeks. He was long in recovering from the effects of the fits, being troubled with pain in the head and vertigo, and manifesting strong aversion to food, though never furious or insane. In July, 1826, after an hour's walk, he experienced a fit, and in the course of the three next days, he had several, appearing all the while to be quite unconscious, and refusing nourishment. On the third day he arose from his bed, and went down into the yard, where he met with a son of his brother ten years old, and a daughter of a relative to whom he was attached, eleven years old. The boy asked him if he did not wish to eat. The patient made no reply, but struck at him, when the children ran off. He followed them, overtook the girl, knocked her down, and catching up a hatchet from the ground, fractured her skull in several places, when the neighbors rushed in, and, after considerable resistance, overpowered him. He now remained quiet, till they proceeded to carry him to the

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[1] Quæstiones medico legales, cons. xvii. lib. 9.

magistrate, when he broke out into violent expressions of hatred against his fellow-townsmen. In prison he laid two days in a state of unconsciousness, took no nourishment, and had a fit. On the third day his reason returned; he expressed some interest in his friends, complained bitterly of his sufferings, but had no recollection of what had occurred. The question having been put to the medical expert (by whom the case was reported), whether the accused was in a responsible condition of mind when he committed the murder, it was answered in the negative, for the following reasons. Unlike real criminals, he had no definite purpose in view, and did not fly, after having committed the act. The mental condition of epileptics just before and after the fit, is usually very peculiar, and for many years, medical jurists have not been in the habit of considering an epileptic as deserving of punishment for any offence he might commit within three days before or after a fit. Among the exciting causes of his fits at the time in question, and of the criminal act, the reporter mentioned the exercise and heat of the weather to which the accused had been exposed, and the inquiry of the child whether he would eat, which, on account of his morbid aversion to food, excited him, in his unconscious and irritable condition, to expend his fury on the nearest object. Two months after, he died in a fit.[1]

§ 443. The following case illustrates another phasis of epilepsy of great importance in a medico-legal point of view. "A very sober, quiet, and industrious tradesman, aged thirty, subject to occasional fits of epilepsy, and who had lately much inclined to religious devotion, was sitting calmly reading his Bible, when a female neighbor came in to ask for a little milk. He looked wildly at her, instantly seized a knife, and attacked her, and then his wife and daughter. His aim appeared to be, to decapitate them, as he commenced with each by cutting on the nape of the neck. Their cries brought assistance, and he was secured before he had inflicted any fatal wound.

[1] Jahn in Henke's Zeitschrift, 1827, iv. 282.

"I saw him on the following day. His countenance then presented a most hideous and ferocious aspect: the complexion was a dusky red, his eyes starting from their sockets, and he was continually sighing deeply, or extending his jaws as if going to yawn. The pulsation of the temporal and radial arteries was full and laborious. He could make no reply to questions, although he attempted so to do; but he occasionally exclaimed, 'oh dear!' He appeared to be on the very verge of apoplexy. He was depleted freely both by blood-letting and purging; his head was shaved, refrigerating lotions were applied to it, and a very low diet prescribed. On the third day his intellects were much improved, and he was quiet. He soon quite recovered, but never had the least recollection of the acts he had committed. About a year before, he had experienced a similar attack; but then showed only a slight disposition to mischief. Nine years have since elapsed without a recurrence of epilepsy, or disturbance of his mental faculties." [1]

§ 444. Epilepsy is often accompanied by imbecility, congenital or acquired, and by disordered appetites and propensities. Although its immediate effect on the mind, in these cases, may not be so definite and prominent as in others, yet it is no less effectual in weakening and perverting its faculties. The medical jurist should preserve himself from the common error of viewing these bad propensities as indicative of a depraved and sin-loving character, instead of being the result of an abnormal condition of the nervous system. The following case from an old writer, will illustrate this form of the disorder. C. F. Oppel, sixteen years old, twice set fire to the royal stables in Saxony, — once in April, and again in May, 1725. The fire was discovered before much damage was done, and the second time, he extinguished it himself. It appeared in evidence that he had always manifested a good and peaceable disposition; that from childhood, he had always been troubled, especially in the summer time, with

[1] Burrows, Commentaries on Insanity, 156.

bleeding from the nose; that when ten years old, he had an attack of scarlet fever; and that about a year before the incendiary attempts, he began to suffer from epilepsy, the paroxysms of which were light at first, but gradually increased in severity. Four weeks before the fire he had a fit, and two days after he had another, and they continued for some time to be very frequent and severe. The reasons which he himself gave for the act were, that when he had been drinking, he felt strongly impelled to commit incendiary acts, and that on this occasion, he also hoped to save something from the fire, with which he might buy drink, instead of being obliged to ask his mother for money. It appeared that his father was an epileptic, and addicted to drinking. The physician who was directed to inquire whether the accused was in perfect possession of his reason when he committed the offence, reported that he was not, and had been of unsound mind from childhood. The reasons offered in support of his opinion, though remarkably correct for the time, will not all bear a critical examination now, and therefore it will not be worth our while to state them at length. The fact that he might have inherited a depraved constitution which was still more weakened by the accession of a severe nervous disease, is sufficient to warrant the suspicion that his mind may have been a prey to morbid impulses which, when under the influence of drink, he would find it difficult to resist. The fact that, shortly before and after the offence, he had suffered from epilepsy, furnishes a presumption that, however rational he may have appeared, his mind was far from being in a sound and healthy condition. True, he alleged as his motive, the gratification of an appetite, but it does not appear that the appetite existed till after the invasion of the epilepsy.[1]

§ 445. The difficulties which sometimes attend these cases are well illustrated in one reported by Dr. Chambeyron,[2] of

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[1] Troppaneger, decis. med. for. quoted in Henke's Abhandlung.

[2] Annales d'Hygiène, xx. 99.

which we give the essential incidents. D. B. a laboring man, was put upon trial at Rennes, February 14th, 1838, for the murder of a young child. It appeared that this child belonged to an unmarried sister of his, and was put to board in his family at a moderate price. On the 16th of July, 1837, a woman passing by the house, heard him speaking, and striking a child who, at every blow, uttered a deep groan. On the 21st, five days after, the mother of the child showed to the neighbors excoriated bruises on its back and abdomen. On the 23d, the prisoner who was left alone at home, his wife and sister having gone to mass, was seen by a neighbor standing in the doorway. With one of his own children in his arms, he accompanied this neighbor to his house, saying that all his children had the hooping-cough very badly, and asking for some cider for his little nephew who was quite sick. The neighbor's wife went with him to his own house, and there found the child dead. On preparing the body for burial, his attention was called to numerous bruises which he explained by saying that he went out that morning for a few minutes to gather cherries, and when he returned, he found the child stiff on the floor on which he had fallen from the bed, and that the fall had caused these bruises. The next day he was arrested and sent to prison. For several days he had daily three or four epileptic fits, marked by violence and fury. From the prison he was finally sent to a hospital for the insane. There, from the 28th of November, the day he entered, to the 5th of December, he had fourteen fits by day, and some, probably, by night, and thenceforth up to the day of trial he had no more. In the intervals he was dejected, taciturn, and restless, fancying that people were continually around him trying to make him confess, and beating and kicking him because he refused to. At times he was noisy and violent. In regard to the homicidal act, his own story at the trial was,[1] that on the 16th of July, he spanked the child

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[1] In the French mode of criminal procedure, the prisoner is called upon for his own statement of the case.

a little to make him take goat's milk which had been prescribed for his cough; that on the 21st he had an attack in the night, as he supposed, and in his struggles must have bruised the child who slept in his bed; that on the 23d he had another fit during which, he presumed he threw the child down upon the floor, though not conscious of having done it. No one in the hamlet where he had lived a year or more, had ever seen him in a fit, or heard of his having one; but his wife and sister were not examined. Of course, then, there was no evidence that he had a fit on either of the days in question, but all the circumstances favor the belief that one or more fits actually occurred on those days. It is improbable that the fits observed in the prison were the first he ever had. He was fond of children. There was no motive for his wishing to be rid of this one, and he had the reputation of being kind and good-natured. He did not allege the occurrence of fits in excuse for the act, until after the existence of the disease was revealed in the prison. The question then arises, in what phasis of the disease were these assaults committed? during the height of paroxysm, or in the comparative calm which succeeded it? Both suppositions are burdened with difficulties, and the evidence does not warrant us in adopting either. The fact alone, however, that three days after the homicide, the prisoner began to have epileptic fits, in rapid succession, must have rendered his mental condition so doubtful at that moment, that the jury were amply justified in acquitting him.

§ 446. The mental condition of epileptics may come into question, in civil cases. Even those who show, during the intervals, but little, if any, trace of the disease, may, immediately before or after a fit, labor under a degree of mental obscurity which incapacitates them for any matter of business. Any thing of the kind occurring during one of these periods, ought to be viewed with suspicion, and if the transaction presents any indication of unfair advantage, little additional evidence should be required to invalidate it. An epileptic may be required to testify, in a court of justice, concerning what he saw or did immediately after he came

out of a fit. If his evidence conflicts with that of others, or is in any respect grossly improbable, it may justly be suspected, because, at such a moment, there is a dulness and confusion of mind that must necessarily vitiate its subsequent recollections.

CHAPTER XIX.

SUICIDE.

§ 447. At the present day, the subject of suicide is deprived of much of the medico-legal importance which it once possessed. Still, however, as questions occasionally come up in which dispositions of property are made to depend on the judicial views that are formed respecting its relations to mental derangement, it is highly proper that mistakes should not be committed from a want of correct notions of its nature. With all the light on the subject which the researches of modern inquirers have elicited, many probably are yet unable to answer understandingly the question so often started, whether suicide is always or ever the result of insanity. It may be proper, therefore, to lay before the reader the present state of our knowledge on this subject, in order that he may have the materials for forming correct and well-grounded opinions respecting it.

§ 448. To the healthy and well-balanced mind, suicide appears so strange and unaccountable a phenomenon, that many distinguished writers have inconsiderately regarded it as, in all cases, the effect of mental derangement; while, by many others, it has, with still less reason, been viewed as always the act of a sound, rational mind. Neither of these views can be supported by an impartial consideration of all the facts, and the truth probably lies between the two extremes. Suicides may be divided into two classes, founded upon the different causes or circumstances by which they are actuated. The first includes those who have deliberately committed the act from the force of moral motives alone; the second, those who have been affected with some patho-

logical condition of the brain, excited or not by moral motives.

§ 449. If it be considered, that life is not the only nor perhaps the best gift we have received from the author of our being, it ought not to appear strange that men should sometimes be willing to relinquish it for the sake of securing a good, or avoiding an evil. We know well enough that life is not so dear that it will not be readily sacrificed, when all that makes it worth retaining is taken away. The intrepid Roman chose rather to fall on his own sword, than survive the liberties of his country or live an ignominious life; and reverses of fortune, which hurl men from the pinnacles of wealth or power, or the certain prospect of infamy and the world's scorn, are no very inadequate motives for terminating one's existence. In these cases, the person, no doubt, may act from error of judgment, and thus be guilty of foolish and stupid conduct, but we have no right to confound such error with unsoundness of mind. Inasmuch as the prospect before him may be such that it will appear to his mind more painful to live than to die, it is not to be wondered at, if, for want of courage to bear up against the ills that threaten to overwhelm him, and battle it to the last, he should prefer the latter; for, after all, the choice might indicate less folly than that which often characterizes the conduct of men. True, the motive may seem sometimes totally inadequate to lead to such a determination, though in reality it may be the only and sufficient motive; and this, probably, must always continue to be one of the mysterious facts in our constitution, that the termination of our existence, from which we instinctively shrink with feelings of horror, should so often be voluntarily hastened from the most trivial and insignificant motives. No doubt the mental disturbance is always great, but the same may be affirmed of all cases where crime is committed under the excitement of strong passions, and, therefore, is in itself no proof of insanity. It cannot be denied, however, that the cases are comparatively few in regard to which it would be safe to affirm, that the excitement of the organic action of the brain and nervous system, which accompanies

this perturbation of mind, had not transcended the limits of health and passed into real pathological irritation. Among these few we can have no hesitation in placing the case of the pair of youths, noticed by Mrs. Trollope, who, after dining sumptuously at a fashionable restaurant at the expense of their entertainer, went to their lodgings, and suffocated themselves together in the same bed;[1] or that of suicidal clubs, the members of which bind themselves to die by their own hands within an appointed time. Men who, with cultivated intellects and refined passions, entertain only the meanest conceptions of the great moral purposes of life, may be ready to terminate their existence the moment it ceases to impart its usual zest to sensual gratification. Here, self-destruction is obviously not the effect of physical disease, but of moral depravity. But how are we to account for those instances of *juvenile* suicide so often recorded, where the dreadful propensity is excited by the most trivial causes? Burrows speaks of a girl, but little over ten years of age, who, on being reproved for some trifling indiscretion, cried and sobbed bitterly, went up stairs and hung herself in a pair of cotton braces; and of another, eleven years old, who drowned herself for fear of simple correction.[2] A French journal has lately reported the case of a boy twelve years old, who hung himself by fastening his handkerchief to a nail in the wall, and passing a loop of it around his neck, for no other reason, than because he had been shut up in his room and allowed only dry bread, as a punishment for breaking his father's watch. Another case is related of a boy eleven years old, who killed himself because reproved by his father; and several more of a similar description are also recorded.[3] In these cases, the moral causes seem altogether inadequate to excite the suicidal propensity, without first producing some serious physical disturbance, for here are none of those

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[1] Paris and the Parisians.

[2] Commentaries on Insanity, 440.

[3] Medico-Chirurgical Review, N. S. xxvii. 21.

motives for self-destruction which have just been mentioned as influencing the adult mind.

§ 450. That suicide is often committed under the impulse of mental derangement, even when mental derangement would not otherwise have been suspected, is a doctrine that was long since taught by some medical writers, and has been confirmed beyond the shadow of a doubt, by the researches of recent inquirers. The propensity to suicide connected with an obviously melancholy disposition, is now universally recognized as a form of monomania, for its symptoms are plainly indicative of cerebral derangement. These patients labor under a constant melancholy, conjuring up the darkest prospects, and presaging nothing but evil fortune. They have been guilty of some sin, real or imaginary, which they believe to be of the most heinous nature, and thenceforth there is no more happiness nor comfort in the world for them. They imagine their friends are constantly watching their movements and engaged in machinations against them, or silently neglecting and despising them; at one time, morose and taciturn; at another, uttering the most bitter complaints, weeping and traversing the room, as if in extreme mental anguish. If their thoughts take a religious turn, they imagine they have committed the unpardonable sin, that their prayers are rejected, that the Saviour turns away his face from their sight, and that the miseries of the damned are to be their everlasting portion. This unquiet and melancholy mood will occasionally give way to short periods of comparative cheerfulness, when the clouds seem to be breaking away, and the individual approximating to his natural character. Their nervous system is weak and irritable, the circulation is quickened, the digestion more or less impaired, the secretions, especially the biliary, more or less deficient, or vitiated, and the mind is incapable of continued exertion. After this state has continued for some time, the mental derangement becomes more prominent, and the wretched victim begins to see visions and hear strange voices, and believes that he has communications from superior beings. All this time the idea of self-destruction is fre-

quently if not constantly before the mind, and unless the patient be narrowly watched, he will finally succeed, after various attempts, in accomplishing his purpose.

§ 451. The suicidal propensity here described, is universally attributed to pathological causes; but there is, besides, a large class of cases, in which no disorder of mind or body has been observed or suspected, though we have good reason to believe its existence. That one may be so harassed with the ills of life, as to deem it best to rid himself at once of both, is not perhaps very strange; but when a person, apparently in good health, and surrounded with every thing that can make life dear to him, deliberately destroys himself without any visible cause, no balancing of motives nor scrutiny of private circumstances can satisfactorily explain it, and we are obliged to consider it as a form of partial moral mania. Within a few years past, the attention of the medical profession has been directed to this subject, and their researches have abundantly established the fact, that the efficient cause is some pathological change, or physical peculiarity, not in every case easily defined or understood, but none the less certain on that account.

§ 452. Sometimes this monomania is attended apparently by no physical or moral disorder, the individual being driven by mere impulse to self-destruction, without being able to assign any reason therefor, real or imaginary. He feels that he is urged on by an impulse he can neither account for nor resist, perhaps deplores his sad condition, and beseeches his friends to protect him from himself. In another class of cases, some powerful physical or moral impression only is needed, to call the suicidal propensity into fatal activity. There are persons who can never approach the water without feeling a strong desire to throw themselves in, and there is reason to believe that suicide is not unfrequently committed in this manner. The wonderful effect of mental influences on diseases of the bodily organs, is so common a fact, that we have no rational ground for disbelieving a similar kind of agency in the production of this phenomenon. The distinguished accoucheur who attended the Princess Charlotte in her fatal

confinement, observed a pair of pistols in the room to which he had retired for repose, the sight of which was sufficient, to a mind harassed by long and anxious attendance, and overwhelmed, as it were, by the responsibilities of his situation, to provoke a desire — which he may never have felt before — to die by his own hands. The case of Sir Samuel Romilly, who committed suicide immediately after sustaining a severe domestic bereavement, strongly shows how far the propensity to commit this act is beyond the control of moral principle or Christian virtue, even when, as it was with him, previously contemplated and conditionally determined upon.

§ 453. It is a remarkable fact, that in many cases of attempted suicide, the individual, after recovery, has no recollection, or at most, but a faint and shadowy one, of the fact itself, and believes it upon the testimony of others. And yet he may have evinced considerable forethought and ingenuity in preparing the means, and when detected in the attempt, have conversed about it calmly and pertinently. It seems to be analogous to that loss of recollection in regard to homicide, or other violent acts committed in acute mania, often evinced by patients after recovery. The fact strongly shows us what deep and serious disorder may pervade the mind, while outwardly all is calm and regular.

§ 454. Among the features which ally the propensity to suicide with ordinary mania, is that of its hereditary disposition. Dr. Gall knew several families in which the suicidal propensity prevailed through several generations. Among the cases he mentions, is the following very remarkable one. "The Sieur Ganthier, the owner of various houses built without the barriers of Paris, to be used as entrepôts of goods, left seven children, and a fortune of about two millions of francs, to be divided among them. All remained at Paris or in the neighborhood, and preserved their patrimony; some even increased it by commercial speculations. None of them met with any real misfortunes, but all enjoyed good health, a competency, and general esteem. All, however, were possessed with a rage for suicide, and all seven succumbed to it within the space of thirty or forty years. Some

hanged, some drowned themselves, and others blew out their brains. One of the first two had invited sixteen persons to dine with him one Sunday. The company collected, the dinner was served, and the guests were at the table. The master of the house was called, but did not answer, — he was found hanging in the garret. Scarcely an hour before, he was quietly giving orders to the servants, and chatting with his friends. The last, the owner of a house in the rue de Richelieu, having raised his house two stories, became frightened at the expense, imagined himself ruined, and was anxious to kill himself. Thrice they prevented him, but soon after, he was found dead, shot by a pistol. The estate, after all the debts were paid, amounted to three hundred thousand francs, and he might have been forty-five years old at the time of his death.

"In the family of M. N. * * *, the great-grandfather, the grandfather, and the father committed suicide." [1]

§ 455. Falret, whose researches have thrown much light on this affection, believes that it is more disposed to be hereditary than any other kind of insanity. He saw a mother and her daughter attacked with suicidal melancholy, and the grandmother of the latter was at Charenton for the same cause. An individual, he says, committed suicide in Paris; his brother who came to attend the funeral, cried out, on seeing the body — "What fatality! My father and uncle both destroyed themselves; my brother has imitated their example; and twenty times during my journey hither, I thought of throwing myself into the Seine." [2]

§ 456. Gall also relates the case of a dyer of a very taciturn humor, who had five sons and a daughter. The eldest son, after being settled in a prosperous business, with a family around him, succeeded, after many attempts, in killing himself by jumping from the third story of his house. The second son who was rather taciturn, had some domestic troubles, lost part of his fortune at play, and strangled himself at the age of thirty-five. The third threw himself from

[1] Sur les fonctions, iv. 345.

[2] Sur la Hypochondria et Suicide.

the window into his garden, but did not hurt himself; he pretended he was trying to fly. The fourth tried one day to fire a pistol down his throat, but was prevented. The fifth was of a bilious, melancholy temperament, quiet, and devoted to business; he and his sister showed no signs of being affected with their brothers' malady. One of their cousins committed suicide.[1]

§ 457. Like other kinds of mental derangement, the suicidal propensity undergoes occasional exacerbations, from the influence of the seasons, periodical congestions, etc. The patient, perhaps, may have thrown off some of the gloom which overshadowed his mind, resumed a portion of his ordinary cheerfulness and interest in his affairs, courted the company of his friends, and thus excited strong expectations of a perfect cure, when suddenly his malady breaks out afresh; the sentiments are again perverted, the judgment disturbed, his breast torn with anguish and despair, and the utmost watchfulness is necessary to prevent him from accomplishing his fatal designs.

§ 458. Another trait which the suicidal propensity possesses in common with some nervous diseases, though not insanity, is its disposition to prevail epidemically, as it were, in consequence of that law of our constitution, not well understood, called sympathy. It is a matter of common observation, that the occurrence of one case of suicide is followed, oftener than not, by one or more in the same community. In a sitting of the Academy of Medicine at Paris a few years since, it was mentioned by M. Costel that a soldier at the Hotel des Invalids having hanged himself on a post, his example was followed in a short time by twelve other invalids, and that by removing this fatal post, the suicidal epidemic was arrested. It is related that thirteen hundred people destroyed themselves in Versailles in 1793; and that in one year, 1506, sixty perished by their own hands in Rouen.[2]

§ 459. The analogies, thus presented between the suici-

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[1] Op. cit. sup. iv. 350. [2] Burrows's Commentaries on Insanity, 438.

dal propensity and insanity or other nervous diseases in its symptoms, are also strengthened by the pathological changes observed after death. In the larger proportion of instances where examination is made, the brain or abdominal viscera are found to have suffered organic lesions, more or less extensive, which, when confined to the latter, have affected the mind by sympathetic irritation. Even in those cases where the fatal act was preceded by no indications of disease or other symptoms that excited suspicions that the individual was tired of life, dissection has often revealed the most serious disease, which must have existed for some time previous to death. True, the most careful dissection will sometimes fail of revealing the slightest deviation from the healthy structure, and it is not necessary to the support of the above views of the nature of this affection, that it always should. For here, as in mania, sometimes the pathological change may not have gone beyond its primary stage, that of simple irritation, which is not appreciable to the senses, but the existence of which we are bound to believe on the strength of the symptoms.

CHAPTER XX.

LEGAL CONSEQUENCES OF SUICIDE.

§ 460. By the common law of England, a *felo de se* forfeited all chattels, real or personal, which he had in his own right, and various other property, and his will became void as to personal property.[1] Such severity has been generally avoided by the almost universal practice of coroners' juries to return a verdict of insanity. At present, the fact of suicide has no other importance, than what it derives from its connection with the mental derangement which may be supposed to have given rise to it. Courts would very justly refuse to consider it as sufficient proof of insanity, in the absence of other proofs, because it might have been the act of a rational mind, and because, too, if it really had sprung from insanity, the delusion might have been so circumscribed, as not to have perverted the judgment in regard to testamentary dispositions and other civil acts. The principle adopted in the ecclesiastical courts is, that in cases of doubtful sanity, — among which those of suicide must always be ranged, — the validity of the individual's testament must be determined solely by the character of that instrument itself. Here is an inherent difficulty that courts will never be very anxious to encounter, and that is, to determine the exact connection of suicide with insanity — supposing the latter to be admitted — in point of time. When this act is the only proof we have of mental derangement, we are left without the means of ascertaining when this condition began to exist or to disappear, and consequently nothing can be more

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[1] Blackstone's Commentaries, iv. 190.

difficult than to decide within what time, either before or after the suicidal attempt, the individual can be pronounced insane. It not uncommonly happens, that a person kills himself, or makes the attempt, shortly after making his will, when the question requires a judicial decision, whether or not the insanity which led to the fatal act existed at the time of making the will. The practice has usually been, if there were no other evidence of unsound mind, either in his conduct or conversation, or in the testamentary dispositions themselves, not to impeach the testator's sanity. In a certain case it was held by Sir John Nicholl, that where there was no evidence of insanity at the time of giving instructions for a will, the commission of suicide three days afterwards did not invalidate the will, by raising an inference of previous derangement.[1] Chief Justice Parker, of Massachusetts, also held that suicide committed fifteen days after the date of the person's will, was not sufficient, in the absence of other evidence, to prove him insane and thus invalidate the will, on account of the difficulty we have just mentioned.[2] Similar views prevailed in *Duffield* v. *Robeson*[3] and *Chambers* v. *The Queen's Proctor*[4] (§ 392). In both cases the suicide occurred the next day after the execution of the will, and in the latter, delusions were proved to exist on the three days next previous to the will.

§ 461. Even where the suicidal act is unquestionably the effect of insanity, it does not necessarily follow that a will prepared within a short time of it, is invalid; for it may be that the insanity was of a limited kind not involving ideas of property or relations. A gentleman made his will a few hours after an unsuccessful attempt on his life, and intrusted it to the charge of a person with the injunction that he should

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[1] *Burrows* v. *Burrows*, 1 Haggard, 109.

[2] His language was, that, "even if the act itself [suicide] should be considered as proof demonstrative that the reasoning faculty was disturbed at the time of its commission, the difficulty of ascertaining with precision the very inception of derangement, weakens its force in relation to any antecedent act." *Brooks and others* v. *Barret and others*, 7 Pickering, 94.

[3] 2 Harrington, 583.

[4] 2 Curteis, 415.

produce it after his death. After some months' treatment he got better, and promised never again to attempt to shorten his life. For three years he kept his promise, and showed no signs of mental derangement, but it does not appear of what disease he died.[1] The dispositions of the will were reasonable; but since it was undoubtedly made during the insanity of the testator, it could not be deemed valid on the principles of the common law. When we consider, however, that it was a rational act, and that the testator suffered it to remain unaltered during the three years that he was free from disease, we are bound to believe that it expressed his true, deliberate intentions; and being such, we ought to be cautious how we adopt a principle that would have defeated them.

§ 462. Generally, then, if the unreasonableness of the will itself raises a suspicion of the testator's sanity, the act of suicide within a short time will always be strongly confirmatory of it, and, in connection with attending circumstances, may, in some instances, turn suspicion into conviction. There will be little danger of going wrong in any cases of this kind, if we are willing to be governed in our decisions by the principles of equity and common sense, rather than by technical distinctions and antiquated maxims. If the will be a rational act rationally done, a suicidal act or attempt ought not to invalidate it, because the presumption is, either, that the will was made before the mind became impaired, or that the derangement was of a kind that did not prevent the judgment from using its ordinary discretion in the final disposition of property. If, on the contrary, it be an unreasonable act, and especially if it be contrary to the previously expressed intentions of the testator, then the act of suicide will be in itself strong proof, that the mind was impaired at the time of making the will.

§ 463. In one of the courts of Massachusetts was tried the following case (1856). An elderly widow, up to a certain Saturday night, had never evinced any mental or nervous disorder. She went to bed as usual, cheerful and natural, hav-

[1] Georget, Des Maladies Mentales, 114.

ing just satisfactorily completed some prospective arrangements. On Sunday morning she arose, looking haggard and ill, complained that she had slept none, and said she felt wretchedly. During the day, she was up and down stairs, greatly agitated, and drinking much water. She was last seen alive, at four o'clock in the afternoon, and at six was found dead by suspension. On examination, it was found that she had assorted her clothing and other valuables, into several parcels to which she had attached labels bearing the names of her various friends. She left no will nor other writing. She had an only son whose character rendered it not unlikely that she would be disinclined to leave him property. About a week after her decease, a promissory note of some hundreds of dollars was found in the ashes of an unused stove in her room, torn into fragments. The promisor of the note refused payment on the ground that the deceased designed to cancel the note, she being a friend of his, but no promise or intimation to that effect appeared in evidence. The jury disagreed, and subsequently a compromise was effected.[1] Had the case gone to trial again and the jury agreed, any verdict must necessarily have been unsatisfactory, because the essential points were beyond the reach of mortal ken. On one side it might have been argued, that the woman destroyed the note with the same motive, and in the same state of mind, which prompted the distribution of her clothing; that the latter act evinced a knowledge of the claims of friendship, and consequently that on this point, the mind was unaffected by disease, however disordered it may have been on others; that both acts were similar in kind, and must therefore be equally valid. On the other, it might have been argued, that persons about to commit suicide often display sagacity and forethought, while, there is much reason to believe, their views of persons and things are greatly confused and distorted; that she evinced a degree of perturbation that unfitted her, very probably, for mature, correct, judg-

[1] Furnished by Dr. L. V. Bell who was an expert in the case.

ments; that if her suicidal design had been frustrated, and she had been restored, she might have declared that she was entirely unconscious of having done either of the acts in question, or if she remembered it at all, her language about it might have been, "it was not such a distribution of my effects as I ought to have made, or such as I should make now. Indeed, I felt so strange and confused that I hardly knew what I was about. It now seems more like a dream than an actual occurrence."

§ 464. Of late years the mental condition indicated by suicide, has been frequently discussed in the trials of cases of life insurance, and the conflict thus provoked between the technicalities of the law and the dictates of common sense is both curious and instructive. By the rules of some offices, the policy is made void by the act of suicide, which is sometimes expressed by the words, *died by his own hand.* Parties to be benefited by the policy have endeavored to avoid this result, by proving that the self-destruction was not that kind of suicide which is regarded by the common law as a felonious act, but rather the offspring of insanity. Of course, the criterion must be the same as if the act were that of homicide, — did the person know right from wrong, etc. In the case of *Borrodaile* v. *Hunter*[1] (1841), the court instructed the jury that if the deceased threw himself into the river knowing he should destroy himself, and intending so to do, then the policy would be void; but if he did not know right from wrong, when the act was committed, then the policy would not be void. The jury found, both that he intended to destroy himself, and that he did not know right from wrong. By the first part of the verdict, it was made a case of *felo de se*, and by the last part, a case of insanity. Judgment was entered for the office, and subsequently confirmed after argument before four of the judges in the Common Pleas, chief justice Tindal dissenting from the rest. In another case, *Schwabt* v. *Clift*[2] (1845), where the person killed himself by taking sulphuric acid, the jury, under the direction of the

[1] 5 Man. & Gr. 639.

[2] 2 Car. & Kir. 134.

court, Cresswell, J., gave a verdict for the plaintiff, thereby deciding that a policy was not necessarily vitiated by suicide. On an appeal, however, this judgment was reversed by a majority of the judges, and a new trial granted.[1] "Had all the judges been present," says Taylor, of the last case, "the decision might have been different; for five have already expressed themselves, at various times, in favor of the view, that the term 'suicide,' in policies, applies, as it ought to do, only to cases in which there is no evidence of insanity; while four have declared their opinion to be that it includes all cases of 'intentional' self-killing, whether the person be sane or insane."[2] In the case of *Breasted* v. *Farmers Loan Co.*[3] (1853), the New York Court of Appeals decided in a case of this kind, where the pleadings showed that the party "was of unsound mind, and wholly unconscious of the acts," that the insurers were responsible.

§ 465. It sometimes happens that two persons desirous of dying, agree to kill each other, while the plan succeeds but in part, and one survives. In this case, how is the survivor to be treated? We do not know that any trial for this offence has ever taken place in this country or England, but in all probability it would be viewed by the light of the common law, as nothing short of manslaughter. In the milder spirit of German jurisprudence, Professor Mittermaier thinks that the survivor would not be a fit subject of punishment; but whether because he considers his responsibility as annulled, or that the act is not criminal, he does not state.[4] However, it cannot be denied that an agreement to commit mutual homicide, ought to be regarded as but questionable evidence of insanity, and therefore should receive no favor on that ground alone.

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[1] *Clift* v. *Schwabt*, 3 Man. & Gr. 437.

[2] Med. Juris. 650.

[3] Wharton & Stillè, On Mental Unsoundness, 172.

[4] De principio imputationis alienationum mentis in jure criminali recte constituendo. p. 26. Heidl. 1838.

CHAPTER XXI.

SOMNAMBULISM.

§ 466. WHETHER this condition is really any thing more than a coöperation of the voluntary muscles with the thoughts which occupy the mind during sleep, is a point very far from being settled among physiologists. While to some, the exercise of the natural faculties alone seems to be sufficient to explain its phenomena, others have deemed it necessary to suppose, that some new and extraordinary powers of sensation are concerned in its production, though unable to convey a very clear idea of their nature or mode of operation. Without discussing this question here, our purpose will be answered, by inquiring how far the natural faculties are exercised during its continuance, and thus ascertaining, as well as may be, in what respect it differs from the sleeping and the waking states.

§ 467. Not only is the power of locomotion enjoyed, as the etymology of the term signifies, but the voluntary muscles are capable of executing motions of the most delicate kind. Thus, the somnambulist will walk securely on the edge of a precipice, saddle his horse and ride off at a gallop, walk on stilts over a swollen torrent, practise airs on a musical instrument; in short, he may read, write, run, leap, climb, and swim, as well as, and sometimes even better than, when fully awake.

§ 468. The extent, to which vision is exercised, differs in different cases. In one class of cases, it is very certain that the somnambulist does not use his eyes in the various operations which he performs. Negretti, an Italian servant, whose celebrated history is related by two different physicians,

would rise in his sleep, go into the dining-room, spread a table for dinner, and place himself behind a chair with a plate in his hand, as if waiting on his master. When in a place with which he was not perfectly acquainted, he was embarrassed in his proceedings, and felt about him with his hands; and sometimes he struck himself against the wall, and was severely injured. He sometimes carried about with him a candle as if to give him light, but when it was taken away, and a bottle put in its place, he failed to perceive the difference.[1] Galen says of himself, that he once walked about a whole night in his sleep, till awakened by stumbling against a stone which laid in his way. Here, it appears that the long continued habit of performing certain operations enabled the individual, with the aid of feeling alone, to repeat them in his sleep.

§ 469. At other times, objects are clearly discerned, but the imagination transforms them into those with which the mind happens, at the moment, to be engaged. Thus, a somnambulist described by Hoffman, who dreamed he was about going on a journey, strided across the sill of an open window, kicking with his heels, and exerting his voice, as if he supposed himself riding on his horse.

§ 470. In other instances again, things are done, in which vision, or an analogous power, is unquestionably exercised. Castelli, whose case, which is one of the most remarkable, is related by Francesco Soave,[2] was, one night, found translating Italian into French, and observed to look for the words in a dictionary. His light having gone out, he found himself in the dark, groped about for a candle, and went into the kitchen to light it. He would also get up, and go into his master's shop, and weigh out medicines for supposed customers. When some one had altered the marks which he had placed in a book he was reading, he noticed the change and was puzzled, saying, " Bel piacere di sempre togliermi i segni." Another somnambulist, a priest, whose case was pub-

[1] Muratori: della forza della Fantazia Umana.

[2] Riflessioni sopra il Somnambolismo.

lished in the French Encyclopedie, would arise from his bed and compose sermons, reading over every page when finished, and erasing and correcting with the utmost accuracy. On one occasion, after writing "*ce* divine enfant," he erased the word "divine," and wrote "adorable" over it. Perceiving that *ce* could not stand before the last word, he altered it to *cet*, by inserting after it a *t*. He would also write music with the greatest accuracy.

§ 471. In another class of cases, there seems to be no reasonable ground for doubting, that the power of vision is manifested to an almost incredible extent. Jane Rider, whose curious history was published a few years since, was able, in a dark room, to make out the date of coins, the figures of which were nearly obliterated, and to read the motto of a seal which others had been unable to decipher by the light of a lamp. With her eyes covered by several folds of handkerchief, she could still read and write as if nothing intervened, and play at backgammon understandingly.

§ 472. It appears that the eyes of somnambulists are sometimes closed while walking about, and perhaps always so when they first get up, though by one writer they are described as being sometimes half open. In some of the cases which have been alluded to, the eyes were observed to be open and staring.

§ 473. The senses of hearing and of taste present as many different modifications as that of sight. The sound of persons' voices talking loud in his presence may be unperceived by the somnambulist, and that of a trumpet no better heard, unless put close to his ears; in other cases, very faint sounds may be heard at considerable distances. Negretti did not distinguish between strongly seasoned cabbage, and some salad he had prepared. He drank water instead of wine which he had asked for, and snuffed ground coffee instead of snuff. By other somnambulists, however, such deceptions have been instantly detected. Generally, somnambulists take but little notice of what is passing around them, unless it is naturally connected with the subject of their thoughts, or specially obtruded on their attention; and

then the perceptions will be associated more or less coherently with their thoughts. Jane Rider would take part in the conversation, and never mistake the nature of outward objects; while others have been no less accurate and acute in some of their remarks, though unconscious of the presence of other persons. These facts show a strong analogy between somnambulism and dreaming. It is well known that a person who will hear and reply to questions addressed to him relative to the subject he is dreaming about, may not notice nor be aware of loud sounds made near him. The difference in the sensorial powers of different somnambulists, probably indicates merely a difference in the degree to which this peculiar condition is carried. Where it is but little removed from that of ordinary dreaming, the sense of feeling alone, in a limited measure, is added to the locomotive power; when still further removed, the senses of sight and hearing come into play, though but partially exercised; and when displayed to its utmost extent, they enjoy a range and nicety of perception, not witnessed in the ordinary state, and hardly explicable in the present state of our knowledge.

§ 474. There is another form of this affection, called *ecstasis* or cataleptic somnambulism, from its being conjoined with a kind of catalepsy, in which the walking and other active employments are replaced by what appears to be a deep, quiet sleep, while the patient converses with fluency and spirit, and exercises the mental faculties with activity and acuteness. Both in this and the former kind, the person generally loses all recollection of whatever transpires during the paroxysms, though it may be revived in a subsequent paroxysm. In some cases that have been related, the memory during the paroxysms embraced only the thoughts and occurrences of those periods; those of the lucid intervals being as entirely forgotten, as those of the paroxysms were, after they had subsided.

§ 475. It now scarcely admits of a doubt, that somnambulism results from some morbid condition in the system, involving, primarily or secondarily, the cerebral organism. We see that its lighter forms are but a slight modification of

dreaming, which is universally admitted to be very much influenced by the state of the corporeal functions, and which in certain disorders, is produced in a very troublesome degree. The analogy of ecstasis to hysteria and epilepsy, with which it is often conjoined, is too strong to escape the most cursory observation, not merely in its phenomena, but in its curability by the use of remedial means. Indeed, these affections are known to pass into each other by frequent and rapid transitions, and to possess a strong common relation to insanity. The attacks of cataleptic somnambulism are invariably preceded by derangements of the general health, — in females, of the uterine functions especially, and their recurrence is prevented by the methods of treatment which are found most successful in those affections with which it is pathologically related. The more active forms of sleep-walking, seldom, if ever exist, except in connection with those habits or conditions that deteriorate the general health. Intemperate drinking is said to be among the causes that produce it; and an observer of Negretti's case attributed the disorder to his immoderate fondness for wine. A plethoric condition of the vessels of the head is also a strong predisposing cause of it; and in proof of this, Muratori relates that he was assured by a physician, that nothing but having his hair cut off once in a couple of months, saved him from being a somnambulist. Its hereditary character, which, like the same trait in insanity, we may fairly conclude depends on morbid conditions, also indicates its physical origin; and the same inference may be drawn from the influence of age and sex in its production. The cataleptic form of the disorder appears chiefly in females before the last critical period; while the other is as much confined to males, in whom it mostly appears in childhood and the early periods of manhood, — seldom in old age.

§ 476. In the somnambulist, either the perceptive organs are inordinately excited, and thus he is led to mistake inward for outward sensations; or the perceptions, if correct, are misapprehended by some obliquity of the reflective powers; in some instances probably, both these events take place.

He talks, moves, and acts, unconscious of his real condition, and of nearly all his external relations. The ideal images that are brought before the mind are mingled and confounded with the real objects of sense, and the conduct is regulated accordingly. Psychologically considered, then, somnambulism appears to be not very remote from mania, the difference consisting in some circumstances connected with the causes that give rise to the derangement of the faculties. In the latter, the pathological affection of the brain is continuous; in the former, it appears only during sleep, by which its effects are greatly modified. When the maniac finds himself restored to health, he looks on the period of his derangement as on a dream crowded with grotesque images, heterogeneous associations, and ever-changing scenes. So the somnambulist, on awaking, is conscious only of having been in a dream, the events of which have left a more or less vivid impression on his memory.

§ 477. In somnambulism, as well as in mania, intellectual powers are sometimes evinced, that are altogether unknown in the waking state. Jane Rider would sing correctly, though she had never learned to sing, nor been known to sing when awake, and would play at backgammon with considerable skill, though she had never learned the game in the waking state. She also exhibited a power of imitating the manners and language of people, though she had never evinced the slightest trace of this power when awake.

§ 478. Like the maniac, too, the sleep-walker's sentiments and propensities are often included in the same circle of morbid action in which the operations of the understanding are involved. The case of a Carthusian monk is related, who, while awake, was remarkable for his simplicity, candor, and probity; but unfortunately, almost every night walked in his sleep, and like the fabled Penelope, undid all the good actions for which he was so celebrated by day. On such occasions, he was a thief, a robber, and a plunderer of the dead. A case of a pious clergyman is somewhere described, who in his fits of somnambulism would steal and secrete whatever he could lay his hands upon, and on one

occasion, he even plundered his own church. In a case of somnambulism which occurred a few years since in Maine, there was a strong disposition to commit suicide. The paroxysms appeared every night, and watchers were required, as if the somnambulist had been laboring under an acute disease. He always attempted to escape from his keepers, and having succeeded one night, an outcry was heard from a neighboring pasture, and he was found suspended by a rope from the limb of a high tree. Fortunately, he had attached the rope to his feet instead of his neck, and consequently was but little injured.

CHAPTER XXII.

LEGAL CONSEQUENCES OF SOMNAMBULISM.

§ 479. SOMNAMBULISM may sometimes incapacitate a person from the proper performance of the duties and engagements of his situation, and then unquestionably it may impair the validity of contracts and other civil acts to which he is a party. By rendering him troublesome, mischievous, and even dangerous, it furnishes good ground for annulling contracts of service, whether it existed previously and was concealed, or had made its appearance at a later date. Whether it should be considered a sufficient defence of breach of promise of marriage, or a valid reason for divorce when concealed from one of the parties previous to the marriage, are questions which do not properly admit of a general answer. Since its evils may be, in some, of the lightest, in others, of the most serious description, each particular case ought, in justice, to be decided solely on its own merits, reference being had to the amount of injury as compared with the magnitude of the obligation sought to be avoided. If studiously concealed or denied, when its avowal would have undoubtedly prevented the other party from entering into a contract, the latter ought to be enabled to set aside his own obligations on the ground of fraud.

§ 480. As the somnambulist does not enjoy the free and rational exercise of his understanding, and is more or less unconscious of his outward relations, none of his acts during the paroxysms, can rightfully be imputed to him as crimes. Hoffbauer places him on the same footing with one who labors under hallucinations, except that the former is not fully excused, if, knowing his infirmity, he has not

taken every possible means to prevent injurious consequences to others. Both law and equity, too, would undoubtedly hold him liable, as they would the maniac, for injury committed to the property of others, though as to what extent this power would be exercised, we have no means of forming an opinion. Hoffbauer suggests as a reason for not regarding the criminal actions of the somnambulist with too much indulgence, that they have probably originated, if not in premeditation, at least in the deep and deliberate attention which the mind has given to the subject when awake. This is, no doubt, the case in many instances, and if men were to be punished for their meditations, the suggestion would be not without its weight; but as such is not the law, it is not very obvious how this fact can affect the legal consequences of somnambulism. Foderè, too, comes to the conclusion that the acts of a somnambulist, instead of resulting from mental delusion, are more independent than any others, because they are the free and unconstrained expression of his waking thoughts and designs, and therefore that they are not altogether excusable. He seems to have forgotten that by no human law are men responsible for their secret thoughts, but only for their words and acts. To these only does it look, and if they are found to have proceeded from a mind not in the full possession of its powers, they must be excused without the slightest reference to the former. And as it cannot be denied that they are sometimes excited by unfounded delusions that have no affinity with the natural character and purposes of the individual, every sentiment of justice cries out against ever regarding them in a criminal light. Georget quotes from an anonymous work a curious instance of somnambulism in a monk, which was related to the author by the prior of the convent who witnessed it himself. Late one evening this somnambulist entered the room of the prior, his eyes open but fixed, his features contracted into a frown, and with a knife in his hand. He walked straight up to the bed, as if to ascertain if the prior were there, and then gave three stabs which penetrated the bedclothes and a mat which served the purpose of a mattress.

He then returned, his features relaxed, and an air of satisfaction on his countenance. The next day, the prior asked him what he had dreamed about the preceding night. The monk confessed, that having dreamed that his mother had been murdered by the prior, and that her spirit had appeared to him and cried for vengeance, he was transported with fury at the sight, and ran directly to stab her assassin. Shortly after, he awoke, covered with perspiration, and rejoiced to find that it was only a dream.[1] A similar case is also related of two individuals who, finding themselves out over night in a place infested with robbers, one engaged to watch while the other slept, but the former, falling asleep and dreaming of being pursued, shot his friend through the heart.

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[1] Des Maladies Mentales, 127.

CHAPTER XXIII.

SIMULATED SOMNAMBULISM.

§ 481. This disorder may be simulated, first, by those who have, at other times, really experienced its attacks; secondly, by those who have not at any time. The motive may be, either to do something which the individual would not otherwise dare to attempt, or to avoid the punishment of an action which is alleged to have been committed in one of its paroxysms. The difference, however, in the difficulty of proof, is not so great, as at first sight might be apprehended; for, since the mind is generally unconscious of what passes during the paroxysm, the somnambulist possesses but little advantage over others, from his experience, in feigning this affection. He will be no less at fault in respect to those little traits which mark the difference between the real and feigned attacks, as well as the more important phenomena. When, however, it is admitted that the person has been subject to its attacks, this fact certainly furnishes a presumption of its reality in doubtful cases, which diminishes the strength of the evidence which the alleged case requires.

§ 482. When the feigned paroxysm is witnessed by others who are capable of describing minutely what they saw, a comparison of his conversation and acts with those observed in real paroxysms, may furnish us with a clew to the true nature of the act imputed to him; for it is scarcely possible that, if feigning, he will not be caught tripping in some of his manœuvres. A curious case is quoted by Hoffbauer from an old writer, where nothing was wanting but a tolerable knowledge of the state of the mental faculties in som-

nambulism, to expose the deception. An old ropemaker frequently fell into a profound sleep in the midst of his occupation, whether sitting or standing, or walking in the street, when he would begin to repeat, by means of words and gestures, every thing he had been doing during the day, from his prayer in the morning till the very moment of his falling asleep. If taken while walking abroad, he would pursue his course just as if he had been awake, avoiding persons and things which might harm him. The story was related as one of genuine somnambulism, though there were two circumstances in it sufficient to have exposed the deception. In the first place, to repeat the transactions of the day in this manner, is contrary to what we know of somnambulists who do only what they have premeditated, or what has strongly engaged their attention. Secondly, this man acted a double, and consequently a deceptive part. He first repeated what he had done during the day, and then went on with what he was in the act of doing when the paroxysm took him. The ruse was finally discovered. The man professed himself cured, as soon as a physician charged with examining his case proposed to bandage his eyes, to see if he would then be able to perform those actions which had excited so much surprise. No doubt can remain of the genuineness of the attack, if the person perform feats which he would not dare to do when awake, unless — which would hardly be possible — he has systematically concealed his skill and abilities; the converse of the proposition, however, cannot be equally true. It will also be a strong confirmation of the evidence in favor of its reality, if the physical symptoms we have mentioned, as sometimes attending the somnambulic disposition, are shown to have been present. But it generally happens that the somnambulist walks unwitnessed, and must rest the proof of his mental condition on his own testimony and the circumstances of the case. The full burden of proof manifestly devolves on him, and if he fail of establishing it satisfactorily, he must suffer the consequence. There can be no other rule; for once acquit a criminal on the score of somnambulism which is imperfectly or at best but plausibly

proved, and it will soon become a favorite excuse for crime, whenever the offender possesses the requisite address for maintaining the deception. Among the proofs, however, necessary to establish this defence, a prominent place should be claimed for those drawn from the nature of the criminal act itself. If this be manifestly contrary to the known character and disposition of the accused, and especially if it can be shown that he could have entertained no motive for injuring the other party, but little else beyond a straight story and an open air of sincerity ought to be required to establish the truth of his own assertions.

§ 483. A criminal trial in Boston, in 1846, strikingly illustrated the peculiar difficulties incident to cases of crime in connection with somnambulism. A dissolute young man, named Tirrell, twenty-two years old, was tried for the murder of his paramour, a woman more dissolute than himself, with whom he had cohabited a year or more. For some three or four days before the murder, they had lodgings in a not very reputable house, and were last seen together at nine o'clock in the evening. About four o'clock next morning, the landlord and his wife heard some one come down the stairs and go out of the street door. At the same moment, they smelt smoke, and on going to Tirrell's room, they found the woman lying dead on the floor with her throat cut from ear to ear, and the room on fire in several different places. Between four and five o'clock, he called at a livery stable, and engaged the keeper, Fullam, to send him in a carriage to his family's residence in the country, saying that he had got into a scrape, and also saying something about a house being on fire. Between five and six, according to the evidence, but probably while waiting for the horse to be harnessed, he called at a house near the stable to get some articles of clothing which they had been making for him. When told next day that he was charged with the murder, he declared he would go back and give himself up, but, by the advice of his friends, ostensibly, he fled.

§ 484. One branch of the defence was, that, if he did the deed, which was very questionable, he did it in a state of som-

nambulism, and the following are the facts, as given in evidence, relied on for this purpose. From the age of four or five he had been habitually somnambulic, the paroxysms occurring as often, at least, as once a month. While in the paroxysms, he always uttered some peculiar inarticulate sounds, indicative, it was thought, of distress. On the morning of the murder, immediately after the landlord and his wife heard some one passing down stairs, they heard, in the entry and soon afterwards in the yard, a peculiar, distressing sound uttered by some man. Heard, at whose house he called for his clothing, and also his wife, testified that he made a strange noise. They said he appeared strangely, and they thought he was asleep or crazy, and being a little afraid of him, refused to let him in. The man, however, shook him, "when," as he testified, "he seemed to come out of a state of stupor and come to himself," saying, "Sam, how came I here?" Before coming to himself he said that Fullam was going to take him to Weymouth.

§ 485. The other facts in the case, however, are strongly at variance with the supposition that he was in the somnambulic state during the interview with Heard. In the paroxysms as described by his family, he was generally walking about merely, without any obvious purpose, and unconscious of the presence of others. Once, in the course of his life, he is said to have broken a window and torn down the curtain, and once he went to the stable and kicked against the door, saying that he was after a horse. During these seventeen or eighteen years, these were the only exceptions to the general course of the paroxysms; and his friends would not have been likely, under the circumstances, to overlook one. How different his movements on this occasion! He begins by committing murder, and setting fire in the bed and closet. He then goes out of the house, proceeds directly to a stable, tells the people there they must take him out of town as quick as possible; then goes to the Heards, wakes them up, inquires for some handkerchiefs they were making for him, and says Fullam is going to take him out of town. Here

was not only a remarkable contrast to his usual proceedings in the somnambulic state, but it was just what he would have done, had he been wide awake, flying from a terrible scene of blood and fire. Again, if it be supposed that he committed the act in the somnambulic state, it must also be supposed, in accordance with the ordinary phenomena of somnambulism, that it was committed in a state of great mental confusion, under a total misapprehension of his relations to the woman, and mistaking her for some devil, witch, or other creature, designing him mischief. Such being the case, while it is impossible to say what he would have done next, it is quite certain that he would not have acted precisely as if he had consciously and deliberately perpetrated a great crime. And even if, yielding to some strange fancy, he had determined to leave the house and go to Weymouth, it must be supposed that the moment when he came to himself, he regarded this purpose as a mere dream, or lost his consciousness of it altogether, and returned to the house. Another fact which weakens the theory of real somnambulism, is, that, notwithstanding his appearance as described by Heard and his wife, Fullam and his servant had previously seen nothing strange or extraordinary in his conduct or conversation. According to the testimony of the Heards, he came to himself while at their house, exclaiming, "Sam, how came I here?" but nevertheless he proceeded to execute his design already formed, to escape from the city. This shows, beyond a doubt, that he did know how he came there. The suggestion of his counsel that he probably called at Heard's before he called at Fullam's, scarcely helps the matter, because the fact still remains that he carried out the purpose which was in his mind while talking with Heard. The idea that a somnambulist may continue to pursue the same train of thought and the same course of action, after coming to himself, which he did before, is directly opposed by all our knowledge of this mental condition.

§ 486. There is no reason to suppose that the Heards were

mistaken in regard to his appearance, or that they fabricated the whole story about it. It probably was precisely as they testified, and the only rational explanation of it, is, that in the interview with them he was simulating somnambulism. No possible theory of this case is without difficulties, but this seems to be encumbered with the fewest. It can hardly be supposed that this young man — sharp and unscrupulous as he was — had not often thought how he might make this peculiar affection available for criminal purposes, when the occasion might require it. Accordingly, when, from some inscrutable motive, he had taken the life of the partner of his guilty pleasures, and saw that all the circumstances would inevitably point to him as the author of the crime, what more probable than that he should, then and there, conceive the design of simulating the affection, the real attacks of which he had so long suffered? It, certainly, would have been more strange had he not conceived and executed this design. It must have seemed to him the only course which furnished the slightest chance of escape. The Heards were selected for the witnesses of the part he was playing, because they were acquainted with him, and were favorably disposed towards him. To have aroused the people of the lodging-house would have defeated his purpose of effacing by fire, the evidences of his guilt, and any appearance of somnambulism to Fullam and his servant, would have prevented his getting the means of escape. So far the plot was ingeniously contrived, but when he came to play out his assumed part, he signally failed, for the simple reason that no one knows less than the individual himself, how he acts when in the somnambulic state. His peculiar utterance and strangeness of manner, he had been often told of, no doubt, and those he could easily manage; but he might not have known that the correctness and pertinence of his conversation at the Heards' were totally unlike any of his manifestations while in the real paroxysms, nor that a true somnambulist would have alluded, in that interview, to the scenes he had just witnessed, rather than to an ordinary matter of business. So little did he seem to apprehend his part, that, pretending to

be somnambulic, he was, for all practical purposes, fully awake.

The jury acquitted him, because, as they stated, the evidence that he did the deed was insufficient. The question of somnambulism they did not consider.[1]

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[1] The facts of this case are obtained from reports of the trial, in the papers of the time.

CHAPTER XXIV.

SOMNOLENTIA.

§ 487. The sleeping state gives rise, in one way or another, to a mental condition in which all moral liberty is destroyed. What the essential condition of the brain is in sleep, as distinguished from that of the waking state, is one of the problems of physiology that remain to be solved. The few facts which meet our observation throw but little light on this point, though they serve to indicate the general features of the difference between the two states. Opposite as they are, the passage from one to the other cannot be exactly described. We only know that, in going to sleep, the various organs of sensation and motion, one after another, cease from their activity and lose their relations to the world without; and that, in waking, these organs more rapidly resume their activity, until the consciousness is fully restored. In either case the ordinary course of things may be interrupted, from one cause or another, — the previous thoughts or occupations of the individual, external circumstances making their impressions upon the senses, or some unusual, if not abnormal activity of the cerebral system. Especially is this the case in the passage from the sleeping to the waking state, the ordinary phenomena of which are liable to be disturbed by loud noises, vivid dreams, or attempts to arouse the sleeper by shaking and pulling. It should be borne in mind, also, that in certain persons the sleeping state is ordinarily marked by peculiarities which are sometimes continued by hereditary transmission. A distinguished general of the American Revolutionary army would not only drop asleep while conversing with a friend, but would sleep on his horse during a march, though without

losing his consciousness of whatever he ought to know. His son, too, while asleep, would hear the conversation of people about him, and interpose some pertinent remark, without awaking. *His* son, also, while asleep, would maintain a colloquy with another person in the room, with but little less coherence and correctness, than he would when fully awake. In some persons too, the mind is more active occasionally, during sleep, than when awake; solving problems, or writing verses, or clearing up difficulties, with remarkable success.

§ 488. It sometimes happens that, in passing from the sleeping to the waking state, especially when the sleeper is suddenly awakened, the mind does not readily resume its proper relations, misapprehending the impressions made upon the senses, and acting accordingly. The mind is then in a state of temporary delirium, resembling somewhat that of intoxication, and which has received in Germany the name of sleep-drunkenness. Deceived by false images and unable to reason correctly, the sleeper may commit some deed of violence that shocks no one more than himself when he becomes fully awake.

§ 489. The case of Bernard Schimaidzig, often quoted in this connection, is one of peculiar interest, but we have room for only a few particulars. This man was suddenly waked up at midnight. At the moment of waking, he saw a frightful phantom standing near him; in the darkness and terror, he distinguished nothing more. Twice he called out, "Who goes there?" but he received no answer, and saw the phantom approaching him. He leaped from his couch, seized a hatchet which was near him, and attacked the formidable spectre. All this was the work of a moment. At the first blow, the spectre was brought to the ground, uttering a heavy groan. Awakened by the noise, he found that the object of his fears was his own wife who had been lying beside him, on whom he had inflicted a mortal wound. To those who ran to the spot, he narrated the above circumstances, exclaiming, with trembling and agitation, "My God, my God, what have I done!" The criminal college of Upper Silesia, to

whom the case was referred for examination, reported that the homicidal act was committed by Schimaidzig in the transition state between sleeping and waking, and that he was not then responsible. The various questions raised by this case were elaborately discussed in their report, which is well worth the attention of the medical jurist.[1]

§ 490. Very recently a case occurred in Germany with a similar judicial result. "A young man, named A. F., about twenty years of age, was living with his parents, in great apparent harmony, his father and himself being alike distinguished for their extravagant devotion to hunting. In consequence of the danger of nocturnal attacks, they were in the habit of taking their arms with them into their chamber. On the afternoon of September 1, 1839, the father and son having just returned from hunting, their danger became the subject of particular conversation. The next day the hunting was repeated, and on their return, after taking supper, with the usual appearance of harmony, the family retired at about ten o'clock, the father and mother occupying one apartment, and the son the next, both father and son taking their loaded arms with them to bed. At one o'clock, the father got up to go into the entry, and on his return, jarred against the door opening into the entry, upon which the son instantly sprang up, and discharging his gun at the father, gave the latter a fatal wound in the breast, crying at the same time, 'Dog, what do you want here?' The father fell immediately to the ground, and the son, then first recognizing him, sank on the floor crying, 'O, Jesus, it is my father.' The evidence was that the whole family were subject to great restlessness in their sleep, and that the defendant in particular was affected by a tendency to be easily distressed by dreams, which lasted about five minutes on waking, before their effect was entirely dissipated. His own version of the affair was, 'I must have fired the gun in my sleep; it was moonshine, and we were accustomed to walk and talk in our sleep. I recollect hearing something jar; I jumped up, seized my gun, and

[1] Marc, de la Folie, ii. 24.

shot where I heard the noise. I recollect seeing nothing, nor am I conscious of having spoken. The night was so bright that every thing could have been seen. I must have been under the delusion that thieves had broken in.'" The medical experts examined in the case expressed the opinion that the act was committed in a state of somnolentia, when the person was not a responsible agent.[1]

§ 491. Cases of this kind have occasionally made their appearance in the annals of English criminal justice, and not always regarded with the same indulgence as those just mentioned. "A peddler who was in the habit of walking about the country armed with a sword-stick, was awakened, one evening, while lying asleep on the high road, by a man who was accidentally passing, seizing and shaking him by the shoulders. The peddler suddenly awoke, drew his sword, and stabbed the man, who soon afterwards died. He was tried for manslaughter. His irresponsibility was strongly urged by his counsel, on the ground that he could not have been conscious of an act perpetrated in a half-waking state." This was strengthened by the opinion of the medical witness. The prisoner was, however, found guilty.[2]

§ 492. In an earlier case — the earliest, perhaps, ever reported — the verdict was more creditable to the intelligence of the court and jury. Sir Matthew Hale relates that, "William Levet being in bed and asleep in the night, his servant hired Frances Freeman to help her to do her work, and about twelve of the clock in the night, the servant, going to let out Frances, thought she heard thieves breaking open the door; she therefore ran up speedily to her master, and informed him that she thought thieves were breaking open the door; the master rising suddenly, and taking a rapier, ran down suddenly; Frances hid herself in the buttery, lest she should be discovered; Levet's wife spying Frances in the buttery, cried out to her husband, 'Here they be that would undo us.'

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[1] Henke's Zeitschrift, lxv. 190 (1853), quoted by Wharton and Stillè in their Unsoundness of Mind, p. 121.

[2] *Reg.* v. *Milligan*, Lincoln Aut. Assizes, 1836, in Taylor, Med. Jur. 656.

Levet runs into the buttery in the dark, not knowing Frances, but thinking her to be a thief, and thrusting with his rapier before him hit Frances in the breast mortally, whereof she instantly died. This was resolved to be neither murder, nor manslaughter, nor felony."[1] Levet, suddenly awakened under such circumstances, had not time to collect his senses, and, no doubt, labored under much confusion of mind, but it does not appear to have been a case of proper somnolentia. Still, it is obvious that the rule of responsibility here adopted, would have been equally applicable had it been an unequivocal instance of that affection.

§ 493. The subject of the following case was a distinguished criminal lawyer, and the only case on record, probably, experienced and described by an intelligent and scientific observer. "I was obliged," says Dr. Meister, "to take a journey of eight miles on a very hot summer's day, my seat being with my back to the horses, and the sun directly in my face. On reaching the place of destination, and being very weary and with a slight headache, I laid myself down, with my clothes on, on a couch. I fell at once asleep, my head having slipped under the back of the settee. My sleep was deep, and, as far as I can recollect, without dreams. When it became dark, the lady of the house came with a light into the room. I suddenly awoke, but for the first time in my life, without collecting myself. I was seized with a sudden agony of mind, and picturing the object which was entering the house as a spectre, I sprang up and seized a stool, which, in my terror, I would have thrown at the supposed shade. Fortunately, I was recalled to consciousness by the firmness and tact of the lady herself, who, with the greatest presence of mind, succeeded in composing my attention until I was entirely awakened."[2]

§ 494. Somnolentia when plead in defence of criminal acts, must often be difficult of proof, for it generally occurs

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[1] 1 Pleas of the Crown, 42.

[2] Vogel, Beiträge zur Lehre von der Zurechnungsfahigkeit, § 147, quoted by Wharton & Stillè, Unsoundness of Mind, 122.

in the darkness of night, and without witnesses. A certain amount of probability may arise from the circumstances of the case, among which, Mende, a German medical jurist, mentions the following, as confirmatory of the plea. It should appear that the person is habitually a deep, heavy sleeper, and awakened only by much shaking and slapping; that before sleeping, certain things occasioned disquiet which might not be removed by sleep, and which, consequently, might give rise to vivid dreams; that the criminal act occurred at the time when the person was usually asleep; that the sudden waking was produced by certain specific causes, unless the result of dreams; that the act is clearly indicative of the absence of consciousness and self-possession; that the person, on fully awaking, is astonished at what he has done, and manifests extreme concern and sorrow.[1] On the contrary, the plea must be regarded with suspicion, when there were motives for the act arising from interest or passion, or when there were appearances of design and opportunity. In a recent case, where somnolentia was plead in defence, it appeared that the prisoner had showed malicious feeling against the other party, and had wished him dead; that the knife seemed to have been recently sharpened, and that the prisoner must have reached over another person sleeping in the same bed, in order to inflict the wound.[2]

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[1] Handbuch de Gerichtl. Med. Thl. vi. p. 270.

[2] *Reg.* v. *Jackson* (Liverpool Aut. Ass. 1847), cited by Taylor, Med. Juris. 656.

CHAPTER XXV.

EFFECT OF INSANITY ON EVIDENCE.

§ 495. The insane are disqualified by law[1] from appearing as witnesses in courts of justice, their incompetence being *inferred* from their mental unsoundness. The fact of incompetence to testify, however, is not necessarily connected with that of insanity, and it would be far more correct to consider the former an independent fact to be established by a distinct order of proofs. The truth is, an analogy, in a medico-legal sense, has been too hastily assumed, between the act of testifying, and that of performing business contracts or other civil acts, and, in consequence, it has shared with them in the same sentence of disqualification, without an attempt to ascertain the kind and degree of intellectual power which they respectively require. The practice of including them in the same category, is certainly not favored by the present state of our knowledge of insanity, nor does it approve itself to the common sense of mankind. To see what foundation in nature this rule of law really has, we shall proceed to inquire how far the competency of a witness is actually impaired by the different forms of insanity.

§ 496. According to Hoffbauer, before a witness can be deemed competent, it is necessary that his senses should be sufficiently sound to take cognizance of the facts to which he testifies; that their impressions should have been really what he believes they were; that his testimony should coincide with his belief; and lastly, that he should be able to convey

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[1] Thomas's Coke's Littleton, 489; *Livingston* v. *Keirsted*, 10 Johnson, 362.

to others his own ideas, without fear of being misinterpreted. These conditions, it may be added, constitute the capacity of a witness, and wherever they are present, his evidence should be received, without agitating the question of his mental unsoundness, which is not absolutely incompatible with their existence.[1]

§ 497. The higher degrees of imbecility must of course disqualify a witness, but its less aggravated forms may not, under all circumstances, have this effect. His senses may be acute enough to see and to hear what he deposes to; no illusions may obtrude and mingle with their impressions; and his memory may be retentive enough, provided too long a space of time do not intervene between the occurrence of the facts and his deposition concerning them, to bear them in mind till revealed by judicial investigation. The facts to which he testifies must be of the simplest kind, requiring the smallest perceptive effort to seize and appreciate, and so intelligible to the meanest understanding, that the memory can easily retain them. If the details are too numerous and complicated, and especially if they include words or actions not familiar with or analogous to his own ordinary experience; or if they happened at too remote a period, they become confused and entangled in his mind, and many of them fade from it altogether, while some important members of the series may not have been attended to at all. Hence, the evidence of imbeciles may present many a contradiction and hiatus of which they may be perfectly unconscious themselves, and which it would be wrong to attribute to intentional omissions, or a wish to deceive. If we bear in mind, too, that these persons are easily embarrassed, it might naturally be expected that the presence of spectators, the per-

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[1] The third condition above-mentioned, may not at first sight appear to be connected with capacity; but if the reader will refer to the observations (§ 192) on a class of people, who, in consequence of some natural defect or organic disease, are incapable of telling the truth, even when most conducive to their own interests, he will be convinced of the propriety of placing it in this connection.

plexing questions of counsel, and the formalities of a trial, would so disorder their ideas, as to make their testimony appear to those unacquainted with their mental deficiency, like the most impudent trifling or downright mendacity. The more, however, the witness is permitted to tell his story in his own way, and finds encouragement in the looks of those around him, the less of this will be observed. The class described in § 66 are competent to testify in matters of a more complicated kind, requiring a larger grasp of the reflective faculties to embrace, and more tenacity of memory to retain them, but, like the others, they are very liable to be disconcerted by the questions of strangers, and, in consequence, betrayed into numerous contradictions of their own testimony. Since, then, the competency of these imbeciles is well established, nothing can be clearer than the propriety of admitting their evidence, and leaving it for the jury to decide upon its credibility.

§ 498. In partial intellectual mania the capacity of testifying under certain circumstances and with certain reservations, is still preserved, though considerable knowledge of the case, and extreme caution are requisite to measure the witness's credibility. In regard to the greater proportion of cases, the only doubt is respecting the second and third conditions of capacity (§ 496), no question being raised as to the presence of the others; that is, whether the witness has really seen, heard, etc., what he believes he saw and heard, and whether his testimony coincides with his belief. That he may offer in evidence the offspring of a disordered imagination, sincerely believing it to have come under the cognizance of his own senses, is undoubtedly true; but no less so, however, that he may testify only to what has come under his own observation. Which of these events does actually take place, is a question to be settled by reference to the nature of the evidence and the character of the witness's insanity. When the matter on which he testifies, is remote from the insane delusion which he entertains, and cannot very obviously come within the circle of its influence, it would be wrong to reject his testimony on the score of incompetency.

When we see these monomaniacs rational on every topic but that which constitutes their derangement, shrewd and methodical in the transaction of business, quick to perceive and able to profit by whatever appears conducive to their interests, trusted and respected by their neighbors, it seems more difficult to disprove than to prove their competency. The power of remembering and telling correctly what they have seen or heard, requires no more strength or soundness of mind, than numberless other duties that nobody doubts their ability to perform. Even on topics connected with their insane belief, their capacity is not necessarily destroyed, and in doubtful cases it would seem better to receive their evidence, and leave it for the court or counsel to disprove its credibility. At the very least, the burden of proof should lie on the party that alleges the incompetence. Even while the predominant idea is highly false and absurd, they may, and very often do, reason upon it with force and correctness, their deductions being sound and their reflections appropriate. Indeed, this mixture of the rational and the irrational, this inability to discern the relations of congruity between the true and the false, constitutes one of the most characteristic features of madness. Hence, it would not be unnatural for them to see things somehow connected with the delusion, in most of their relations, in their true light; and of this fact we should certainly avail ourselves in deciding on the admission of their evidence. The man who believes that he is charged by government with the regulation of the weather, may, notwithstanding, observe meteorological changes, and testify accurately concerning the state of the weather at a particular time — perhaps no one more so; and he who believes that he has made an immense fortune by a commercial speculation, may talk sensibly on mercantile interests and be perfect master of the price-current, and thus be competent to testify on any matter connected with the same, that has come under his observation. The credibility of such witnesses, however, depends very much on the importance of the subject on which they testify, and on the relations of their evidence to that of other witnesses. When they cor-

roborate the statements of other witnesses, they may justly challenge our belief, while we should very properly hesitate to decide upon any great interests of person or property, solely upon the ground of their testimony.

§ 499. The reported cases where the competence of witnesses was destroyed by reason of insanity, are too few to render it very apparent how far the following represents the ordinary practice of American courts. It strikingly illustrates the effect of a rigid adherence to the common-law maxim, that the insane are incapable of testifying; and, therefore, may be properly introduced in this place. In May, 1833, Jacob Schwartz was tried, at a term of the supreme court for the county of Lincoln, in Maine, on an indictment for assaulting, with intent to kill, Jonathan Jones. Jones himself was the principal witness, and he stated that he went into Schwartz's house for the purpose of conversing on religious subjects with his wife who was also Jones's sister; that Schwartz who had often forbidden him to do so, followed him into the house, drove him out, seized his gun, and threatened to shoot him; that he then ran several rods, occasionally looking back at Schwartz who stood in his door-way presenting his gun, as if in the act of firing; that Schwartz finally fired and hit him, several shot lodging in his hat and coat, and a few penetrating into the skin of his back, from which they were taken out by some persons in a house to which he immediately ran. The transaction was witnessed by no one besides Jones. By other witnesses it was testified that Jones ran into the house where they were, exclaiming that Schwartz had shot him, and that they assisted in taking the shot out of the skin. Thus far his testimony was rational and consistent, and his manner calm and composed. On being cross-examined by the defendant's counsel who had some knowledge of his case, he testified, that he used to work on a piece of land which he owned, but that feeling himself called to exhort sinners to repentance, he went about in imitation of Christ and the apostles, preaching the gospel and exhorting sinners to forsake their evil ways. He declared himself to be an apostle,

and inspired by the Holy Ghost; also, that he was one of the saints who are to judge the world, and that he should bear a part in the judgment of the great day. On this subject he dilated largely and incoherently, his countenance being animated, and his language and manner ardent and impassioned. Other witnesses having testified that in his domiciliary visits he had sometimes represented himself to be the Lord Jesus Christ, he was examined on this point. Here he was not very explicit, and did not seem disposed to make a full disclosure, as, he said, he could not perceive its connection with the question at issue. He did not expressly deny, however, that he so considered himself, but seemed disposed to leave it to be inferred from particular things in which he resembled Jesus Christ, as in his poverty, in his going about to do good, and in the persecution he suffered. The jury, not thinking it safe to convict the defendant on Jones's testimony, acquitted him, and the court signified its approval of the verdict.

§ 500. If the testimony of Jones had stood alone, unsupported by confirmatory circumstances, no fault could be reasonably found with this verdict. It would have been sufficient for the jury to know that he was laboring under extensive delusions, with which the alleged criminal act was not very remotely connected in his mind, to be justified in shrinking from the responsibility of depriving another, on his testimony, of his good name, and subjecting him to legal punishment. Of the two evils, that of convicting on insufficient evidence, and that of suffering a guilty person to escape a few years' imprisonment, they would not have been liable to blame, for choosing to incur the risk of that which they considered the least. The circumstances of this case, however, being very different from what is here supposed, might we not have reasonably expected a different verdict? That Jones was assaulted at, or very near the time alleged, could not be doubted for a moment, and his exclamation, as he entered the house with the appearance of sudden fright, that Schwartz had shot him, and his coming in the direction from Schwartz's house, strongly authenticated his statement, that

the assault was committed by Schwartz, — so strongly, indeed, that in the absence of any conflicting evidence on the part of the defendant, it was entitled to implicit belief. Such a scene might, no doubt, have been got up by a sane person, for the purpose of gratifying some malignant feelings; but men, affected with the kind of insanity under which Jones was laboring, rarely, if ever, contrive such schemes. It was a circumstance, too, which should have had its weight, that in relating the facts of the assault, he was calm and consistent, and that it was only when touching on the subject of his delusions, that he was excited and incoherent. His insanity was not of the kind which would deprive him of the second condition of capacity to testify (§ 496), and it is the third only, in regard to which there could have existed any reasonable doubts; and these were obviated more or less satisfactorily, by the above-mentioned circumstances.[1]

§ 501. In a case which lately came before the court of sessions in New York, the principle we have contended for was adopted by the court. A gentleman by the name of Gracie labored under the delusion that various persons to him unknown, were entertaining designs against his life, and he had spent much money in attempting to discover the conspirators. Taking advantage of this delusion, a couple of rogues obtained money of him at different times, under pretence of aiding him in his researches, for which practices they were finally indicted. On trial, their counsel resisted the admission of Mr. Gracie's testimony, on the ground of monomania; but the court decided that this objection applied only to his credibility, not to his competency.[2]

§ 502. The view here taken of the competence of some monomaniacs, as witnesses, is not without some support in the legal profession. "Of an insane person," says Mr. Evans, "it might, for defect of other evidence, merit to be

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[1] For the facts of the above case, the author is indebted to the kindness of J. G. Reed, Esq., of Waldoborough, Me., who was the defendant's counsel.

[2] Boston Semi-weekly Advertiser, July 15, 1843.

considered, whether, in civil cases at least, the testimony of such might not be admissible upon points where his understanding did not appear to be subject to disturbance; it being well known that in many of these melancholy instances, especially when the result of some violent passion, the party affected is entirely cool, clear, and collected in his ideas, and as free as other persons from the delusions of a perverted imagination, in every thing not connected with the cause of his insanity; with regard to persons who have only temporary fits of madness (those usually termed lunacy), and at other times are in all respects sound of reason, these are then considered as capable of testimony as of any other legal act."[1]

§ 503. If the evidence of the monomaniacs in question be rejected, it must be from a fear of deception; and, probably, most of the distrust manifested towards such witnesses arises from a lurking suspicion, that their mental impairment is necessarily accompanied with impaired veracity. It cannot be denied that there is some ground for this suspicion, and though it should not have the effect of totally invalidating their testimony, it is proper to bear it in mind whenever their credibility is in question. It is well known how prone the inmates of lunatic asylums are to complain of the servants, the overseers, and one another, and prefer against them special charges that are without any foundation whatever; whether from an involuntary propensity to lying and mischief, or from a morbidly exalted imagination, which distorts and discolors its perceptions, it is not easy to decide. Some, however, will relate very accurately what they see and hear, and their statements are received with implicit credit. On the whole, we may conclude with Georget, "that it is necessary to know the patient, the character of his madness, his customary relations to surrounding objects, before we can know what degree of confidence to place in his assertions." It should not be forgotten, also, that in the greater proportion of cases of mental de-

[1] Pothier on Obligations, Appendix, 259

rangement, there is a weakness of memory that prevents it from retaining impressions so long and so faithfully, as when in its sound condition; and, therefore, the facts to which a monomaniac testifies, should always be of recent occurrence, to render his testimony at all credible.

§ 504. Since the second edition of this work was published, a case (*Regina* v. *Hill*) (1851) has been decided in England, sustaining the above views, by implication, at least, in all their length and breadth, and a little more. The considerations which induced the court thus to reverse what seemed to be a well-settled principle, had reference, less to the nature and degree of the witness's mental impairment, than certain technicalities of legal procedure. As the case is destined, no doubt, to be a leading one on this point, it will be proper to notice it here. Hill, it seems, was an attendant in a private asylum, and was committed on a charge of manslaughter, for causing the death of one of the patients, by violent ill-treatment. At the trial before the central criminal court, London, the principal witness relied upon by the government, was Donelly, also a patient in the asylum. In reply to the inquiries of the prisoner's counsel, before being sworn, he stated that he had within him twenty thousand spirits, but they were not all his; that his ascended from his stomach to his head and ears; that they spoke to him incessantly and were speaking to him at that moment; that they were immortal and would live after he was in his grave; that they came from various directions and from various persons, — some from the Queen, who frequently visited him. He believed that after death, his spirit would ascend to heaven or remain in purgatory. He said he understood the meaning of an oath, having learned from his catechism, in infancy, that it was lawful to swear for God's honor and his neighbor's good. He considered an oath as an obligation imposed upon men for the good of the law, and that if he took a false oath, he would go to hell to all eternity. He was then sworn, and gave a perfectly connected and rational account of the abuse inflicted by the prisoner on the deceased, and which was supposed to have led to the death of

the latter. *He* thought it occurred on a Monday, but the *spirits* told him that it was on Tuesday. The incidents of the transaction were not told him by the spirits, but witnessed by himself. The jury returned a verdict of guilty, but the case was reserved, in order that the opinions of the full bench might be taken, on the competence of Donelly. On the 3d of May, 1851, the chief justice, Lord Campbell, delivered the opinion of the court, unanimously sustaining the decision of the judge at the trial. He declared "the proper rule to be, for the judge, at the time the party is produced as a witness, to examine him whether he understands the nature of an oath, and say whether he considers him a competent witness, and then leave it to the jury to estimate the value of his testimony. He may be cross-examined as to the state of his mind, and witnesses may be called to prove that his mind was so diseased that no reliance can be placed upon his statements; but in the absence of evidence to discredit his testimony, it would be competent for the jury to hear what he said, and to act upon it."

§ 505. It will be observed that the question made by the court in this case, was, whether the witness was capable, notwithstanding his disease, of comprehending the nature of an oath; not whether his disease necessarily incapacitated him from giving testimony. The latter consideration was regarded as affecting his credibility alone; and how far it had this effect, was a point for the jury to decide. Instead of the four conditions of competency indicated by Hoffbauer (§ 496), all having direct reference to the object in view, the court here insists upon only one, and that very remotely connected with this object. This, certainly, is to disregard old maxims and enlarge the competency of the insane to testify, to an extent hardly warranted by our knowledge of insanity. Many an insane person who could perfectly understand the nature of an oath, as well as any other abstract question in morals or religion, would be utterly unreliable as a witness of things which had come under his own observation. None but those who are practically conversant with the insane, can have an adequate conception of their liability, both to receive

erroneous impressions from what passes around them, and to falsify what they really and correctly perceive. After habits of the closest intimacy with the insane, continued through many years, I am led to the conclusion that those who converse so correctly and shrewdly with the transient visitor, and never forget the common observances of life, are scarcely more capable of reporting truly what they see and hear, than those who cannot utter a single coherent sentence. The most circumscribed delusions, after having existed for a considerable time, are generally accompanied by a mental condition in which the most ordinary impressions are very imperfectly perceived. It would be difficult to characterize precisely the deficiency in question, because it differs, probably, in different individuals. It would seem as if in some, the impression were mingled with and distorted by the delusion, while in others, it does not receive the degree of attention necessary for fixing it firmly and clearly in the mind. Thus, without the least disposition to deceive, their statements are apt to be wide of the truth. In that other class of the insane, also, whose disorder is characterized by mental excitement and impropriety of conduct, while they entertain no delusions whatever, the competence to testify is completely annulled by an irresistible propensity to exaggerate and color, and frequently to lie without limitation or scruple. Now it is hardly a satisfactory answer to these objections, to say that these traits of the insane would be duly considered by the jury when brought to their notice, and that the only difference between us, is, that in one case it is the judge, and the other the jury, that decides the question of competency. The evidence, if coherently and plausibly given, will leave an impression upon the jury, though experts may testify that the witness is not reliable, and the instructions of the court may imply the same opinion. It does not appear that the credibility of the witness in the present case was impeached in the slightest degree, while, on the other hand, a physician and some other witnesses thought him capable of giving a correct account of any transaction he may have observed. All this may have been, in effect, quite correct, and the punishment of

the offender well merited, but unless the physician were familiarly acquainted with the witness, his opinion ought not to have affected the general presumption against the evidence of this class of patients.

§ 506. It was assumed, both by the judges and the medical witnesses, that Donelly's insanity was circumscribed within very narrow limits, and that beyond the sphere of his delusions, his mind performed its customary office as well as ever. This position is unwarranted, certainly, by the statement of his case, given above, which shows a kind and degree of mental impairment that must have affected the power of receiving impressions, and recalling them precisely as they occurred, unmixed with freaks and fancies; of forming general conclusions; and appreciating the nature and consequences of legal testimony. It is not uncommon to see insane persons in the chronic stage of disease who show, in their ways, manners, modes of thinking and feeling, a very obvious degree of mental impairment, sufficient to destroy all confidence in their testimony on a disputed point, but whose delusions are few and limited to a narrow range.

§ 507. It may not be out of place to notice one of the reasons offered by the court for admitting the testimony of Donelly, namely, that under a different rule, patients in asylums would be at the mercy of their attendants. It is quite as obvious that under the rule of the court, the attendants would be at the mercy of the patients; and if this were clearly understood, the most respectable and trustworthy attendants in our asylums, would seek some other calling immediately.

§ 508. Another consideration upon which the court relied, ought not to be passed over in silence, because it evinces a mistake not unfrequent among persons who have no professional knowledge of the subject. A rule which would exclude this witness, said the court, merely because he thought he had twenty thousand spirits, would equally have excluded Socrates, who believed that a spirit always haunted him. If there were to be no distinction between a gross delusion admitted to be the offspring of disease, and a notion which,

however opposed to the general belief of mankind, is the deliberate deduction of an acute and healthy mind, then, certainly, the *reductio ad absurdum* would be fairly made out. But where is the warrant for disregarding a distinction which the world has always made? In one instance, the witness is deemed to be incompetent, because laboring under a mental disease which is indicated by strong delusion as well as by other traits of character; in the other, the witness is admitted because of the unquestioned soundness of his mind, as evinced by its ordinary manifestations, though accompanied by a notion which may be extravagant but not absurd. In short, the two cases are separated by all the difference between health and disease, which, however difficult to be discerned sometimes, is obvious enough between Socrates and Donelly.[1]

§ 509. In the subjects of general mania, all competence to testify is lost, except during what is called the lucid interval, when they may testify in regard to transactions that occurred during a lucid interval, or at a time previous to their illness. Their evidence should be implicitly received, only when it relates to simple facts easily perceived, for their intellect may be hardly strong enough to bring to mind and expose in order, a complicated mass of details.

§ 510. In partial moral mania, there is nothing to incapacitate one from testifying, unless we except that kind of it where the individual labors under an uncontrollable propensity for lying. Of all the forms of mania, this really diminishes competence more than any other, but it will be long, probably, before it will be considered in this light, in courts of justice.

§ 511. In general moral mania, it has been seen that the intellectual powers are not perceptibly impaired, and that the patient loses none of his interest in what passes around him, nor of his power to observe and remember them with ordinary distinctness. Under such circumstances, there

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[1] 15 Jurist, 470; Law Reporter, N. S. iv. 141; American Journal of Insanity, vii. 386; 2 Dennison, Crown Cases, 254.

would be little reason for rejecting his evidence on the score of incapacity. Considering, however, the great derangement of the affective powers under which he labors, and the unfounded likes and dislikes which it produces, his veracity may be justly suspected, and his evidence should be entitled to little weight, except when limited to facts in regard to which it can be shown that his feelings are not interested.

§ 512. The competence of old men in the early stages of dementia to testify, is a point frequently discussed in courts of justice, and the want is severely felt, of some fixed principles that shall serve as a guide to correct decisions. In every stage of this affection, the impairment of the memory is more perceptible in regard to recent than remote impressions, and it often happens that a person may have a distinct recollection of things that occurred in his youth, while those of a month's or a year's date, are but imperfectly remembered, if at all. To test the strength of his memory respecting certain things, it is only necessary to ascertain if he remembers various other transactions of about the same date, in which he is known to have been engaged. If he can do this, it is a strong presumption in favor of his competency; if not, it is incumbent on the party offering his testimony to show why his memory should have been more faithful in the one case than in the other. This is rendered still more necessary by the fact, that the weakness of mind incident to this condition makes its subjects more easily swayed by the suggestions of others, and leads them to believe that they remember what they are told they ought to remember, or what they are assured they actually did remember till within a recent period. The slightest examination will show how much dependence can be placed on their recollections of recent events.

CHAPTER XXVI.

DRUNKENNESS.

§ 513. BEFORE we can properly appreciate the legal consequences of drunkenness, it is necessary to understand its immediate and remote effects on the mind, and the organism with which it is connected. Correct information of this kind will enable us to avoid many of the prevalent errors that have arisen from vague and imperfect notions respecting the nature of drunkenness. We shall first consider the symptoms, or immediate effects, of free indulgence in intoxicating drinks; for the following account of which we are chiefly indebted to Hoffbauer and Macnish.[1]

§ 514. The first effect of alcoholic liquors is to exalt the general sentiment of self-satisfaction, and diffuse an unusual serenity over the mind. The intellectual as well as physical powers act with increased vigor and activity, the thoughts flow with more facility and accuracy, and the individual becomes perfectly well pleased with himself and others. He feels an exhilaration of spirits, a sense of warmth and gaiety, and his imagination is crowded with delightful images. The sight and hearing are very slightly affected; a low, humming sound is heard in the pauses of the conversation; and objects are enveloped in a slight mist which prevents them from being seen distinctly. Thus far there is no appearance of drunkenness. Soon the torrent of his ideas becomes more rapid and violent, and he can scarcely repress them. This is the moment of his happiest sallies, and he pours forth his thoughts with a force of expression and a richness of concep-

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[1] Anatomy of Drunkenness.

tion unknown in his sober hours, and now he feels the ecstatic pleasures of getting drunk. As yet the brain is in tolerable order, though a great effort is necessary to relate a story or transaction at all complicated in its details, for the thoughts succeed one another too rapidly, to allow sufficient time to arrange them in the order that the recital requires. This is the first well-marked symptom of intoxication. Now his ideas succeed one another with constantly increasing force and rapidity; his sensations lose their ordinary delicacy; and his imagination gains as fast as they lose. His language is, in some respects, more oratorical and poetical, and though he now feels an irresistible propensity to talk nonsense, he is perfectly conscious, all the while, that it is nonsense. His voice is louder, because he hears less acutely, and judges of the hearing of others by his own. Now the organic activity of the brain is at its height. His imagination is filled with strange and queer images, and he is conscious, if so it may be called, of a sense of oppression and giddiness in his head. His perceptions of color, form, distance, and number become utterly confused; he confounds one person with another; the candles burn all colors in succession, and are multiplied fourfold; and in stretching forth his glass to set it on the table, he lets it go before reaching its edge. He is apt to imagine, either that he has offended some one, and shows a ludicrous anxiety to apologize, or that he has been offended and fixes upon some one as the object of his maledictions, perhaps his blows. Judging from his discourse, his ideas begin to want connection, notwithstanding their vivacity, but this vivacity and rapidity of his ideas give to his passions an insurmountable power, against which reason has nothing to oppose, and unless some accident divert him from their object, he is hurried on wherever they impel him. Soon his tongue stammers and his voice gets thick; his legs falter; he falls from his seat; and is plunged into a profound sleep, in which the manifestation of his physical and intellectual powers is completely extinguished. In this condition, he is said to be dead drunk. Such is the ordinary course of a fit of drunkenness, but it sometimes varies, more or less, with the tem-

perament or habits of the individual, and the attending circumstances.

§ 515. Such is the immediate effect of drunkenness on the mind; we have now to show how the long-continued and excessive use of alcoholic liquors affects the moral and intellectual powers. Except in some happily organized natures, the original delicacy and acuteness of the moral perceptions are invariably blunted; the relations of neighbor, citizen, father, spouse, have lost their accustomed place in his thoughts; great moral interests no longer obtain a strong hold on his attention; the voice of distress is apt to fall on his ear like an unmeaning sound; and the finer emotions of the soul, which will occasionally be felt by the least cultivated minds, have entirely deserted his nature. The injury sustained by the intellect is more obvious, if not more deplorable. The course of the ideas is sluggish, and they want their former force and brilliancy; the mind has lost its comprehensiveness of grasp, and experiences a difficulty in seizing the relations of one idea to another; it is incapable of the long-continued efforts which were once easy, and of concentrating the whole force of its faculties on the subjects submitted to its examination. In consequence, too, of the brain having been so much accustomed to artificial stimulus, according to a well-known law of the animal economy, it becomes incapable of an effort without the aid of this stimulus, which is necessary to the performance of even its most ordinary exercise. Drinking is thus made an indispensable habit, and by this means, it sometimes happens that the tame, cold, and lifeless being, as if touched by a spark of Promethean fire, is converted into the animated, sociable, and efficient man of his better days. Sheridan never spoke in the House of Commons without the inspiration of half a pint of brandy; and numberless are the heroes of the buskin and the sock, who require to be wound up, as it were, to a certain pitch, by artificial stimulus, before they venture to undertake the labors of the night.

§ 516. This account of the pathological effects of drunkenness would be incomplete, without some mention of that

curious disease to which it often leads, called *delirium tremens*, or *mania a potu*. It may be the immediate effect of an excess, or series of excesses, in those who are not habitually intemperate, as well as in those who are; but it most commonly occurs in habitual drinkers, after a few days of total abstinence from spirituous liquors. It is also very liable to occur in this latter class when laboring under other diseases, or severe external injuries, that give rise to any degree of constitutional disturbance. The approach of the disease is generally indicated by a slight tremor and faltering of the hands and lower extremities, a tremulousness of the voice, a certain restlessness and sense of anxiety which the patient knows not how to describe or account for, disturbed sleep, and impaired appetite. These symptoms having continued two or three days, at the end of which time they have obviously increased in severity, the patient ceases to sleep altogether, and soon becomes delirious. At first, the delirium is not constant, the mind wandering during the night, but, during the day, when its attention is fixed, capable of rational discourse. It is not long, however, before it becomes constant, and constitutes the most prominent feature of the disease. Occasionally, the delirium occurs at an earlier period of the disease, and may even be the first symptom of any disorder. This state of watchfulness and delirium continues three or four days, when, if the patient recover, it is succeeded by sleep, which, at first, appears in uneasy and irregular naps, and, lastly, in long, sound, and refreshing slumbers. When sleep does not supervene about this period, the disease is fatal; and whether subjected to medical treatment, or left to itself, neither its symptoms nor duration are materially modified.

§ 517. The character of the delirium in this disease is peculiar, bearing a stronger resemblance than any other form of mental derangement, to dreaming. It would seem as if the dreams which disturb and harass the mind during the imperfect sleep that precedes the explosion of the disease, continue to occupy it when awake, being then viewed as realities, instead of dreams. The patient imagines himself,

for instance, to be in some peculiar situation, or engaged in certain occupations, according to each individual's habits and profession; and his discourse and conduct are conformed to this delusion, with this striking peculiarity, however, that he is thwarted at every step, and is constantly meeting with obstacles that defy his utmost efforts to remove. Almost invariably, the patient manifests, more or less, feelings of suspicion and fear, laboring under continual apprehension of being made the victim of sinister designs and practices. He imagines that certain people have conspired to rob or murder him, and insists that he can hear them in an adjoining apartment, arranging their plans and preparing to rush into his room; or that he is in a strange place, where he is forcibly detained and prevented from going to his own home. One of the most common hallucinations is, to be constantly seeing devils, snakes, vermin, and all manner of unclean things around him and about him, and filling every nook and corner of his apartment. The extreme terror which these delusions often inspire, produces in the countenance an unutterable expression of anguish, and, in the hope of escaping from his fancied tormentors, the wretched patient endeavors to cut his throat, or jump from the window. Under the influence of these terrible apprehensions, he sometimes murders his wife or attendant whom his disordered imagination identifies with his enemies, though he is generally tractable and not inclined to be mischievous. After perpetrating an act of this kind, he generally gives some illusive reason for his conduct, rejoices in his success, and expresses his regret at not having done it before. So complete and obvious is the mental derangement in this disease, so entirely are the thoughts and actions governed by the most unfounded and absurd delusions, that if any form of insanity should absolve from criminal responsibility, this certainly should have that effect.

§ 518. Persons much conversant with the subjects of delirium tremens, have recognized a phasis of this disease differing materially from its ordinary type. "It occurs most frequently in such persons as have from any cause been

induced or obliged to abstain from the use of ardent spirits for a considerable time, and have again had free access to them. Hence it is often seen in sailors after a long voyage, or in those who have been permitted to go on shore from a vessel of war for a few days. But it may also occur in any intemperate person, who, without having previously intermitted the use of spirits, has been tempted to a course of unusual indulgence for several days in succession. Thus it is very common in those who are taken up in a state of intoxication by the civil authority, and committed to almshouses or houses of correction for actual drunkenness. This form of the disease is usually denominated by the vulgar, the 'Horrors,' but the same name is frequently given to the other more severe and aggravated cases. A considerable number of cases of this description fell under my observation at the Boston almshouse when that place was made the receptacle of persons taken up in a state of intoxication. The usual symptoms of delirium manifested themselves in a period varying from a few hours to one or two days from the time of entrance. They were not less severe, not less distinctly marked than those which occur in the more important cases; but the paroxysm did not uniformly continue for so great a length of time. It sometimes subsided spontaneously in twenty-four hours, though more frequently running out to the full length which has been spoken of as common to the disease generally."[1] It is added that in this form of the disease, the patient always recovers.

§ 519. Before being able to decide the question understandingly, of the relation of drunkenness to moral agency, it is necessary to proceed one step further in this investigation, and inquire into the pathological, or, as it is technically called, the *proximate* cause of drunkenness. No impressions, whether from within or without, can affect the mind, but through the brain. In drunkenness, therefore, it is this

[1] History and Treatment of Delirium Tremens, by John Ware, M. D. 1831, p. 17. An admirable monograph characterized by good sense and sound philosophy.

organ which is principally affected, and that portion of it more particularly which is connected with the manifestation of the moral and intellectual powers. The vital actions of which it is the seat, receive an increased share of activity, so that every process that goes on, is conducted with fresh energy and speed. Drunkenness, however, depends on something more than mere increase of cerebral action, because it varies, in some degree, with the nature of the intoxicating agent, but what this specific action is exactly, it is impossible for us to know. As the fit proceeds, this increase of action continues, until it arrives at such a pitch, that the organ is unable to perform its functions properly; hence, the disorder and tumult of mind that attend the last stages of the fit. The torpor and exhaustion that follow, are the natural consequence of the previous excessive stimulation, and the one is generally proportioned to the other. This increased action that takes place in drunkenness, degenerates, after frequent repetition, into a permanent state of irritation which, at last, becomes real inflammation. The coats of the vessels are thickened and less transparent than usual, and, in some pláces, they assume a varicose appearance. The cerebral texture is less delicate and elastic, becoming either unnaturally hard, or soft. Slight effusions of water are not uncommon. These appearances, to a more or less extent, are found in the brains of nearly all confirmed drunkards, and it may be now considered a well-established fact, that the habitual drunkard has always more or less of cerebral disease.

§ 520. Obviously as these pathological changes are the effect of a long-continued voluntary habit, there is strong evidence in favor of the idea that they, in turn, become efficient causes, and act powerfully in maintaining this habit, even in spite of the resistance of the will. So deplorably common has drunkenness been in this country, that there are few who have not seen the melancholy spectacle of the most powerful motives, the most solemn promises and resolutions, a constant sense of shame and danger, bodily pain and chastisements, the prayers and supplications of friend-

ship, of as little avail in reforming the drunkard, as they would be in averting an attack of fever or consumption. With a full knowledge of the dreadful consequences to fortune, character, and family, he plunges on in his mad career, deploring, it may be, with unutterable agony of spirit, the resistless impulse by which he is mastered. Macnish relates the case of a young man of fortune, twenty-six years old, which presents an impressive illustration of this truth. "Every morning before breakfast," he says, "he drank a bottle of brandy; another he consumed between breakfast and dinner, and a third, shortly before going to bed. Independently of this, he indulged in wine and whatever liquor came within his reach. Even during the hours usually appropriated to sleep, the same system was pursued — brandy being placed at the bed-side for his use in the night time. To this destructive vice he had been addicted since his sixteenth year; and it had gone on increasing from day to day till it had acquired its then alarming and incredible magnitude. In vain did he try to resist the insidious poison. With the perfect consciousness that he was destroying himself, and with every desire to struggle against the insatiable cravings of his diseased appetite, he found it utterly impossible to offer the slightest opposition to them." [1] Another, whose case he quotes, replied to the remonstrances of his friend, who painted the distresses of his family, the loss of his business and character, and the ruin of his health, "My good friend, your remarks are just; they are indeed too true; but I can no longer resist temptation. If a bottle of brandy stood at one hand, and the pit of hell yawned at the other, and I were convinced that I would be pushed in as sure as I took one glass, I could not refrain. You are very kind; I ought to be grateful for so many kind, good friends, but you may spare yourselves the trouble of trying to reform me; the thing is out of the question." [2]

§ 521. These phenomena strongly remind us of some of the manifestations of moral mania, and if further evidence is

[1] Anatomy of Drunkenness, 163. [2] Idem, 162.

necessary to convince us that they are both connected with similar pathological conditions, it is abundantly furnished in some other phenomena of drunkenness. It is now well understood that this vice sometimes assumes a *periodic* character, persons indulging in the greatest excesses periodically, who are perfectly sober during the intervals which may continue from a month to a year. From a state of complete sobriety, they suddenly lapse into the most unbounded indulgence in stimulating drinks, and nothing but absolute confinement can restrain them. Macnish who saw several cases, says that they "seemed to be quite aware of the uncontrollable nature of their passion, and proceeded systematically, confining themselves to their room, and procuring a large quantity of ardent spirits. As soon as this was done, they commenced and drank to excess till vomiting ensued, and the stomach absolutely refused to receive another drop of liquor. This state may last a few days or a few weeks, according to constitutional strength, or the rapidity with which the libations are poured down. So soon as the stomach rejects every thing that is swallowed, and severe sickness comes on, the fit ceases. From that moment recovery takes place, and his former fondness for liquor is succeeded by aversion or disgust. This gains such an ascendency over him, that he abstains religiously from it for weeks, or months, or even for a year, as the case may be. During this interval he leads a life of the most exemplary temperance, drinking nothing but cold water, and probably shunning every society where he is likely to be exposed to indulgence."[1]

§ 522. Esquirol has distinctly recognized this disorder,[2] both in its continued and periodical form, under the name of dipsomania; and attributing it to the influence of pathological changes, considers its unhappy victims as not morally responsible. This distinguished observer of mental affections affirms, that "sometimes the abuse of intoxicating drinks

[1] Op. cit. 36.

[2] Note in Hoffbauer, § 195, and Maladies Mentales, ii. 80.

and drunkenness are the first symptoms, or rather the most prominent symptoms, of the first stages of madness;" that "the stomach being in that peculiar condition which produces an extremely painful, moral, and physical depression, craves strong drink;" that "this craving is imperious and irresistible;" that "it continues as long as the paroxysm, after which the patient becomes sober and assumes all the habits of a temperate life." He also says, that these people "obey an impulse which they have not the power of resisting;" that they are "true monomaniacs;" and that if carefully observed, we shall find in them "all the characteristic features of partial madness." In illustration of his views he relates the following case. "M. N., a merchant, aged about forty, of a robust but nervous constitution, became, six years before, towards the beginning of autumn, gloomy and disquieted, in consequence, apparently, of some reverses in his affairs. After a few weeks, he neglected his business, and became irritable and ill-tempered in his family. His taste and habits changed; he took to drinking, and seriously endangered the safety of his fortune and his family. The prayers and tears of his wife and children, the authority of his father, and the inroads upon his property, were equally unavailing in checking his career. Thus passed the winter; at the approach of spring, the craving for drink ceased. M. N. resumed his regular and sober habits, and by his application to business and increased tenderness towards his family, he endeavored to forget the occurrences of the past winter. In the following autumn there appeared the same phenomenon, the same disorders, and the same spontaneous cure in the spring. It was the same for the two following years, except that the symptoms were so aggravated, that his property suffered severely, and his wife's life was sometimes endangered. At the end of his fourth paroxysm, in 1817, M. N. came to Paris to consult me and submit to my directions, conjuring me to deliver him from a disease that rendered him the most miserable of men." Esquirol subjected him to a course of medical treatment, and in August sent him off on a journey into Italy. That year he escaped, except that in December he

manifested a slight desire to drink, but found himself able to resist, and never afterwards had a return of his complaint. He also relates the case of a lady who, after being melancholy for six weeks, with weakness of the stomach, and indisposition to take the least exercise, was suddenly seized with the strongest craving for spirituous drinks, together with sleeplessness, agitation, disturbance of mind, and perversion of the affections. For six years, these symptoms made their appearance annually, and continued two months.

§ 523. A case is related of a Parisian bookbinder, sixty years old, who for fifteen years was afflicted with periodical drunkenness, having previously been a model of sobriety and virtue. The paroxysm lasted two or three months with an interval of equal duration. M. Pierquin, the narrator of the case, observed him closely for the space of two years, and found that his daily habit was, to rise at five or six o'clock in the morning, take some money out of the till, and hasten to the nearest cabaret, where he would drink incessantly, until ten or eleven o'clock. He would then stagger home, go down into his cellar, bring up some large bottles of wine, and drink night and day, seldom sleeping, and very rarely eating. During the early period of the attack, he would go to the cabaret, forenoon and afternoon; but during the last eighteen or twenty days, he never went from home. Then he became reserved, passionate, avoiding the light, and seeking the darkest corner of the kitchen. He was never observed to be delirious, nor deranged in mind, but would answer questions correctly, and follow the train of conversation. The paroxysm ended in a profound sleep, from which he would awake in his sober senses, and resume his avocations as if he had just quitted them the preceding evening, being unconscious, or pretending to be so, of any thing that had occurred.[1]

§ 524. It can scarcely be doubted, that the above cases originated in pathological changes; and there is also another class of cases which strongly point to the same origin, and

[1] Journal des Progress, etc. xi.

present a close affinity, both in this respect, and in that of their symptoms. In the cases referred to, the persons, who are habitually sober, are irresistibly impelled to indulge in the reckless, unlimited use of intoxicating drinks, whenever agitated by strong moral emotions. The author was once acquainted with a very amiable, intelligent, and virtuous young seaman, who, by means of strict attention to his duties, his staid deportment, and his knowledge of navigation, rose to the command of a ship, at a very early age. During his second voyage as captain, while in a foreign port, in a hot climate, some circumstances occurred, which subjected him to considerable fatigue, exposure, and great anxiety of mind, and seriously affected his health. By this and some other things which took place on the passage home, his mind was so disturbed, that this young man who hardly knew the taste of ardent spirits, suddenly abandoned himself to the wildest excesses. The fit continued till within a few days of their arrival at port, during which time he was totally unconscious of what was going on, and the first officer took charge of the vessel. The same scenes again occurred the next voyage, and he lost his employment; but with these two exceptions, no man living practised more rigid abstinence from every kind of intoxicating drink. Nothing could tempt him to the slightest indulgence, and he evinced the strongest repugnance to all spirituous liquors of whatever kind. The author also knew another young man of similar character, who rose in a similar manner to the command of a ship; but no sooner did he reach this reward of his merits, than he began to drink with all the recklessness of an old toper. As soon as he was degraded to an inferior station, no man could be more temperate, and this appearance of reform each time encouraging his friends with the hope, that he had abandoned his bad habits altogether, they would restore him to the station he had lost, to be again and again forfeited by his mad propensity. In these cases, it seems as if the anxiety arising from a sense of heavy responsibility, and from adverse circumstances, produced an irritation, if not inflammation of some portion of the brain, — of that which, if

phrenology be true, is connected with the appetite of hunger and thirst.

§ 525. Esquirol mentions the case of a servant girl in the Salpétrière, who, upon the slightest cross or contradiction, began and continued to drink until prevented by strict seclusion. If not prevented in time, she got drunk, became furious, and attempted suicide.[1]

§ 526. Marc observes that dipsomania sometimes occurs in women at the turn of life, as it is called, as a result of the important physiological changes, which, at that period, take place in the female constitution. He has met with many examples of it in women who previously had exhibited all the virtues of their sex, and especially temperance.[2]

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[1] Des Maladies Mentales, ii. 73. [2] De la folie, etc. ii. 605.

CHAPTER XXVII.

LEGAL CONSEQUENCES OF DRUNKENNESS.

§ 527. Before we undertake to estimate the legal responsibilities of drunkards, it will be necessary to retrace our steps for a moment, in order to ascertain what is the exact state of the mind while under the immediate influence of intoxicating drinks; and for this purpose we shall distinguish, with Hoffbauer, three degrees or periods of drunkenness. In the first degree, to use in some measure the language of this writer, the ideas are only uncommonly vivacious; consequently the empire of the understanding over the actions is so little weakened, that the individual perfectly retains the consciousness of his external condition, and in fact may be said to be in complete possession of his senses. Still this rapid flow of ideas is unfavorable to reflection, and there also accompany it great irritability, and activity of the moral emotions. It must be remembered, however, that anger is more rare in this degree of drunkenness, in consequence of the self-satisfaction which the person enjoys, and which renders him more patient; but, on the other hand, some previous circumstances that may have increased his susceptibility, even the sallies of a wild gayety, or a simple dispute of words, though conducted with courtesy, strongly dispose him to transports of passion. Still, as long as drunkenness does not exceed the first degree, the passions can be repressed. In the second degree of drunkenness a man has still the use of his senses, though they are remarkably enfeebled; but he is entirely beside himself, memory and judgment having abandoned him. He acts as if he lived only for the present, with no idea of the consequences

of his actions, nor their relations to one another. The past has gone from his mind, and he cannot be influenced by considerations which he no longer remembers. He conducts himself as if no control over his actions were necessary. The slightest provocation is sufficient to awaken the most unbounded rage. He is, therefore, not unlike the maniac, and can be responsible for his actions only so far as he is for his drunkenness. In the last degree, he not only loses the possession of his reason, but his senses are so enfeebled, that he is no longer conscious of his external relations. In this condition he is more dangerous to himself than to others.

§ 528. In the first stage of drunkenness, it is obvious that the legal relations of the individual cannot be affected, inasmuch as he has lost none of the ordinary soundness of his judgment. In the second and third stages, so much are the soundness of his understanding and clearness of his perceptions impaired, and his passions excited, that he acts more or less unconsciously and without deliberation. But since drunkenness is itself a sin, it becomes a question, how far a person's liability for the consequences of his acts in that state, can be affected by a condition which is itself utterly inexcusable.

§ 529. The common law of England has shown but little disposition to afford relief from any of the immediate consequences of drunkenness, either in civil or criminal cases. It has never considered mere drunkenness alone a sufficient reason for invalidating a deed or agreement, except when carried to that excessive degree which deprives the party of all consciousness of what he is doing. Courts of equity, also, have strenuously refused their relief in moderate drunkenness, unless it were procured by the contrivance of the other party, or were made the means of obtaining some unfair advantage.[1] The general doctrine to be derived from modern English decisions is, first, that moderate drunkenness does not necessarily deprive the mind of the power of rational consent, is not always apparent to others, and ought

[1] Story, Commentaries on Equity, 1, § 232.

not, of itself, to avoid any deed or contract; secondly, that inasmuch as excessive drunkenness deprives a person, more or less, of the consciousness of what he is doing, and is perfectly obvious to every one, all acts executed while in this condition may be avoided at law on the ground of incompetency, and in equity, on that of fraud.[1] Nothing, certainly, can be fairer than this, since it equally guards the interests of the drunken party, and of those who deal with him. In this country, the English practice has been followed,[2] and in France the courts have been governed by similar views.[3] Writers on natural and public law have regarded drunkenness under any circumstances, as a sufficient cause for avoiding any acts that may have been executed under its influence, upon the principle that the free and deliberate consent of the understanding is essential to the validity of such acts.[4]

§ 530. It is the legal relations of drunkenness in regard to criminal acts, however, which more particularly require our attention. A remarkable diversity of views has prevailed on this point at different times and among different nations, and it would certainly be a curious, if not useful inquiry, to investigate the peculiar circumstances that have given rise to it. Respecting the principles and practice of the ancient Greeks on this subject, we know but little more than that Solon condemned to death a drunken Archon; and that by a law of Pittacus, he who committed a crime when drunk, was to receive a double punishment, — one for the crime itself, another for the drunkenness in consequence of which it was committed.[5] The Roman law contains no general provision on the subject, but in practice it had the effect of depriving a criminal act of the quality of malicious intention, and thus lessening the amount of punishment.[6] In

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[1] *Shaw* v. *Thackeray*, 23 Eng. Rep. 21.

[2] Amer. Jurist, xxi. 6.

[3] Pothier, Traitè des Oblig. by Evans, 26.

[4] Puffendorf, Law of Nat. and Nat. ch. 4, § 8.

[5] Bruning's Compend. antiquatat. graecar. C. 2, p. 20.

[6] Mittermaier, Effect of Drunkenness upon criminal responsibility. Amer.

the canon, imperial, and common criminal law of Germany, drunkenness was viewed as a ground of extenuation, and in the sixteenth century, writers began to distinguish its various kinds, and discriminate between their legal consequences. Excessive drunkenness was regarded as exempting from the punishment of *dolus*, intentional injury, though not from that of *culpa*, fault; unless it were intentional, or preceded by a consciousness that it might lead to crime, in which case it was to have no exculpatory effect. When not so severe as to deprive the subject of the use of reason, it was to receive no consideration. These views, which gradually determined the German practice, prevailed also in the practice of Italy, Spain, Portugal, Holland, and the Netherlands.

§ 531. Modern legislation, in Germany, remains true to the old practice on the subject of drunkenness. In the Austrian code of 1803, § 2, lit. c, it is made a ground of exculpation from responsibility, when not produced with a view of committing the crime. In the Prussian Landrecht, p. ii. tit. 20, § 22, it is intimated, that a criminal act, committed in a state of drunkenness which originates in fault, is punishable for the fault only; and a case has been mentioned, where a man who killed his child in a drunken fit, was punished by only one year's imprisonment. In the Bavarian code, art. 121, "inculpable disorder of the senses, or of the understanding," which includes drunkenness, is mentioned as one of the grounds that exempt from responsibility. But if it be intentional, and for the purpose of committing the crime, the code expressly declares, art. 40, that it shall be no ground of exculpation. In the revised project of the Bavarian code of 1827, art. 67, the above-quoted language is retained, with the exception of the word "inculpable." The Hanover project, art. 99, contains the words of the code, with the following

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Jurist, xxiii. For the following notices of the law of Germany on this subject, we are also indebted to this article, in which the subject of drunkenness in connection with crime, is amply and ably discussed in the spirit of a learned and enlightened jurisprudence.

additional clause — "namely, in cases of the highest degree of inculpable drunkenness." Drunkenness is also mentioned generally as a ground of extenuation, art. 109. The Zurich project of 1829, art. 159, declares that one who commits a crime, in a state of inculpable drunkenness of the highest degree, is punishable in the same manner as if he were under legal age.

§ 532. Very different from this has been the legislation of France, England, and Scotland, into which these milder views of the legal consequences of drunkenness have never been suffered to enter. In France, an ordinance of Francis I. declares that it shall not in any case absolve from the ordinary punishment of crime. In the present penal code of that country, drunkenness is not mentioned, expressly or by implication, as a ground of exculpation. Accordingly in 1837, the court of cassation, which is the highest in the kingdom, and receives appeals from all other courts, formally decided that drunkenness being a voluntary and reprehensible state, could never constitute a legal or moral excuse. Many eminent French jurists, however, have lamented the deficiencies of the code on this subject, and contended for the introduction of milder principles. It has even been contended that the penal code, art. 64, which declares insanity, without distinction of any kind, to be a ground of entire exculpation, would justify the admission of drunkenness which produces a temporary insanity, among the grounds of extenuation. Within a few years, juries have availed themselves of the suggestion, although in affording relief in the only way they could, that is, acquitting the accused altogether, they have certainly gone too far. In the case of J. M. Erion, mentioned by Georget,[1] who was tried for an assault on his mother, he being intoxicated at the time, the verdict of the jury was, that he was guilty, but acted *involuntarily*. Consequently, he was discharged in virtue of the 364th art. of the code of criminal instruction, namely: "The court will discharge the accused if the act for which he is indicted is not

[1] Discussion médico-légale, 23.

prohibited by any penal law."[1] In another case the jury returned that the accused "was guilty, but acted without discernment and without will."[2]

§ 533. In England drunkenness has never been admitted as a ground of extenuation for any offences committed under its influence. "A drunkard who is *voluntarius demo*, hath no privilege thereby," said a learned expounder of the common law; "whatever ill or hurt he doth, his drunkenness doth aggravate it."[3] It is not strictly true, however, that drunkenness is an aggravating circumstance when attending the commission of real offences. It may be said more correctly, that it has no legal effect whatever, on any offence which it accompanies; it neither modifies its nature, nor increases its penalties. Nothing can be further from the spirit of English jurisprudence than the idea that drunkenness, unless produced by force or fraud, should afford any relief from the ordinary consequences of crime. Owing to the exclusive influence of this spirit, few are able to contemplate the milder views that have prevailed in some parts of Europe, with any other than feelings of deep distrust and aversion. The inevitable consequence thereof, it is alleged, is to increase the temptations to crime, and to obliterate some of the most important distinctions of morality. To one who comes to the examination of this subject with an unbiased and inquiring mind, it certainly is not very obvious how the views in question lead only to mischief. The ap-

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[1] The apparent want of connection between the discharge of the accused and the provisions of this article, is to be explained by a difference of procedure in French and English courts. The former, unlike the latter, permit the jury in criminal as well as in civil cases, to render a *special* verdict, and accordingly they found Erion guilty of the assault, but that having "acted involuntarily, he was guilty of no *crime*," and was entitled to a discharge from the court, as much as if he had been found by the same verdict, guilty of the assault, but *deranged*, and not acting voluntarily. The law makes no man responsible for an involuntary act, and drunkenness is not recognized as a circumstance that deprives acts of this quality, which are committed under its influence.

[2] Gazette des Tribunaux, 1828, nr. 839.

[3] Thomas's Coke's Littleton, 46.

prehension that men would intentionally make themselves drunk for the purpose of committing a crime with impunity, has hardly the shadow of a foundation. In the first place, the existence of the previous intention is liable to be detected; and again, if the accused be successful in concealing it, and his plea is admitted, still, at the very least, the penalty would probably be severe, for the drunkenness is merely a ground of exculpation. We do not apprehend, therefore, that men would abandon the ordinary method of committing crime, in secrecy and silence, for one that is sure to be followed by severe punishment — perhaps the very punishment they would avoid.

§ 534. While we are far from believing that these milder views manifest too much indulgence to drunkenness, we have no hesitation in saying that English jurisprudence has erred most widely in the other direction. The whole theory of the English law in regard to drunkenness, is founded on the fallacy, that because the act of drinking is voluntary, the person is responsible for whatever actions it may lead him to commit. An act that unintentionally leads to the commission of crime, is thus confounded with such as are deliberately designed to have this effect, — the distinction being utterly overlooked between what the law calls *culpa* and *dolus*, *fault* and *intentional injury* or *crime*. It is difficult to conceive why such a confusion of moral and legal distinctions should be — not overlooked — but actually acknowledged and defended, even at the present day. An essential element of crime is the previous intention, and unless the criminal act be accompanied by wrong intention, the author thereof is regarded by the laws of all civilized people, and even by the English law, except in a few instances, as guilty of *culpa*, not of *dolus*. We are not satisfied that there should be an exception to this principle, in the case of drunkenness. If a person who enters a stable with a lighted candle not properly protected, and carelessly drops it into a hay-mow, whereby the building is destroyed, is not deemed guilty of arson, no more should one who, in a fit of drunkenness, kills a fellow being without any previous intention so to do, be deemed

guilty of murder. True, the fault of drunkenness is far greater than that of carelessness, and consequently should be punished with proportionate severity; but the difference is one merely of degree. The doctrine of the common law would have a shadow of support, if drunkenness were really a crime of some magnitude; but it is not so regarded by the laws of England, and in most parts of this country it is no crime at all. The free, unembarrassed use of the reasoning powers is essential to responsibility; but while the contrary condition of these powers in insanity absolves its subjects from the legal consequences of crime, it is not permitted to have the same effect when produced and accompanied by drunkenness. It does not seem to be a sufficient reason for this distinction, that in the latter case, the loss of moral liberty is the voluntary act of the party, while in the former it is the effect of disease. In the first place, the only object which the drunkard has in view, is animal enjoyment; for the loss of his reason, though a certain result, is not the motive for his indulgence; and, secondly, the very insanity which *is* admitted in excuse for crime, may be, as in a very large proportion of cases it really is, the result of habits of drunkenness in which the party has voluntarily persisted. Where the moral guilt is very nearly, if not precisely equal, it seems unjust that the legal consequences should differ so widely, as they do in regard to criminal acts according as they are committed under the influence of drunkenness, or of that insanity which may be one of its direct results.

§ 535. Drunkenness, in reference to its moral and legal character, may be divided into three kinds, dolous or criminal, culpable, and inculpable. Bearing these distinctions in mind, we shall be able to arrive at more accurate notions in regard to the effect which this condition should produce on criminal responsibility. Dolous drunkenness is that which is deliberately produced for the purpose of committing a crime while under its influence, and is generally regarded as affording no relief from the ordinary punishment of that crime. Drunkenness is culpable when, though knowingly produced, it is accompanied by no previous criminal inten-

tion. Of course there must be various degrees of culpability, and the amount of punishment they severally require, must be determined by the circumstances of the case. The English law, however, as has been already observed, does not admit this kind of drunkenness as a ground of extenuation, though it would seem to be incompatible with one crime at least with which drunkards are often charged, that of murder, as defined by legal authorities. If, previous to the drunken fit, there were no design nor malice, which is essential to murder, we are obliged to suppose that it arose in the mind after it had been brought under the influence of drunkenness. But a mind which has lost the perfect use of its reasoning powers, cannot, without an unwarranted abuse of language, be deemed guilty of originating the feeling of malice. Lawyers have occasionally suspected that it is going too far to attribute malice to a mind under the influence of drunkenness, but until lately their doubts have never been suffered to affect their practice.

§ 536. Within a few years, there has been an obvious disposition, both in this country and England, to qualify the doctrine of the common law on this subject. It has been witnessed only in cases where the drunkenness might possibly have affected some essential element of the crime. Justice Holroyd decided, in 1819, that the fact of drunkenness might be taken into consideration in determining the question whether the act was premeditated, or done only with sudden heat and impulse.[1] This particular decision, however, was subsequently (1835), pronounced to be not law.[2] In 1837, it was stated by Baron Parke, that drunkenness may be taken into consideration in cases where what the law deems sufficient provocation has been given; because the question is, in such cases, whether the fatal act is to be attributed to the passion of anger excited by the previous provocation, and that passion is more easily excitable in a person when in a state of intoxication, than when he is sober. But he was

[1] *Rex* v. *Grindey*, 1 Russell on Crimes, 8.

[2] *Rex* v. *Carrol*, 7 Car. & Paine, 145.

careful to say that a previous determination to commit a certain criminal act being proved, drunkenness at the time of its commission, would furnish no excuse.[1] In a charge of assault with intent to murder, Justice Patterson told the jury that if they were not satisfied the prisoners had formed a positive intention of murdering the child, they might find them guilty of an assault.[2] In a later case (1849), Justice Coleridge said, "such a state of drunkenness [one which takes away the power of forming any specific intention] may, no doubt, exist."[3] Similar views have the more readily been adopted in this country, because often favored by the positive requisitions of the statute. Where murder in the first degree is defined to be wilful, deliberate, malicious and premeditated killing, it has been questioned whether the existence of these attributes is compatible with that of drunkenness. "The mental state required for that crime being one of deliberation and premeditation, the fact of the prisoner's drunkenness was material, not as an excuse for the crime, but to show it had not been committed."[4] The same doctrine has been repeatedly held of late years.[5] In a little different shape, it was presented as long ago as 1794, in a case of murder. "Drunkenness," said the judge, "does not incapacitate a man from forming a premeditated design of murder, but frequently suggests it. But as drunkenness clouds the understanding and excites passion, it may be evidence of passion only, and of want of malice and design."[6] In another case, it was held that drunkenness might be taken into the account in connection with other circumstances, in determining the question of intent.[7]

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[1] *Rex* v. *Thomas*, 7 Car. & Paine, 817.

[2] *Reg.* v. *Cruse*, 8 Car. & P. 546.

[3] *Reg.* v. *Monkhouse*, 4 Cox, C. C. 55.

[4] *The State* v. *Bullock*, 13 Alabama, 413 (1848).

[5] *Swan* v. *The State*, 4 Humphreys, 136; *Pirtle* v. *The State*, 9 Humphreys, 570; *Haile* v. *The State*, 11 Humphreys, 154.

[6] *Penn* v. *Fall*, Addison, 257.

[7] *The State* v. *McCants*, 1 Speers, 384. The reader will find the course of opinion on this subject very thoroughly and fully displayed in Bennett &

§ 537. Inculpable drunkenness is that which occurs without any fault in the party, and consequently renders him irresponsible for whatever acts he may commit, while under its influence. The common law recognizes but two ways in which it can be produced, namely, by "the unskilfulness of the physician, or the contrivance of enemies."[1] It appears to us, that it may also be produced in at least two other ways; by the party's drinking no more liquor than he has habitually taken without being intoxicated, but which, from some cause unknown to him at the time is much stronger than usual; or which, without any change in its quantity or quality, exerts an unusually potent effect on the brain, in consequence of certain pathological conditions. This latter kind of inculpable drunkenness, is not an uncommon occasion of crime, but in English and American courts, it has never, that I am aware of, been admitted in extenuation of punishment. The following passage contains in a few words, the spirit of the law on this subject. "There are many men, soldiers, who have been severely wounded, in the head especially, who well know that excess makes them mad; but if such persons wilfully deprive themselves of reason, they ought not to be excused one crime by the voluntary perpetration of *another*."[2] It is not very obvious how that can be properly called a crime, which may not be once mentioned in the statute-book; nor, if it be a crime, why in the absence of any legislative enactment on the subject, it should be visited with capital punishment, as it virtually is when it leads to a capital crime. In the following cases, we have instances of this kind of drunkenness, and a practical illustration of the spirit in which they are regarded.

§ 538. William M'Donough was tried and convicted on an indictment for the murder of his wife, before the Supreme Court of Massachusetts, in November, 1817. It appeared in

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Heard's Leading Cases in Criminal Law, i. 113 (1856), to which I am indebted for the above citations.

[1] Russell on Crimes, 8.

[2] Paris and Fonblanque, Medical Jurisprudence, iii.

evidence, that, many years previous, the defendant had received a severe injury of the head, in consequence of which he had suffered occasional paroxysms of insanity, though the general habit of his mind was sound and clear. It appeared that they were often produced by intoxication, and there was some evidence to prove that they sometimes occurred, unconnected with any apparent exciting cause. In one of these fits of insanity induced by drinking, and while actually under the influence of liquor, he murdered his wife. The court, in its charge to the jury, observed, that "if they believed the prisoner was in a fit of lunacy when he committed the act, he should be acquitted; but if they believed he was of sound mind, or if his reason was impaired, and that it was caused by intoxication only, the fact being proved and no palliating circumstances existing, he must be convicted."[1] If, in using this language, the court had in view any circumstances that might be deemed to be of a palliating character, it is not easy to see what it was, unless it were the pathological condition resulting from the injury of the head, which rendered him peculiarly susceptible to the effects of ardent spirits. If the court actually did consider this a palliating circumstance, it is to be regretted that its language was not more explicit on this point. It is very probable, that in this case also, the jury were considerably influenced by the character of the exciting cause of M'Donough's insanity. If it had been testified, that, instead of getting drunk, he was in the habit of attending religious meetings, where warm and pungent appeals were addressed to his feelings; that the excitement thus produced occasionally degenerated into a fit of madness, in one of which he killed his wife, the jury would have acquitted him without leaving their seats. Yet the essential condition of guilt would have been the same as in the case that actually happened. "The voluntary use of a stimulus," as it is expressed by Dr. Beck, "which he was well aware would disorder his mind, fully placed him under

[1] Trial of *William M'Donough* for the murder of his wife, 65.

the purview of the law."[1] It is not a satisfactory reply to this objection, that, in the one case, the exciting cause is, in itself, of a commendable character, while in the other, it is in the highest degree sinful and pernicious. Drunkenness in itself, is not by law a crime; and though the moral sense of the community at the present day condemns even the moderate use of intoxicating drinks, it must be recollected that twenty years ago, and especially in the class to which M'Donough belonged, such use was generally considered, not only harmless, but absolutely necessary to the bodily health. Had he not labored under this peculiar irritability of the brain, it is not supposed that the bloody act would have been committed or even thought of, so that M'Donough was virtually convicted for the consequences of a bodily infirmity.

§ 539. The following case, related by Georget, presents us with another striking illustration of mental disorder excited by the use of spirituous liquors. Vatelot, a gendarme, while passing the Place Louis Quinze, suddenly struck the Sieur Chardon with his sabre. The latter turned round, and seeing a stranger brandishing a sabre over his head, asked if he knew him, and what he meant. "I know you," replied Vatelot, "you are mine enemy, and I will give it to you." At the same moment he aimed at him another blow, and after pursuing him awhile with his drawn sword, left him. He soon met the Sieur Bellon whom he struck on the head, and aimed two blows at Sieur Avenell who accompanied Bellon. The Sieur Beaupied who ran to their assistance, and another person who never injured him, he also threatened; and finally, observing a young lady standing at her door, he struck her over the head with his sabre, and then fled. On trial before the court of assizes at Paris, he denied the facts, and admitted that he had been drinking, but was not

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[1] Medical Jurisprudence, i. 811. In a subsequent edition of his work, however, the Doctor observes, that in using the language above quoted, he has "probably expressed himself too strongly, in a medical point of view," and seems inclined to retract his approval of the verdict of the jury.

drunk. He was convicted of homicide committed voluntarily but without premeditation, and condemned to hard labor for life.[1]

§ 540. The homicidal acts of Vatelot obviously have all the characteristics that distinguish those committed by furious maniacs. "He attacked indiscriminately all whom he met," said the court, "and made four successive attempts at homicide, without being moved by any of the passions characteristic of crime, but in consequence of a fatal phrenzy which impelled him to the shedding of blood whenever an opportunity offered." One of the elements of guilt in M'Donough's case is wanting in this; for it does not appear that strong drink had ever produced a fit of insanity before, and thus it could not be urged that Vatelot sinned against the light of his own experience. If he had not drank enough to intoxicate him under ordinary circumstances, he had done nothing which the law or public opinion recognized to be wrong, and there was not a shadow of justice in rejecting his plea of insanity. Even if he had, are we to make no distinction, as Georget forcibly inquires, between a drunken person who commits a crime from motives of interest, such as theft, or to gratify a criminal passion existing before the intoxication, and one, who like Vatelot, becomes a murderer, without interest, without motive, without any rational cause for his conduct?

§ 541. We shall close our observations on this form of inculpable drunkenness, with a couple of passages from recent writers. "If either the insanity has supervened from drinking," says Mr. Alison, "without the panel's having been aware that such an indulgence in his case leads to such a consequence; or if it has arisen from the combination of drinking with a half crazy or infirm state of mind, or a previous wound or illness which rendered spirits fatal to his intellect, to a degree unusual in other men, or which could not have been anticipated, it seems inhuman to visit him with the extreme punishment which was suitable in the other case.

[1] Discussion Médico-Légale, 159.

In such a case, the proper course is to convict; but in consideration of the degree of infirmity proved, recommend to the royal mercy." [1]

"There is a class of cases in which persons have sustained injuries to the head, as often happens with soldiers and sailors, where drunkenness, even when existing to a slight degree, produces sometimes temporary insanity, and leaves the mind in possession of its habitual sanity when the drunken fit is over. . . . . Such persons certainly ought not to undergo the same punishment as sane criminals, unless the crime be accompanied by many circumstances of aggravation, and the plea rest rather upon suspicion than proof." [2]

§ 542. In regard to the effect of *delirium tremens* on responsibility, the principles and practice of American courts will be best exhibited by presenting a few of the cases that have been tried.

§ 543. At the May term, in 1828, of the Circuit Court of the United States, Alexander Drew, commander of the whaling ship John Jay, was tried for the murder of his second mate, Charles F. Clark. It appeared in evidence, that previously to the voyage during which this fatal act occurred, Drew had sustained a fair character, and was a man of humane and benevolent disposition, though addicted to the excessive use of ardent spirits. After recovering from a drunken debauch, in the latter part of August, 1827, he resolved to drink no more, and all the liquor on board of the ship was thrown overboard. In two or three days after, he lost his appetite, was unable to sleep, and manifested various hallucinations. He thought the crew had conspired to kill him, and expressed great fear of an Indian belonging to the ship, calling him by name when not present, and promising that he would drink no more rum, if he would not kill him. Sometimes he would sing obscene songs, and sometimes hymns, and would pray and swear alternately. In the night

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[1] Principles of the Criminal Law of Scotland, 654.

[2] British and Foreign Medical Review, x. 161.

of the 31st August, he went on deck, and attempted to throw himself overboard, but was restrained by the witness. At seven o'clock in the forenoon, September 1st, while the witness, Drew, and Clark, were at breakfast, Drew suddenly left the table, and appeared to conceal something under his jacket which was on the transom in another part of the cabin. He immediately turned round to Clark, and requested him to go upon deck. The latter replied that he would when he should have finished his breakfast. Drew then exclaimed, "go upon deck, or I will help you;" and immediately took a knife that had been covered over by his jacket, and before another word was spoken by either, he plunged it into the right side of Clark's breast. Clark fell instantly, but soon afterwards rose and went upon deck. As the witness left the cabin, Drew cocked his pistol, pointed it at him and snapped it, but it missed fire. Drew followed them upon deck, and, addressing the mate, said, "Mr. Coffin, in twenty-four hours the ship shall go ashore." He was then seized and confined. His whole demeanor, for some weeks after, was that of an insane person. When he first appeared to be in his right mind he was informed of Clark's death and its cause; he replied that he knew nothing about it; that, when he awoke he found himself handcuffed, and that it appeared to him like a dream. It also appeared that there had not been for months any quarrel between Clark and Drew.

§ 544. After hearing the witness who testified the above facts, the court interposed, and through Mr. Justice Story, delivered its opinion, that on these admitted facts the indictment could not be maintained, because the prisoner was unquestionably insane at the time of committing the offence. "The question made at the bar," continued the court, "is whether insanity, whose remote cause is habitual drunkenness, is, or is not an excuse in a court of law, for a homicide committed by the party while so insane, but not at the time intoxicated or under the influence of liquor. We are clearly of opinion that insanity is a competent excuse in such a case. In general, insanity is an excuse for any crime, because the party has not the possession of his reason, which

includes responsibility. An exception is, when the crime is committed while the party is in a fit of intoxication, and while it lasts; and not, as in this case, a remote consequence, superinduced by the antecedent exhaustion of the party arising from gross and habitual drunkenness. However criminal, in a moral point of view, such an indulgence is, and however justly a party may be responsible for his acts arising from it to Almighty God, human tribunals are generally restricted from punishing them, since they are not the acts of a reasonable being. Had the crime been committed when Drew was in a fit of intoxication, he would have been liable to be convicted of murder. As he was not then intoxicated but merely insane from an abstinence from liquor, he cannot be pronounced guilty of the offence. The law looks to the immediate, and not to the remote cause, to the actual state of the party, and not to the cause which remotely produced it. Many species of insanity arise remotely from what in a moral point of view, is a criminal neglect or fault of the party; as from religious melancholy, undue exposure, extravagant pride, ambition, etc.; yet such insanity has always been deemed a sufficient excuse for any crime done under its influence." The jury returned a verdict of not guilty.[1]

§ 545. At a term of the Supreme Court in York county, Me., April, 1836, Theodore Wilson was tried for the murder of his wife in June, 1835, at Kittery. It appeared in evidence, that for several years Wilson had been addicted to intemperate drinking; that on the Saturday previous to the murder, he had brought some rum from Portsmouth, N. H., and that on the next day he had drank it all. It did not appear that he drank any more after this, and circumstances render it probable that he did not. There was nothing strange or unusual in his conduct till Wednesday morning, when he arose early and went to the house of a neighbor to get some barley and procure a person to sow it for him. He returned home about six o'clock, and then complained of being sick. His wife assisted him to undress, and he laid

[1] 3 American Jurist, 7–9; 5 Mason, 28.

down, saying that he was dying. In the mean time he complained that his wife would do nothing for him; that she had often set traps for him, and once put fire and wood into the oven to burn him up. He ate some porridge only for his breakfast, was constantly talking, and among other things, spoke of his having been fishing when he was four years old. While the family were at dinner, he rose from bed and walked about in great agitation, striking the walls with his fists, and beating in the door with the tongs. As he became more furious, a woman who resided with him at this time, left the house, he and his wife then being the only persons in it. A short time after, he was seen coming out of the house stark naked; and in this condition he walked rapidly down the road, throwing up his arms, and making a wild howling noise, and finally laid down by a fence. It appeared that after he left the house, his wife went to one of the neighbors to ask his aid in getting her husband back, and this person declining to interfere, she went alone. As she approached him still lying by the fence, she asked him why he was lying there and making such a noise. He immediately sprang up, put his hands upon her shoulders, threw her down, and beat out her brains with a stone. He then left the body, and on reaching a house near by, broke in the windows with his fists, and also struck at the doors and side of the house, to seal it, as he said, with his wife's blood. Here he proclaimed that he had killed his wife, and meant to kill two more; he was then arrested. To those who watched with him during the night, he declared he was not sorry for what he had done, but was glad of it, and intended to have done it before. He continued furious, talking wildly and incoherently, making unnatural noises, sleeping none, and apparently anxious to kill himself, till the next Saturday morning, when he became, and remained, rational. It further appeared, that in 1830, he went on a fishing voyage, and, that being deprived of spirits, he became deranged after three days' sailing, and had to be confined. He then began to tear his clothes, and try to tear the clothes of others. He complained of being sick, said he should die, and requested the captain to tell his sons to take

care of their mother. He was afterwards set ashore, and did not go on the voyage. His counsel set up the plea of insanity in his defence; and the court, in charging the jury, observed that it was not material for them to determine what *species* of insanity it was under which the prisoner had been suffering, if satisfied with the fact of its existence. He was acquitted.[1]

§ 546. John Birdsell was tried, in 1829, by the Supreme Court of Ohio, on an indictment for the murder of his wife, on Thursday, 5th of March, 1829. It appeared in evidence, that for several years the prisoner had indulged in fits of intoxication, which, in the latter part of the time, had been followed by delirium tremens, which generally lasted for several days, and went off spontaneously. In these paroxysms he had the physical and moral symptoms that usually characterize the disease. Among many hallucinations under which he labored, the prevailing one was, that his wife was in combination with three of his neighbors, one of whom was his son by a former wife, and that they had conspired to take his life. He imagined that his wife had a criminal intimacy with these persons, and even threatened to kill her if she did not desist. On the Sunday before the murder, he drank freely, and was intoxicated; in which condition he was quiet, dull, and disposed to lie in bed. Monday, Tuesday, and Wednesday, presented nothing especial. On Wednesday evening he complained to a neighbor of feeling unwell, and asked his son's assistance in the performance of some necessary manual labor for his family. He seemed to the witness to be rational. During the night he slept none, and complained of cramp in the stomach. The next morning his family thought him crazy, but were not alarmed, as they were accustomed to such attacks. In the course of the day he took an axe, and walked rapidly to the house of a neighbor whom he desired to go home with him, saying that they wanted to kill him; and about the same time he

[1] For the facts in this case, the author acknowledges his obligations to Nathan Dane Appleton, Esq., one of the defendant's counsel.

told another of the supposed conspirators that he overheard his wife and him, that morning, whispering about taking his [the witness's] life. He spent the day at home in the midst of his family, apparently in agitation and terror; but said he would not hurt any one, and did not wish to be hurt. He also placed an axe with a scythe under the bed, where the former was often kept. He manifested jealousy of his wife, and told her to act better, for she had already caused the death of thirty thousand men. He fancied that the persons of whom he was jealous were in the loft manufacturing ropes to hang him, and going up, returned, saying that he had cut the ropes in pieces, and brought down the fragments in his hands, though he had nothing in them. In the course of the afternoon he fastened both the doors of his house. At the usual time the wife went out to milk, and he barred the door after her. On her return, he fastened it again. She was seated near the fire, and he was walking the room. At length he took the axe from under the bed, and gave the fatal blow, following it up with two others on the face. His eldest daughter caught the axe, which he yielded up; and then he seized the scythe, with which he attempted to strike her. She defended herself with a chair, till, the smaller children having opened the door, she escaped. He took the youngest child in his arms, and sat down by the window. The child exclaimed, "Mamma bleeds!" which he said made him feel badly. When his neighbors arrived, immediately afterwards, he gave himself up, acknowledged what he had done, said he knew he should be hanged for it, but that he ought to have done it nine months sooner; that if he had to do it again, he would strike two blows where he only struck one. It was testified, that he talked so rationally, that many of the witnesses could not believe him deranged; that he evinced no dread of punishment for his crime, but was still in great apprehension from the persons who, as he believed, had intended to kill him; and that he was glad he had defeated their calculations. On his way to jail he talked rationally and composedly about his affairs and various other subjects; but frequently asked the guard if they did not hear sweet

sounds of different kinds; and, on being answered in the negative, insisted he could not be mistaken. After his committal he became rational, and expressed his regret at what he had done.

§ 547. The point submitted to the jury for their determination was, whether the prisoner was capable of discriminating between right and wrong. They concluded that he was, and returned a verdict of *guilty*. In consequence of a petition from a number of persons who had no doubts of Birdsell's insanity, the punishment was commuted by the governor to that of imprisonment. Previous to the commutation, he again became insane, and continued so permanently.[1]

§ 548. The essential features of the above cases being alike in every thing relative to their pathological nature, we are left, without any satisfactory reason to account for the issue of the last. It is probable that the court adhered to the antiquated maxims of the common law on the subject of insanity, and that the jury was governed by the opinions of the court, or relied, with that confidence which ignorance usually inspires, on their own crude and erroneous notions. The verdict of the jury in Birdsell's case furnishes another instance of the deplorable consequences of obliging a body of men, the most of whom are utterly unacquainted with the phenomena of insanity, to decide the question of its existence in a given example, and with it the fate of an unfortunate fellow being, for weal or woe, here and hereafter. They concluded that the accused was *capable of distinguishing right from wrong*, probably because others who knew as little of insanity as themselves testified, that immediately after committing the murder, "he talked so rationally that they could not believe him deranged;" and on such a conclusion they founded their fatal verdict. Of course, it would

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[1] This case was reported, and the medico-legal questions growing out of it discussed at considerable length by Dr. Drake, in the Western Journal of the Medical and Physical Sciences, vol. iii.; extracts from his papers may be found in the American Jurist, iii. 10–16.

have been too violent a contradiction in terms, to have denied the existence of any insanity at all in a disease whose very name is delirium; but it appeared that the prisoner was not altogether bereft of his senses, not quite reduced to the condition of a brute or an idiot. Now, without resting upon the general fact that the mind is always and unequivocally deranged in delirium tremens, there is proof enough that various hallucinations took possession of Birdsell's mind, and prompted him to the bloody deed for which he was condemned; that he was under the influence of manifest, unequivocal, strong, delusion, that test of insanity which, when present, never deceives. If any one, on being made acquainted with the particulars of Birdsell's case, can pronounce it to be not insanity, he must have derived his notions of this disease from some other source than the wards of the hospital and asylum.

§ 549. In the first two cases, the directions of the court to the jury were, substantially, that if they were satisfied the accused was insane when he committed the criminal act, they were not to go back and inquire into the cause of the insanity; but, on this fact being established in their minds, the prisoner was entitled to an acquittal. In the first case, the court examined the question whether the legal consequences of insanity are affected by the character of the cause which produces it; and so clear and satisfactory is its opinion, that any thing further on this point is rendered unnecessary here. But we are not so well satisfied with its distinction between the insanity which is the remote, and that which is the immediate effect of drunkenness. Where the moral guilt is so nearly alike, as it certainly is in the two cases, we are unable to perceive the justice of making such a fearful difference in regard to their legal consequences. The distinction is not only unjust, but we apprehend that there would often be no little difficulty in applying it to practice. It would not be very easy to determine the precise period when the drunken fit is over, — when the individual ceases to be under the influence of the intoxicating liquor. A case is related by Hitzig in which this difficulty would

have been experienced, if the legal consequences of the act in question had not been determined by very different principles. A carpenter in Pregelswalde, named Thiel, had contracted such a propensity for drink, that he finally became a dipsomaniac. During the fits he would continue drunk from eight to fifteen days together, taking no food in the mean time, and on two occasions, he continued for three weeks in a complete state of drunken stupor. While the fit was on him, he was quiet, taciturn, and peaceable, and during the last three or four days, extremely stupid. The fit that occasioned the criminal act with which he was charged, began on the 27th of May, 1824, and continued till the 2d of June, on which day he drank less, and on the following day (3d of June), he drank only one glass of beer, and one of brandy. At noon-time he assisted his wife in sawing wood, though she had to tell him just what he was to do. In the evening he slept a few hours, awoke, walked about, and finally went to bed with his wife. The latter, on getting out of the bed for the purpose of going to the window, to watch some cloth that was bleaching, awoke him again. Soon after, he experienced a strong sense of anxiety, and felt a trembling over his whole body, and he imagined that he heard an inward voice commanding him to kill his youngest child, a boy of five years old, who with two other children, were sleeping in the same room. After a while the command was repeated so peremptorily that he could no longer resist, and he accordingly murdered his favorite child. Whether at this moment he was under the direct influence of the liquor he had drank on the 3d, is a question to which it would be impossible to give a satisfactory answer. In the present case it was not required, for drunkenness being regarded by the German law, as an extenuating circumstance, he was condemned to one year's imprisonment, and to pay the costs of the prosecution.[1]

§ 550. In Birdsell's case there was presented a new feature of no little interest to the medico-legal student, which,

[1] Henke's Annalen, viii. 186.

though it was suffered to have no influence on the verdict, might, if the court had chosen to urge its opinion respecting it upon the jury, have prevented an acquittal, even if they had satisfied themselves beyond a doubt that the party was incapable of distinguishing right from wrong. In replying to the arguments of counsel for a new trial, the court observed in the course of its remarks, "that they were not called upon to give an opinion whether *Mania a potu* would, under any circumstances, be an excuse for the commission of a crime; but they felt no unwillingness to express their opinion, that if the insanity were the offspring of intemperance, and the prisoner *knew* that intoxication would produce it, he could not plead it as an apology." Birdsell, it has been seen, had experienced several fits of delirium tremens following his drunken debauches, previous to that in which he destroyed his wife, and consequently *knew* that intoxication would *be likely* to produce insanity. How far this fact changes the attitude of the case, is a point which deserves a careful examination, before being allowed to have a bearing on judicial decisions. If the party had known that, in his previous attacks of delirium tremens, he had attempted the life of his wife, then indeed this opinion would not have been without some foundation; for in that case, perhaps, he might have been justly held responsible for whatever criminal acts he committed while in a state of insanity, just so far as he was responsible for the intoxication that produced it. All that Birdsell *knew* on this subject, however, was, that indulgence in drinking having frequently occasioned delirium tremens, would be liable to produce a renewal of its attacks. As to what acts he might commit while under their influence, he knew absolutely nothing. It is not very clear how delirium tremens can have a different effect on legal responsibility, from that which would follow any other form of mental derangement resulting from habits of intemperance. If Birdsell's habits had led to attacks of common mania instead of delirium tremens, his guilt, in a moral point of view, would certainly have been no less; nor, on the hypothesis of the court that insanity is no apology for

crime, if the party *knew* that intoxication would produce it, would his legal responsibility have been diminished. It does not appear, however, that in ordinary cases where insanity is pleaded in excuse for crime, the question is ever raised whether the insanity be a consequence of intemperate drinking; and, in the event of its being so, whether the party *knew* that such a result might be expected. It is not easy to resist the impression, that the opinion of the court against the exculpatory effects of Birdsell's insanity was determined, in some measure, by the reprehensible character of its cause. If his insanity had been produced by mingling in scenes of religious excitement, by indulging in schemes of commercial speculation, or a more criminal species of gambling, would the court have said it afforded no apology for crime, because he had suffered previous attacks in consequence of exposure to the action of these same causes? Probably not; and yet if guilt is made to consist in disregarding the lessons of experience relative to the manner in which the insanity is produced, then the nature of its exciting causes is clearly an immaterial circumstance. In short, the opinion of the court of Ohio conflicts with the principles laid down by Mr. Justice Story (§ 544); and if the latter be admitted, as they must be undoubtedly, so far as they relate to the causes of insanity, the former is untenable for a moment, and therefore it is scarcely necessary to pursue this train of reflections any further.

§ 551. The decision of Mr. Justice Story in Drew's case, as above related, has unquestionably settled the law on this point, in this country. In England the cases have been too few, perhaps, to render it quite certain, that such also is the law there. Two cases[1] are cited by Taylor,[2] in which the plea of delirium tremens was admitted as a sufficient excuse for crime, and they seem to be the only ones reported.

§ 552. Few diseases are better marked than delirium

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[1] *Reg.* v. *Simpson*, Appleby, Sum. Ass. 1845; and *Reg.* v. *Watson*, York Winter Ass. 1845.

[2] Med. Jurisprudence, 656.

tremens, yet occasionally it is not easy to distinguish it from other forms of mental disturbance directly or indirectly produced by drinking. The importance of making this distinction correctly, was recently illustrated in the trial of James McGlue, for the murder of Charles A. Johnson, in the United States Circuit Court held at Boston, October 30, 1851. It appeared in evidence that on Thursday, the 15th of May, 1851, the bark Lewis came to anchor off the coast of Zanzibar, about 5 o'clock, P. M.; and that immediately after, McGlue, who was second mate of the vessel, without any provocation or exchange of words, rushed upon Johnson, who was chief mate, and killed him with the sheath-knife which sailors usually carry at their side. After being secured, he was very restless, rolled about the deck, laughed, talked wildly and incoherently, cursed and swore, until daylight the next morning, when he came to himself, and was greatly surprised and shocked on learning what he had done. It was obvious enough that McGlue, when he committed the act, was laboring under some kind of mental disturbance resulting more or less directly from intemperate habits. It was all-important for the prisoner's counsel to show that this was delirium tremens, but the evidence was not so satisfactory as it might have been. It was proved that on the Sunday previous to the murder, McGlue drank to excess, but it was not quite clear that he had not drank more or less, up to the very day of the murder. Between Sunday and Thursday, he was described as looking pale and stupid, and by one witness, as having trembled, but he performed his duty without interruption. On Thursday afternoon he talked in a wild and rambling manner. About half an hour before the fatal act, he asked some of the crew if they wanted to make money, and to their inquiry how it was to be done, he replied, "keep a hard cheek on from this hour." Immediately after the act, he said he was captain of the ship, and told the men to arm themselves with clubs, handspikes, etc. He told the captain to give up the command, unless he wished to be killed too. It was clearly established that he did not sleep for a moment, until after he came to his senses. It also ap-

peared that McGlue did occasionally drink hard, when he seemed to the witness to be "crazy," and "hallooing like a madman." Several medical gentlemen gave their opinions, as experts, all of whom had enjoyed extraordinary opportunities for witnessing delirium tremens. While some were satisfied that McGlue was suffering an attack of that disease, and some were equally satisfied that he was not, all were agreed in stating it as one of the results of their experience, that they had never met with an instance of recovery from delirium tremens, prior to the occurrence of sleep. The jury acquitted the prisoner, and their verdict could not well have been otherwise. It was proved beyond a reasonable doubt, that McGlue was unconscious of what he was doing when he committed the homicide, or, in more general phrase, was insane. The government did not prove — as they were bound to, in order to convict the prisoner — that this insanity was the direct and immediate effect of drunkenness, and therefore the prisoner's plea of insanity was not vitiated, though his counsel failed to show beyond dispute, that his insanity was that particular, indirect effect of drunkenness, called delirium tremens.

§ 553. Not unlike this was the case of Murray, tried in Scotland, 1858, for murder, and defended on the ground of insanity, which disease, it was admitted, was the result, more or less directly, of drinking. He was addicted occasionally to excessive drinking, but it did not appear in evidence that he drank on the day of the homicide. He stayed at home that day, appearing strangely, and imagining that people were making a great noise in the house, and were after him to carry him off. He had some delusions also about the devil. In the night he killed his mother without the slightest provocation. The next day he was calmer, and in the course of a day or two more, he had regained his usual condition, though it does not appear that he slept before this improvement took place. One medical witness regarded the case as one of delirium tremens, but Dr. Christison, the eminent toxicologist, and Dr. Skae, physician of the Edinburgh Lunatic Asylum, considered it one of temporary mental disturbance — a kind

of transitory mania — produced by previous intemperance. The last-named gentlemen were, undoubtedly right. Murray's case wanted two essential elements of delirium tremens — sleep before recovery, and several days' duration of the stage of suspicion and delusion.[1]

§ 554. The following is another of these embarrassing cases. I. S., a man of intemperate habits, after some adverse domestic incidents, began to be excited and restless, travelling about the neighborhood without any end or object. At the end of a week, he became suspicious of others, imagined people were after him, and armed himself with pistols. In a letter to his father about this time, he said, "I have been troubled, the last week or two, with several attacks on person and house. I have killed seven persons, in self-defence, three this morning, but have lost my last pistol and gun, and had, last night, to guard my house against about twenty. I am now going to P. to purchase gun, pistol and knife. I draw an order on you for $——, my next monthly allowance." In the course of two or three days, his family, apprehensive for their own safety, sent him to me. During all this time he had drank more or less every day, and for the last two or three, slept none. At first sight, he presented that anxious, troubled expression, that hurried manner, cold sweat, and intolerable apprehension of sheriffs and foes, so characteristic of delirium tremens. During the day he was very agitated, walking back and forth, imagining he heard people in the neighboring rooms plotting against him, and vociferating at the top of his voice. Once, while out of sight for a moment, he tried to strangle himself. Towards evening he became calmer, went to bed quietly, and slept the greater part of the night. In the morning, his mind, to all appearance, was completely restored, and so continued without any relapse. Much as this case looked like delirium tremens, it is very doubtful whether it actually was that disease. Delirium tremens seldom, if ever, passes off with one long, continued sleep. Such a sleep occurs in the course of the disease, but it is generally, per-

[1] Edinburgh Medical and Surgical Journal, Jan. 1859.

haps invariably, preceded by several short naps. In delirium tremens the patient ceases to drink for a period ranging from one to three days, before the attack begins. Here, he continued to drink even after the mental disturbance appeared. In this case, too, the patient manifested some mental disorder for a week or more prior to the appearance of any characteristic symptom of delirium tremens. Neither can this case be regarded as one of intoxication simply, for many of its features conflict with this supposition. Never, under the immediate effects of drink only, does a person exhibit that kind of terror and apprehension which this man did, though it is characteristic of delirium tremens; or go without sleep so long as he did. We are forced to conclude, therefore, that the ordinary effects of intoxication were mingled with those of proper insanity. Had he committed homicide, he would scarcely have escaped conviction, in face of the evidence that he continued to drink up to the moment of the fatal act. Had the jury acquitted him, however, in the belief that the homicidal act was as much the result of insanity as of intoxication, if not more, the case would long be quoted as a signal illustration of the criminal leniency of juries, whenever insanity is urged in defence of crime.

§ 555. Criminal acts are sometimes committed by drunken people, in consequence of the illusions by which their minds are frequently possessed. Although the ordinary legal consequences of such acts would not be regarded by the English law as being modified at all in consequence of the mental illusion under which it is committed, yet it cannot be doubted that the person is actuated by no criminal intention, nor any other improper motive. Such acts have been viewed in France, Germany, and in one instance, at least, extraordinary as it may seem, even in England, with more indulgence than those which arise from the excited passions and quarrels produced by drunkenness. On the Norfolk Circuit, 10th of March, 1840, a man was tried for killing his friend, both being intoxicated, "under the illusion that he was some other person who had come to attack him. The judge made the prisoner's guilt to rest upon the fact, whether, had he been

sober, he would have perpetrated the act under a similar illusion. As he had voluntarily brought himself into a state of intoxication, that was no justification. He was found guilty of manslaughter, and sentenced to two months' imprisonment."[1]

§ 556. After the thirty years' war in Germany, it was a popular superstition, on the banks of the Elbe, that the spirits of Swedish cavaliers were sometimes seen at midnight mounted on horses and dressed in a blue uniform faced with red. Two peasants who had always been intimate friends, were on their return in the evening from their labors in the fields, when they stopped to rest their limbs under a tree, and there they drank from a bottle of brandy they happened to have, until they became quite drunk. In this condition they talked about the Swedish cavaliers, till their imaginations, heated by the drink, made them believe that they were surrounded by the spirits, and that they could only escape by fighting them. Each had a staff, and they proceeded to belabor each other, believing they were contending with the cavaliers, till one was finally killed. The victor went home and proclaimed his triumph over the devils that tried to carry him off. He was condemned to ten years' imprisonment.[2]

§ 557. On the 17th of December, 1838, two young French peasants in the commune of the Prairie of Sept Vents, started to walk home about ten o'clock in the evening, after having drank excessively. According to the account of the survivor, they were conversing about witches, on their way home, when they arrived at a little bridge which it was rather difficult and dangerous to pass. The survivor offered to carry over the deceased on his shoulders, but the latter refused, and passed over first on his hands and knees. The former did not know how he got over; he only remembered that when he reached the other side, he could not find his companion, but that in groping about, he stumbled against something white with long hair on its legs. He called out

[1] *Reg.* v. *Patterson*, British and Foreign Medical Review, x. 172.

[2] Marc, De la Folie, etc. ii. 635.

and summoned the strange thing to get up and speak, but receiving no answer, and getting more and more frightened, he took out his knife and stabbed it repeatedly. Losing the knife, he broke the branch of a tree, and attacked the object of his fears with renewed fury, trying, at last, to break one of its legs, that he might be sure of finding it next morning. Being cold and tired, however, he concluded to go home, and the body of his companion was found next day, near the bridge, horribly mutilated. The prisoner was condemned to hard labor for life, and to exposition.[1]

§ 558. In the first of the above cases, the verdict of the jury, it will be observed, is directly at variance with the principle laid down by the court, as, indeed, it is with the whole doctrine of the English criminal law in regard to this subject. When a man voluntarily deprives himself of the perfect use of his reason, and in this condition commits a criminal act, it is immaterial, so far as his moral guilt is concerned, whether the act be prompted by passion, frenzy, or hallucination. The verdict is a memorable one, inasmuch as it is the first within our knowledge, in which an English jury has made any distinction between a homicide committed in a state of drunkenness though without any criminal intention, and one deliberately planned and deliberately executed, in the full possession of the reasoning powers.

§ 559. Criminal cases are not very unfrequent in which intemperance and insanity are so mingled together, that it is impossible to unravel their relations to each other, and ascertain their respective shares of influence in producing the criminal act. The following will serve as an illustration of this class of cases.

§ 560. David Abbot was tried by the Superior Court of Connecticut, for the murder of his wife in July, 1841. The facts, as they appeared from the testimony, were substantially as follows. The prisoner belonged to a respectable family, possessed some property, and had twelve children by his wife. For several years prior to the event, he had been

[1] Idem, ii. 639.

very intemperate, but not to such a degree as to prevent his walking about and conversing as at other times. Habitually harsh and cruel to his wife, he became still more so when under the immediate influence of liquor. He became jealous of her, and believed that she had frequent criminal intercourse with two of their neighbors. But it was admitted by all parties that the conduct of these persons and of his wife was perfectly unexceptionable, so far as this subject was concerned. On the afternoon of the day when the murder was committed, he was observed to drink rum and cider several times. After he and his wife had gone to bed, they were heard talking together, and at eleven o'clock he called up one of his daughters, and directed her to summon the neighbors, "as they were all dead, or would be soon." The wife was found dead, apparently choked to death, and he lying on the floor with his throat cut in several places, but not fatally. When asked what he had been doing, he replied, "that the devil had been there, that he had had a clinch with him, and that the devil had been trying to kill them both, and had cut his throat." Subsequently, however, when he became more composed, he stated that after they went to bed, an altercation ensued; that he became provoked, and seized her by the throat, holding her five or six minutes, when he found she was dead. He then attempted to cut his own throat with a razor, but having lost the razor, and bled a while, he changed his mind, and called up his daughter. It also appeared in evidence that his father, two brothers, and sister had been insane; that the prisoner himself, when about eighteen years old, was delirious for several weeks immediately after attending a camp-meeting; and that about seven years before the death of his wife, he went to one of his neighbors, with both hands on the top of his head, saying that he had lost the top of his head and must go home and get his wife to put it on again. The court, in laying down the law, relative to the legal consequences of intemperance, adopted the principles of Mr. Justice Story in the case of Drew, and the jury was also told, that if they found the prisoner insane, but not to such a de-

gree as to render him wholly irresponsible for his acts, they had a right to take such partial insanity into consideration in connection with the provocation, in determining upon its sufficiency. If they found that the provocation, in that case, operating upon a mind partially insane, was equal in its effect to a provocation which would reduce a homicide, committed by a man of perfectly sound mind, from murder to manslaughter, they would have a right to find the prisoner guilty of manslaughter only. The prisoner was found guilty of murder.[1]

§ 561. In the present state of public opinion, it would be difficult, perhaps, to convince a jury that the wretched victims of periodical drunkenness, or of that other form of the disorder which we have illustrated (§ 524) ought not to be held responsible for their criminal acts. It would be objected, probably, that these conditions are the result of habitual indulgence, and that at the utmost, the only difference between these and other drunkards is, that they are impelled to the gratification of their insatiable cravings by different degrees of violence, — a circumstance which it would be mischievous to recognize in estimating the degree of criminal responsibility. The truth would be overlooked or disputed, that this irresistible propensity to excessive drinking is manifested as often, if not oftener, in temperate men, as in habitual drunkards; and that it is either a symptom of the first stage of madness, or of a temporary impairment of the mind produced by some disturbance of the cerebral circulation. The drunkenness being thus an accidental, involuntary consequence of a maniacal state of the mind, it cannot impart the character of criminality to any action to which it may give rise. If the merchant, or servant girl whose cases we have quoted from Esquirol (§ 522, 525), had committed murder in one of their paroxysms, we should, no doubt, have had the testimony of that distinguished physician, as he has already recorded it in his writings, that they were "true

[1] MS. of Mr. Justice Waite, who sat upon the case, and kindly furnished by him.

monomaniacs, not morally responsible." The other cases we have related, though differing a little from these, in some of their accidental symptoms, evidently proceeded from the same pathological causes; and if moral responsibility ceases in the former, it must equally cease in the latter.

CHAPTER XXVIII.

INTERDICTION AND ISOLATION.

§ 562. With respect to the kind and degree of mental impairment that warrant interdiction, there prevails the utmost diversity of opinion; and such must continue to be the case, till sounder views are entertained of the true purposes of this measure. The radical fault of speculations on this subject is, that the attention has been directed to general rules and abstract distinctions, rather than to a thorough and discriminating examination of the particular circumstances of each individual case. In the following paragraphs will be found abundant illustrations of the truth of this remark.

§ 563. Imbeciles in the first degree cannot be justly deprived of the management of their property, on the ground of mental deficiency alone. If they have shown no disposition to squander their money on trifles, nor suffered their affairs to be grossly neglected, there can be no reasonable pretence for taking it altogether from their control and enjoyment. Neither should we be too rigid in our scrutiny of these cases. If a whole life of extravagance, or hazardous speculation, is not enough to produce the interdiction of a sound person, why should an occasional act of either in one of feeble intellect, provoke that measure? Of course there can be no question of its propriety when it is perfectly obvious that he is dissipating his fortune, to the great detriment of himself and of those who are dependent on him.

§ 564. Much discussion and tedious litigation have arisen, from the difficulty of determining the exact measure of intellectual capacity requisite to the undisturbed enjoyment

of civil rights and privileges, chiefly in consequence of losing sight of the real object before us, and pursuing a shadow of our own creating. It is a question of capacity in reference to certain ends and duties, and we are not called on to go beyond the consideration of these, in our endeavors to settle this question. The speculative opinions of the imbecile person, the little peculiarities of his conduct, his style of living and talking, and his general deportment in society, are points that require but little attention in this inquiry. Our business is with the manner in which he has conducted his affairs, and from this chiefly, we are to draw our inferences respecting his probable future conduct and capacity. And here we are not bound to institute a rigid comparison between his habits, and those of people enjoying ordinary soundness and vigor of intellect. We are not warranted in stripping him of all his possessions and leaving him at the mercy of others, the moment we can fix upon a single instance in the course of his life, where he has neglected to profit by a happy turn of fortune, or has rewarded a service, or bestowed his bounties, in a manner altogether opposed to our ideas of forethought and economy. Has the individual indulged in repeated acts of extravagance, or of profitless expenditure? Has he engaged in the execution of visionary projects with reckless indifference as to the extent of his means and appliances? Has he squandered his money on favorites, or become an instrument in the hands of designing and profligate associates for advancing their own selfish projects? These are among the most prominent questions that require a satisfactory answer; and if they are kept steadily before us, there will be little fear of losing ourselves in the maze of perplexities which the judicial investigation of cases of imbecility frequently creates.

§ 565. These views, it will be seen, afford no countenance to the usual practice of canvassing the whole history of the imbecile person, arraying act against act, and speech against speech, and drawing from each an inference for or against his capacity of managing his own affairs, in his own way. Few of those whose interests become involved in protracted

litigation, are so destitute of intellect as never to conduct like persons of well-developed minds under similar circumstances. They may write sensible letters, make shrewd bargains, and converse on ordinary topics without betraying any mental deficiency, while yielding implicitly to the will of others, and committing acts of folly that can arise from nothing short of unequivocal imbecility. The popular error that imbecility is only an inferior endowment of mind, considered in regard to its absolute quantity, has led people to forget that in this condition, the mental faculties may be very unequally defective; and, therefore, that very different conclusions would be formed respecting an individual's capacity, according as the attention is exclusively directed to the manifestation of this or that faculty. Many also, who, while surrounded by their usual circle of associations, manage their slender means with the utmost prudence and economy, would prove themselves totally inadequate to the management of a large property, and be easily led, by the influence of new associates and the excitement of new desires, into habits of extravagance and dissipation.

§ 566. The little success that has attended every attempt to fix upon certain criteria as tests of that degree of imbecility which is incompatible with the management of property, and to run the line between this mental condition and that of legal capacity, is another circumstance in favor of the course here indicated. "In order to arrive at the true meaning of 'imbecility of mind,'" says Sir John Nicholl, "we may resort to what the law describes as perfect capacity, which is most correctly found in the form of pleadings used in the ecclesiastical courts, in the averment in support of a will, that the testator was of 'sound mind, memory, and understanding — talked and discoursed rationally and sensibly, and was fully capable of any rational act requiring thought, judgment, and reflection.' Here is the legal standard."[1] It may be doubted if this definition can ever be of much practical service, for no definition can be so which

[1] *Ingram* v. *Wyatt*, 1 Haggard, 401.

embraces either more or less than is strictly warranted by the exact nature of the thing defined. Many an imbecile who could not be safely trusted with the control of property for a single week, may nevertheless "talk and discourse rationally and sensibly," so long as the conversation is confined to simple subjects that have long been familiar to the mind; and many a man of legal capacity may be found, of whom it cannot be said that he is "fully capable of any rational act" whatever, "requiring thought, judgment, and reflection." The very point to be decided is, whether the person in question, who talks and discourses so rationally and sensibly, and does so many rational acts, is or is not capable of managing his affairs; and, however much we may scrutinize the character of his intellect, the only just and accurate test of such capacity is the manner in which he has already managed his affairs. The tests of legal capacity so much sought after in imbecility, cannot be obtained, from the nature of things, because the general strength of mind is but an uncertain index of its ability when exercised on particular subjects. The ministers of the law, therefore, should be extremely cautious how they are moved by theoretical considerations, instead of particular facts bearing on the point at issue, in examining requests for interdiction on the ground of imbecility.

§ 567. General intellectual and general moral mania are always a sufficient cause of interdiction; for the reflective faculties are too much disturbed in the former, and the moral in the latter, to appreciate properly the relations of property, or to provide the necessary arrangements for preserving and improving it. The only question is, how soon after the manifestation of the disease, are we warranted in taking this measure. Since its publicity serves to expose the patient and his family to the popular and not unfounded prejudice against insanity, and since mania, when early attended to, is cured, in the larger proportion of cases, within the first or second year, this step should be delayed, unless extraordinary reasons require immediate action, till the effect of judicious treatment has been observed. The restraint and seclusion which cura-

tive measures necessarily require, prevent the patient from engaging in business, and indeed place him in the same condition as would sickness of any other kind. Neither is this measure always justifiable when the disease is so slight as not to prevent him from going abroad and mingling in the affairs of the world. If, however, the patient is a merchant, for instance, and continues to engage in the transaction of business, immediate interdiction would be required, perhaps, to save him from the effects of ruinous contracts. Generally speaking, no harm is done by a little delay, but the practice of taking property from its lawful possessors to place it in the control of others who may have no other object than that of enriching themselves by their trust, the first moment the presence of insanity is satisfactorily established, must lead to positive and considerable evils. So jealous is the French law of this hasty interference, that it permits nothing less than *habitual* insanity to procure interdiction.[1]

§ 568. In partial mania, Hoffbauer[2] thinks we should be governed by the nature of the predominant idea, not considering it a sufficient ground of interdiction, unless connected with the subject of property in a manner likely to lead to its wasteful and improvident management. Such, too, was the opinion of Dr. Rush,[3] and a late writer[4] has contended against the opposite practice with signal ability and skill. "Mental derangement, to be a sufficient reason for interdiction," says a French jurist, "should have reference to the ordinary affairs of civil life, and to the government of the person and property of the individual; a man who is merely visionary, or entertains speculative notions that are palpably false, should not be interdicted, if he manage his affairs well enough in other respects."[5] Georget, however, thinks that monomaniacs are not to be trusted, and that we can never be sure that the predominant idea may not, by

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[1] Code civil, art. 489.
[2] Op. cit. § 110.
[3] Lecture on Medical Jurisprudence, Philadelphia, 1811.
[4] Conolly, Indications of Insanity, 430, 445.
[5] Toullier, le Droit civil Français, etc. 1811.

means of some mental associations, lead to the dissipation of their fortunes. Accordingly, he is dissatisfied with the decision of the tribunal of La Seine, who rejected a petition for the interdiction of M. Selves, a celebrated advocate, although admitted to be a "meddler in his family, litigious in society, impertinent towards the magistrates, vainly profuse in his expenditures, and subject to some illusions."[1]

§ 569. This distrust of the insane of whatever description, is nowhere more strongly implied than in the habitual practice of Great Britain at the present day. One finds it difficult to believe on what slight grounds interdiction is there every day procured, — a measure, that with the ostensible purpose of protecting the interest of the insane party, is too often, in reality, designed to promote the selfish views of relatives and friends. A kind and degree of mental impairment that have never obscured the patient's knowledge of his relative situation, never altered his disposition to be kind and useful to those around him, never weakened his enjoyment of social pleasures, and never affected his capacity to manage his concerns with his usual prudence, have been repeatedly deemed a sufficient reason for depriving him of the use and enjoyment of his own property, and subjecting him to all the disabilities the law can impose. Dr. Conolly speaks of a gentleman on whose account his family applied for a commission of lunacy, because he had become possessed with the idea, that the queen of England was in love with him. Yet this person conducted himself very well in most of the offices of life, and on one occasion after this application was made, while dining with a party of friends in company with the lord chancellor, he contributed so remarkably to the enjoyment of the day by his polite, agreeable, and amusing manner, that this functionary could not help expressing to him how much he had been gratified by his introduction to him, and how utterly absurd it now appeared to him, to have ever given credit to the story of his delusion. This was enough to produce its avowal from the

[1] Des Maladies mentales, 108.

patient, and the issuing of the commission from the lord chancellor. The sequel furnished a striking comment on the injustice of this act; for the insane gentleman gave so much assistance to those intrusted with the management of his affairs, that he was the means of their getting over difficulties, which, without his aid, would have been insurmountable; and in the end, he was actually, if not formally, constituted the steward of his own estate. It is well known that a monomaniac in England, who fancied himself duke of Hexham, and was accordingly interdicted, became the agent of his own committee for the management of his own estate, and did the duties of the office, for a time at least, not incorrectly.

§ 570. The case of Mr. Edward Davies, which engrossed the attention of the English public a few years since, being, says Dr. Gooch, "by far the most important lunatic cause which has been tried in our time," furnishes a striking illustration of the manner in which these things were managed in England. Mr. Edward Davies was born of humble parents, and though particularly shy and reserved among his schoolfellows, he was generally considered sharp and intelligent. On leaving school, he commenced the business of a tea-dealer in London, and by indefatigable industry and cautious management, rapidly became rich. It appears that his health, at best, was delicate, and that he suffered much from dyspepsia and nervous excitement. He was fond of reading medical books; and, like most persons who indulge in such a taste, was fanciful about his complaints, and subject to false alarms. The defects of his early education he endeavored to remedy, by reading what he took to be the best authors, and was often guilty of making a ridiculous display of his acquirements, by making long quotations which he would spout with a theatrical air. He was of a remarkably timid and yielding disposition, to such a degree as to be completely subjected to the authority of his mother. Though he was twenty-seven years of age, and managing an extensive and lucrative business, she would not allow him to carry any money in his pocket, nor to spend the most trifling sum

without her permission. He dared not go to the play, nor leave the house for a few hours, without asking her leave. She was particularly at great pains to prevent his meeting young women, lest, in the event of his marriage, she might be displaced from the control of his conduct and the command of his purse; and she took various opportunities of inducing him to give considerable sums of money to different branches of her family. At the age of twenty-seven, he grew restive under the maternal restraints, and made many attempts to emancipate himself. He offered to leave the shop to his mother and take his own property away; or to give her seven thousand pounds, on her consenting to leave the concern; but she was not to be got rid of at that price. The incessant state of contention at last seriously impaired his health and his mental tranquillity, and on the first of July, 1829, he applied to Mr. Lawrence, the surgeon. He told this gentleman a long story about his health and his tea-trade; and at another interview, he recited poetry and expressed a strong antipathy to his mother and several relations. Mr. Lawrence considered him of unsound mind, but thought that if he could be reconciled to his mother and family, the disease would be at an end — that his antipathy to his mother was his chief delusion.

§ 571. About this time, he applied to Dr. Latham, claiming his protection. His discourse was wild and rambling, and his manner strange and excited. He told the doctor in a sort of a whisper, that he had a tale to relate of the greatest horror, and then flung himself away and stalked into the middle of the room. He appeared very apprehensive lest he might be overheard, and begged that he might lock the doors and close the windows. He spoke of his wealth and his trade, and quoted poetry largely, using great gesticulation and throwing his arms about. Several times he asked if he looked insane, and on leaving the house, he said: "If you fail (in his promise to call on him) dread the vengeance of a madman; for I carry a loaded pistol." Dr. Latham thought him insane, though not prepared to recommend that he should be shut up as an acknowledged lunatic. Shortly

after this, he left his own house and went to spend the night at Furnival Inn, on the third of August. About one o'clock, in the night, he rang the bell, and told the waiter that there were thieves in the house; that he heard them snapping off pistols, and striking a light. On being remonstrated with by the waiter, on the impropriety of his ringing the bell, and thus disturbing the lodgers, he said he was sorry for it, went upon his knees, and humbly begged his pardon.

§ 572. It must be borne in mind, that on the same days on which Dr. Latham, Mr. Lawrence, and others, saw him in his most explosive state, his friends who had known him long, passed hours with him; and though he was ill and terrified, he appeared to them quite himself, and as equal as ever he had been to give directions about his shop affairs. Indeed, the very persons who were trying to confine him as unfit to take care of his business, were themselves consulting him about the management of that business.

§ 573. Mr. Davies was shortly after this removed to a private asylum, where he remained till the end of December, when he was liberated by the verdict of the jury. Here his agitation subsided, his incoherence diminished almost to nothing; and the only remaining grounds for believing him a lunatic, were his antipathy to his mother, and certain suspicions that were considered to be delirious. Nevertheless, a commission of lunacy was granted by the lord chancellor, which finally resulted in restoring him to liberty, and the management of his property. The evidence of the physicians who were sent expressly for the purpose of examining Mr. Davies at various interviews, and who pronounced him to be mad, is worthy of a little notice, inasmuch as they present the grounds on which, in the year 1829, physicians of some eminence recommended the interdiction of the insane.

§ 574. Sir George Tuthill testified, that he was of unsound mind, at the period of his last visit; principally, because he spoke indignantly of the manner in which he had been treated by his family. His additional reasons for thinking him insane, and unable to manage his affairs, were his learning to box, his purchasing a fowl for ten shillings, and his

saying that he could weep over his little rabbits, which he had not seen for six weeks.

Dr. Algernon Frampton testified, that he could not consider him sane on the seventh of December, because he would not admit himself to have been insane on the eighth of August. He thought there was a delusion in his mind as to his mother's conduct, though he admitted there would be no delusion, if his mother had interfered as Davies described, and as other witnesses testified. He thought that the purchase of a certain estate for 6,000 guineas was in itself an act of insanity, considering his circumstances, though he admitted he knew nothing of his circumstances. A man of business, he thought, ought not to lock up so much of his capital. He never inquired how Mr. Davies managed his business, though he declared that he was incapable of managing it.

Mr. Haslam testified, that he was induced to consider him insane, from his manner of complaining of the dirty habits of the keepers of the establishment where he was confined. He said decidedly, that as long as his morbid hostility remained against his mother, it was not safe for him to go at large.

§ 575. In opposition to this evidence — and it is but a small portion of what might be given — it may be well to exhibit a specimen or two of that given by Mr. Davies's medical witnesses. Dr. Macmichael, who had been sent down by the lord chancellor to examine into the state of his mind, satisfactorily showed that Mr. Davies's peculiar notions and views which had been considered by many as delusions, either did not exist at all, or proved, upon examination, to be perfectly rational and proper. In attributing his prosperity to the favor of Providence, which had been mentioned as one of his delusions, he said he did not mean immediate or special interference, but that general providence which regulates human affairs. His boast of having improved the revenue by his biddings, which had also been imputed to him as a delusion, he explained by saying that there was a certain kind of tea that was now almost given away;

that if he bid higher than others, the duty would be increased, and that thus he should put money into the pocket of government. He showed, that instead of sacrificing his property by this course, he realized a large sum of money in a very short time. Dr. Macmichael was not willing to admit that his learning pugilism, or carrying pistols, was any evidence of unsoundness of mind, for he might have had good reason for doing both.

§ 576. Dr. Mackinnon, who was connected by marriage with the family of Mr. Davies, and had visited him several times during his confinement, thought him, from the first interview to the last, capable of managing himself and his affairs. He showed that many of his peculiar habits and manners which had given rise to the idea of insanity, he had always manifested when in good health. His letters which, from being full of quotations and puns, were thought to indicate disordered mind, he showed were not different, in that respect, from those he wrote long before insanity was imputed to him. He conversed with him freely on the affairs of his family, and his remarks upon his mother's interference were rational, just, and free from excitement. His inquiry into the imputed delusions, ended in the same result as Dr. Macmichael's. In particular, he did not consider his hostility to his mother as a delusion, for, from the son's account, there was good reason for it. On a variety of other subjects, his discourse was calm and rational.

§ 577. This case is not calculated to recommend the opinion of those who look on the slightest mental aberration as a sufficient ground of interdiction. The principle to be followed here is precisely that which we have indicated as applicable to cases of imbecility. Instead of puzzling ourselves with vain attempts to gauge the depth and breadth of the absolute capacity of the mind, our duty is simply to ascertain if the individual has been guilty of any instances of gross improvidence, of expenditure beyond his means, or for objects unsuited to his station and pursuits. If it be found that he has, then interdiction is implicitly required by a regard to his own and the interests of those who are

dependent on him for support, or entertain rational expectations of being benefited by his wealth. If he has not, it is not very clear how his property can be taken from his control, without violating the first principles of civil liberty. If no one doubts that the mental operations in monomania may be perfectly sound, except within a certain very narrow circle, why should it be a matter of surprise, that ideas of property should sometimes be among those which are unaffected by the influence of the disorder? To deprive a person laboring under a partial mania that does not involve his notions of property, of the natural right of controlling and disposing of his own fortune, is as unjust and irrational as it would be to inflict upon a felon convicted of theft, the penalties attached to the violation of every article in the criminal code. If, too, we interdict one monomaniac whose derangement is limited to a single subject, we are bound in consistency to proceed till we have included all, from him who believes he has lost his rational soul, to the poor hypochondriac who imagines his legs are made of glass, or that a fish has taken up its abode in his stomach. The mischief that would arise from such a course of disqualification, may be easily enough conceived, without the aid of any more particular description. Even when the hallucination has reference to property, as the idea, for instance, that the individual possesses immense wealth, or that every ship which enters the harbor is his and freighted with his goods, we are not too hastily to strip him of what is really his own, for he might, nevertheless, in the management of it, evince the most commendable prudence and economy. It is a remarkable, but not an uncommon fact, that monomaniacs often make no practical application of their insane notions to their own conduct or concerns, but continue to manage both as if no such delusion existed.

§ 578. In the progress of dementia, there always comes a period sooner or later, when interdiction is required, wherever the patient has much property, or conflicting interests are involved in its disposition. To decide when this period has actually arrived, is generally a difficult and a responsible

duty. To avoid the disagreeable alternative of favoring the designs of selfish relatives, which would be promoted by the interdiction and seclusion of the old man, by premature interference, or of delaying proper measures, for fear of being thought accessory to schemes of fraud and oppression, until too late to be of any service, is to gain the happy medium which all should seek, but which few perhaps are successful enough to obtain. The difficulties which medical men have to encounter, who are consulted in such cases, are graphically described by Dr. Conolly. "An old gentleman," he says, "whose intellects are so impaired that he does not know whether he has received his rents or not, or who is unable to arrange his own dress decently, and requires, when up stairs, all the attention of a child, is seen by the medical practitioner, for the purpose of its being ascertained how far interference with his property is justifiable. The very servant who is hourly robbing him, takes care to send him down very carefully drest. The mere effect of habit is to cause the patient himself to be more guarded and exact in his manner and words in the presence of a stranger; he feels under a temporary and a wholesome restraint; asks and answers common questions as well as most other old men, and is perfectly correct in his deportment. Two very serious evils may ensue. If the practitioner is unacquainted with the varieties of the mind and their tendencies; and imagines that insanity and sanity cannot be mixed up together in the mind as they are in the body; he feels a degree of conscientious horror concerning any interference with an old gentleman who may be a little weak, but who, he is quite convinced, is no more mad than any of those about him. He turns his thoughts to the probable motives of interest, in the children or the friends, and, determining not to warrant any kind of restraint, inwardly applauds his own sagacity and incorruptibility. The friends, now more afraid to interfere than before, allow the old man to do as he likes, and he sets off, and gets married to a worthless and designing woman, or he alters his will in favor of some unprincipled person, or finds his way to some neighboring town, where he becomes a disgraceful spectacle,

and gets robbed of his money and ill-treated; or perhaps he falls into the pond, and is drowned; all the world then exclaiming against the heartlessness and inattention of those about him, and the unaccountable supineness of those who were consulted about the case. Thus, the view of a very plain and easy duty is, not unfrequently, obscured by prevalent opinions respecting the nature of insanity, and respecting the measures which insanity is supposed to render indispensable. If the patient whom I have described, as conducting himself so satisfactorily in a short and common conversation, is left to his own thought for a little time, and his attention is not excited by those about him, his state will become evident enough. He will be seen to be wandering, and lost in his reflections, and will perhaps rise up and endeavor to make his way out of the room, but without seeming to remember the situation of the door. Or he will declare his intention to set off on a long journey, or by many slight indications show that his mind is reduced to imbecility. In some, the effects of the recent restraint of a stranger's presence may be more permanent than in others; but half an hour, or a few hours at the utmost, will suffice to show the state of the case. The decision is important, and due time must be allowed for it. If one visit is not sufficient, the visit should be repeated, until the practitioner can give a clear and decided opinion.

"But now comes the other danger. A sanguine practitioner sees the undoubted signs of folly and weakness in the old man, and forgetting that they are as much the effects of age as are the unsteadiness of his limbs, and the dulness of his hearing, pronounces the patient to be mad; and to gratify persons of no feeling or compunction, consigns the poor patient to strange hands, and causes him to spend the little remnant of his days away from his own house, and unseen by any of those whom his former care perhaps preserved, and whom his wealth will enrich."[1]

§ 579. The principles we have indicated, as proper to

[1] Indications of Insanity, 440.

guide us in deciding questions of interdiction in the various forms of imbecility and mania, are not to be so implicitly relied on here, because the unfitness of the patient to manage his own concerns is often proved, not so much by specific acts of extravagance or folly as by his subjection to the will of those who are deliberately and cautiously preying upon his substance. We may also bear in mind, that although we take from him the control of his property, even while his faculties are sound enough to make him capable of performing the duty himself, yet we are only prematurely taking a measure which a few weeks or months will generally render absolutely necessary.

§ 580. It is to be regretted that in cases of insanity where the mental disorder does not seem sufficient to warrant so extreme a measure as complete interdiction, while it occasions reasonable doubts of the ability to manage property with ordinary prudence, our laws have established no inferior grades of restraint. The civil code of France ordains that, "in rejecting a demand for interdiction, the court may, nevertheless, if circumstances require it, debar the defendant from appearing in suits, making contracts, borrowing, receiving payment for debts or giving a discharge, alienating or pledging his property, without the aid of a council which shall be appointed in the same judgment."[1] It would be well, if something of this kind always found a place in the legal regulations of the insane.

§ 581. The views here presented on the propriety of interdiction in different kinds of insanity, can, at the most, affect only the opinions of the expert, or the conclusions of the judge. They cannot easily be embodied into a legislative enactment, and it is doubtful if the slightest attempt thereto, would not be productive of uncertainty and embarrassment. In the French civil code it is enacted that only *habitual* imbecility, dementia, or furor, can be a sufficient cause of interdiction.[2] In thus requiring the alienation to have been habitual, it was the object of the legislator, no

[1] Code Civil, art. 499.

[2] Art. 489.

doubt, to prevent the abuses that might arise, if this measure were allowed in those temporary alienations that readily yield to medical treatment. But as no two individuals would probably agree as to the number of weeks or months necessary to make a case of insanity habitual, the law must, of necessity, either be entirely disregarded in practice, or become the means of great injustice, in consequence of the diversity of interpretation to which it is liable. Georget observes, that in Paris, the judge is always governed by the opinion of the patient's physician, relative to the future progress and result of the disease, rather than its previous duration.[1] The French jurists have disagreed as to the construction intended to be put on the terms, imbecility, etc. While some contend that these terms are thus multiplied, merely in order to embrace every possible form of mental disorder, it is contended by others, that the legislator's object was to prevent interdiction on account of any mental disorder which could not fairly be brought under one of these divisions. The consequence is what might be expected — the law is practically disregarded altogether.

§ 582. What the legislator can and ought to do is, to provide for the impartial administration of justice where interdiction is provoked, by such a course of procedure as will tend to bring out all the material facts. In France the facts of the case must be stated in writing, and supported by documents and witnesses; the family-council gives its opinion touching the utility of the measure; and the respondent is examined by the court and the attorney-general. If the examination and the documents are not satisfactory, the court may order an inquest. The same formalities are required for removing the interdiction.[2] In England interdiction is obtained by application to the Lord Chancellor who appoints a *Commission of Lunacy*, consisting of three or five persons, who cause a jury to be summoned with whom the commissioners sit as a court, and hear the evidence adduced. The inquisition may be traversed, though

[1] Discussion méd. lég. 174.

[2] Code civil, art. 493, 494, 495.

the chancellor be satisfied with it. In some of the United States, this method is still preserved, except that in such as have no chancery court, the commission is issued by a court of law. In most of them, however, application is made to the judge of probate, who gives due notice to the respondent, appoints a time and place for the hearing of the case, and decides without the intervention of a jury. This course is far preferable to the English, on the ground of expense, and probably the ends of justice are as fully obtained as if the case were submitted to a jury. In the German States, medical evidence is always required by the law, and the opinions of the physicians govern the decision of the judge. In Prussia, for instance, the law ordains that in all cases involving the question of insanity, the opinions thereon of two physicians shall be obtained, one of whom is to be chosen by the friends or relations of the party whose sanity is questioned, and the other by the court; and no person can be pronounced insane by the court, unless so considered by both physicians.[1] No provision can be better than this for settling the question of insanity, though whether it be sufficient to warrant interdiction, is another question, in the decision of which other considerations must enter.

§ 583. Isolation is a measure entirely distinct from that of interdiction, and neither should be considered, as they sometimes are, necessarily dependent on the other. On no point in the whole range of the subject under consideration, is it more necessary that we entertain clear and definite notions, than on that of the restraint of the insane, because, while often essential to the restoration or comfort of the patient, and to the safety of the community, it is, at the same time, liable to serious abuses. It is a curious fact that this measure, important as it is, has seldom been regulated by any express provisions of law. In France this measure is altogether unknown to the laws, except in relation to those whose liberty might endanger the safety of society. Such, and such only, the municipal authorities are required to con-

[1] Schröder, de legibus in commodum mente alienatorum, 197.

fine. The Penal Code, art. 341, inflicts the punishment of hard labor on any one who shall arrest, detain, or sequester the person of another not charged with any criminal offence, without the order of the constituted authorities. The 4th article of the charter of 1830, also declares that "no person can be pursued or arrested, except in cases provided by the law, and in the forms that it prescribes." Of course, establishments for the reception of the insane exist, but their whole economy is regulated by their respective governments. "In many departments," says Esquirol, "it is sufficient to apply to the administration of the hospital or asylum, in order to obtain the admission of a patient. In some places the authorization of the mayor is necessary, if the establishment is communal; of the prefect, if it is departmental. In a few establishments, the patient must be interdicted before he can gain admission." The necessity of express legislation on this subject is generally felt, and within the last year or two, it has received the attention of the legislature, but with what result we are unable to say. In the civil code of Austria, it is ordained that no person can be confined on account of insanity, who has not been legally declared to be insane by physicians appointed for the purpose of investigating his mental condition. In this country, the law as it relates to the isolation of the insane, is in very nearly the same condition as that of France, except in those States which possess hospitals that are controlled and supported by government. Isolation is also sanctioned by the law when adopted as a measure of police. In England, a person cannot be admitted into any lunatic asylum, without a certificate of his insanity, signed by two physicians, within seven days of his admission, and they must state the facts on which their opinion is founded.

§ 584. The seclusion of a person from his family and customary pursuits, on account of insanity, should be regulated by provisions having reference to the varying circumstances that may arise, and applicable with a suitable degree of ease and quietness. A uniform mode of proceeding would secure no advantages that would not be counterbalanced, either by

a degree of publicity and delay exceedingly painful in a majority of cases, while totally unnecessary and uncalled for, or by a want of that impartial inquisition which, in a few cases, is necessary to remove every suspicion of unfair dealing. It seems better to suit the provision to the nature of the case, and on this principle we have acted in making the following suggestions.

§ 585. When a person is struck down by disease, and is no longer capable of caring for himself, he is completely dependent on those around him — his family, his relatives, his neighbors, and even the passing stranger. To this appeal for sympathy and care, the ties of kindred, the holiest instincts of our nature, a sense of duty, a decent regard for the opinion of mankind, each or all prompt a favorable answer, and the sacred ministry thus exercised is instinctively regarded with feelings of respect and honor. It does not appear, at first sight at least, that there is any difference in the relations of the parties, when the disease is mental, instead of bodily. The essential conditions of the case are the same. The individual, if not utterly helpless, is incapable of judging what is best for himself, and needs appropriate attendance and medical treatment. Here then, as in case of bodily disease, the duty of making such provisions as the welfare of the patient may require, naturally falls upon those immediately around him or near him. Nature prompts it, the common sentiment of mankind expects it, in most cases all parties are ultimately satisfied with it, and the legislature should legalize it.

§ 586. The doctrine of the common law on this point has not been interpreted with the uniformity which the importance of the subject requires. Not long since, Chief Justice Shaw, of Massachusetts, laid down the broad principle, that the friends of an insane person are authorized in confining him in a hospital, by "the great law of humanity."[1] On the other hand, within a year or two, the Lord Chief Baron of the English Court of Exchequer incidentally remarked, that

[1] In the matter of Oakes, Law Reporter, viii. 122.

insane persons could not be legally held in confinement unless dangerous to themselves or to others.[1] In this opinion he was undoubtedly wrong, because the legislature had granted the power (8 & 9 Victoria, c. 100), but it indicates his interpretation of the common law on the subject. If, therefore, the friends of the insane are to enjoy the privilege of providing for them in such a manner as they may deem most suitable for their welfare, there seems to be a manifest propriety in securing it by a legislative act. The provision which, in accordance with these views we have adopted, insures the indispensable requisites of a great majority of cases, — despatch, domestic privacy, and those natural rights that flow from the family relation, — and, considered in all its aspects, is both wise and humane. That the power might sometimes be abused, is not denied, but such a result would be an exception to the general rule, and would be effectually remedied by the provisions hereafter mentioned. For obvious reasons we would give the same power to the guardian over his ward, and to the proper municipal authorities over their paupers.

§ 587. A very different provision is required for another, smaller class of cases, in order to secure, in the fullest degree, the rights of persons and the confidence of the public. We all know that insanity does not always derange every operation of the mind, and deprive the patient of every attribute of a rational being. Under certain circumstances, his conduct and conversation are marked by ordinary propriety and discretion, and to those who regard him superficially, he appears to be governed by the ordinary feelings and motives of men. At the worst, he may be supposed to be only a little eccentric, or to give way too readily to passion and impulse. To those, however, whose relations towards him place them immediately under his control, and whose presence furnishes no check upon the manifestations of his character, he appears very differently. They witness a degree of mental excitement and restlessness, an extravagance in his prospects and

[1] *Nottidge* v. *Ripley*, Law Reporter, N. S. ii. 277.

plans, a readiness to embark in new and hazardous speculations, an indulgence in habits of living beyond his means or unsuitable to his condition, an impatience at the slightest show of opposition or restraint, unfounded suspicions and jealousies, and the most arbitrary and tyrannical conduct in his family, all which traits are foreign to his natural character, and perhaps of recent origin. He at last evinces so little control over his passions, or is so completely possessed by his morbid fancies, that the peace and comfort of those in any way dependent upon him, are destroyed, and they are in momentary fear of personal violence. Besides this, he may be squandering his estate in a series of ruinous undertakings, and rapidly bringing his family to beggary, or plunging into unlawful indulgences that fill them with shame and sorrow. Now when such a person is placed by his friends in a hospital, the discipline of which is necessary, not only to secure the safety of others, but to restore him to his natural and healthy condition of mind, he declares that he is the victim of an iniquitous cabal, and so plausible and ingenious are his representations, that the most intelligent and cautious are sometimes led to suspect that he has not been fairly dealt with. Wearied by his incessant importunities, and doubtful, perhaps, of the propriety of his confinement, he is finally discharged by the directors of the institution, to renew the same course of ruinous enterprises and domestic tyranny, with the addition, it may be, of a lawsuit against his friends for false imprisonment. Even though he fail by these manœuvres to shorten the period of his confinement before it has produced any salutary effects, his mind is kept in a state of agitation and wrath that might, in some degree, have been avoided, if the measure had come from a different quarter, and with some of the formalities of a legal procedure.

§ 588. The condition of a family whose head is laboring under the form of insanity described above, is sufficiently painful and embarrassing, without imposing upon it the necessity of adopting the only appropriate measure, unaided by any of the sanctions and helps of law. To provoke the wrath of such a person by what he would consider the most

flagrant indignity and outrage, would be too fearful a thing to be ventured upon until patience had been tried to the utmost limit of endurance, or some overt act of violence called for immediate action. Neither is it a small thing to provoke the criticism of the public by taking a step of this importance, the necessity of which may not be unequivocally obvious to the world. In such cases the public is severe in its judgments, and not particularly careful to weigh the parties in an even balance.

§ 589. In the same category, too, we would place those persons who are insane enough to require confinement, but have no relatives or friends with sufficient interest in their welfare to induce them to assume so unpleasant and responsible a duty as that of placing them in confinement.

§ 590. After due consideration of the various means that might be adopted for determining the question of seclusion, in regard to the cases above-mentioned, we can think of none better than that of a commission, so constituted that its decisions shall command the respect and confidence of the community. It should consist of not less than four nor more than six persons, one of them a lawyer and another a physician, for the purpose of giving a suitable direction to the inquisition, who should have the party brought before them, hear the testimony, and render a decision accordingly. Of course they should have the power of ordering him to be held in custody pending the proceedings. The authority appointing the commission should be as accessible as possible, to insure the necessary despatch, and might be lodged with the judges of the law courts, and also with judges of probate where these functionaries are at all distinguished from the average run of men by superior knowledge and respectability. The application should be made in writing by some friend or relative, and should present the grounds on which the allegation of insanity is to be established. The success of this proceeding would very much depend on the character of the individuals composing the commission, and no act of the legislature could regulate that exactly. It is probable, however, that the importance would be felt of intrusting so

delicate and responsible a duty to men, whose intelligence and virtues had given them a merited weight of character in the public estimation.

§ 591. There is still another class of the insane for whose committal a mode of procedure is required, different from both of those already mentioned, — those whose disorder renders them dangerous to the community, and who have no friends to take them in charge, and provide for them according as their necessities may require. Most, if not all the New England States, and perhaps others, have a statute which gives to a magistrate the power of committing to some place of confinement, "persons furiously mad and dangerous to be at large." This provision should be retained. Indeed, there seems to be no other way by which this class of persons can receive the attentions that common feelings of humanity and a regard for public order would dictate. As they are, for the most part, destitute and friendless, and become a charge to the community where they are arrested, there can be no inducement to seek their confinement unjustly. It would not be impossible, certainly, for wicked and cunning men to make the statute an instrument of great injustice; but the objection arising from such a contingency may be obviated by the fact, that if the case present any suspicious circumstances, the magistrate may decline to take cognizance thereof, and refer the parties to the provisions just mentioned.

§ 592. Having thus provided for the restraint of the different classes of persons who may require it, the next step would be to provide for their restoration to liberty. For the most part, the latter measure, like the original restraint, should remain in the hands of the family or friends. The same authority, also, which commits persons "furiously mad and dangerous to be at large," should have the power of discharging them, when satisfied that the original objects of their confinement will be properly cared for. It is proper, too, that those who have guaranteed the payment of the expenses of an insane person in a place of confinement, should have the power of removing him, if that is requisite in order

to close their liabilities. Reasons may occur that would render it as expedient to withdraw from such an obligation, as it might have been to assume it originally, and if, by the conditions of the obligation, the patient must be removed before it can be discharged, then most clearly the surety should have that power.

§ 593. There now remains but one more class whose discharge from confinement we have to consider, — those who claim their liberty on the ground of being unjustly confined. The injustice may consist in being confined without having ever been insane, or in the confinement being continued after recovery from the disorder. We can conceive of no better mode of meeting such cases, than by a process very similar to that by which those are committed whose friends do not choose to assume the responsibility. There would be a convenience in making the trustees, directors, or by whatever name that body may be called which has the general supervision of the hospital, this committee, as they could discharge the duty quietly and cheaply, with the peculiar advantage of having often observed the party in question and heard his statements from his own lips. But their official connection with the institution might be thought to bias their opinions, and therefore there seems to be a propriety in forming the commission of persons having no previous knowledge of the parties. It should be an indispensable condition that they should have an interview with the patient, but it is not necessary that it should be attended with any formalities, or that he should be aware of its object. The proceeding is in the nature of an inquisition, not a trial by jury, and hence the commission may not be bound by any formal rules in pursuing their object. Indeed, the great advantage of this method over a judicial investigation procured by a writ of habeas corpus, is, that it is not necessarily attended with a degree of formality and publicity calculated to excite injuriously the mind of an insane person, and also to produce a mischievous effect upon the minds of other patients in the same establishment.

§ 594. It often happens, that insane persons are attacked

with bodily disease, when their friends are desirous of taking them home, and contributing whatever may be in their power to the solace of their declining days. The character of their disorder also often changes, so that they can be safely managed at their own homes; and sometimes there may be reasons for merely changing the place of confinement. In all these contingencies, the grounds on which the discharge of the patient is sought for, are so reasonable, that the order of a judge should be sufficient without the interference of a commission.

§ 595. The above provisions, we apprehend, will meet every contingency incident to the confinement, or discharge therefrom, of the insane. They possess the necessary requisites of despatch, convenience, cheapness, and regard to private feelings. By suiting the provision to the particular emergency, we avoid the insuperable objections that would lie against any single provision intended for application to all classes of cases. By far the larger class require no legal procedure at all, and are better left to the management of the family or friends. To subject them to any legal formalities beyond a compliance with a few simple rules, would be to inflict needless pain, and thus produce a certain evil in order to avoid a contingent one. The much smaller class, which require some judicial investigation, are provided for by a mode of procedure, familiar to our practices, accessible, cheap, and well calculated to satisfy the public mind. The commission, let it be observed, is its only essential feature. The manner in which it shall be constituted, and the authority from which it shall emanate, are subordinate, though important points, which must or ought to vary with the circumstances of each particular community. To insure the successful working of the system, the appointment of the commission should be conferred upon functionaries having some practical acquaintance with law proceedings, and sufficiently cultivated and enlightened to be above the influence of vulgar prejudices. On this account we have selected for the purpose, the justices of the law courts, and perhaps those of the probate courts, and in sparsely populated parts of our

country, the public convenience might be served by adding to them the sheriff of the county. In most respects, it would be decidedly better if the duties of these commissions were performed by a single permanent board appointed by the government. The members of such a board would naturally make themselves acquainted, by all the means in their power, with the subjects of inquiry that would come before them, and frequent practice would give that familiarity with their duty that would enable them to avoid mistake, and inspire confidence in their decisions. The only conceivable objection to the plan would be, the large amount of travelling expenses to which it would lead, especially in large States, and this would be sufficient, probably, to outweigh its acknowledged advantages.

§ 596. In order to prevent any infringement of the laws respecting the confinement of the insane, the first step would be, to render it a penal offence for the directors or superintendents of hospitals to receive patients, except in strict conformity to the laws. In respect to persons admitted under the first section, a certificate of insanity from one or more physicians should be required, as well as a written request for admission from some relative or friend. Beyond this we do not know that any safeguard would be practicable or necessary, and, considering the provisions that furnish a remedy against any possible abuse, we see not how any fault can be reasonably found with it.

CHAPTER XXIX.

DUTIES OF MEDICAL WITNESSES.

§ 597. Books on Medical Jurisprudence usually contain a chapter on Medical Evidence, in which the general subject is discussed. There are some points, however, connected with such evidence in cases involving questions of insanity, which require a more special consideration. Cases of this kind have now become so common, that it is highly important for the medical witness to know precisely what are his duties, as well as the difficulties which he is likely to encounter.

§ 598. Unlike the ordinary witness who relates only what comes within the cognizance of his own senses, the expert testifies respecting the inferences that may be drawn from the facts related by others. In other words, certain facts being given, the expert is required to state the general principle which they indicate in regard to the question at issue. This method of obtaining information on scientific subjects is as inappropriate as possible, but, in this respect, our rules of evidence recognize no distinction between matters of fact and matters of opinion. In regard to the latter as well as the former, the testimony is off-hand, with no other preparation than what may have been anticipated by a shrewd conjecture as to the course of inquiry which the examination may pursue. Objectionable, however, as this method is, it is the only one known to our laws, and its requirements must be met in the best possible manner.

§ 599. The expert should be prepared for his duty by a well-ordered, well-digested, comprehensive knowledge of mental phenomena in a sound as well as unsound state.

The question which, in one shape or another, is put to him, is whether or not certain mental phenomena indicate mental unsoundness. The true character of doubtful cases cannot be discerned at a glance. The delicate shades of disorder can only be recognized by one who has closely studied the operations of the healthy mind, and is familiar with that broad, debatable ground that lies between unquestionable sanity and unquestionable insanity. How little dependence could be placed on the testimony of a physician concerning the results of a cadaveric autopsy, who has not, by frequent inspection, made himself acquainted with the healthy appearance of the organs. How this knowledge is to be obtained, is a question not easily answered. In books on mental philosophy the various faculties and operations of the mind are unfolded and described, with a show of scientific precision. But the expert will derive from them little aid in preparing himself for his duties, for the reason that their investigations are partial, being confined chiefly to the individual's own mind, overlooking the manifestations of mind as affected by disease. If any books are to be studied, it should be those immortal works which represent men in the concrete, living, acting, speaking men, displaying the affections and passions, the manners and motives of actual men. Locke and Stewart will here be found of less service than Shakspeare and Molière. But better than all books, though their aid is not to be despised, are personal observation, and study of mental phenomena as strikingly exhibited in real life. Every mental peculiarity, especially in the normal condition, and, above all, those traits of character that mark the transition between health and disease, should be closely observed. The expert should learn to distinguish the thoughts and manners of the one condition from those of the other, and endeavor to gain a ready perception of the general air and tone characteristic of each. No kind of preparation will better fit him for performing the peculiar duty of an expert, which consists in forming opinions respecting mental conditions, from a few and perhaps disconnected facts. Without it he will be constantly liable to the mistake of regarding a trait or act as indicative

of disease, for no other reason perhaps, than because it occurs in a case supposed to be doubtful, and of confounding natural eccentricities and impulses with the manifestations of active insanity. The expert who is deficient in this kind of knowledge can never be a reliable witness in questions of insanity.

§ 600. However well prepared the witness may be, he will find it necessary to be on his guard against another disadvantage incident to our method of eliciting evidence. He is called by the party that has reason to believe, that his testimony will serve the purpose of the latter. He is, in form at least, that party's witness, engaged by him, and by him made acquainted with all that he knows respecting the merits of the case. Counsel look at one side of the question only, and naturally endeavor to make the expert participate in their views, while their intercourse is marked by a kind of cordiality and fellow-feeling somewhat adverse to that independence which the expert should never relinquish. The consequence of such a relation is, that he can scarcely help testifying under a bias. In many cases, no doubt, this would be unavoidable under any mode of procedure, and the only thing the expert can do, is to shun the evils of this arrangement as much as he possibly can.

There are other points in regard to which an expert not much familiar with courts, may be benefited by a word or two of advice.

§ 601. In the first place, let him beware how he suffers the dread of being thought ignorant of his profession, to draw from him a positive and unqualified reply, where a modest doubt would better express the extent of his knowledge. It is not expected, that on the spur of the moment, without any special preparation, he should always be ready to express an opinion on an obscure point, or one somewhat remote from the line of his ordinary duties. Neither court nor counsel ever commit a folly like this. They are careful to make their opinions the result of calm, deliberate reflection, and thorough research. And why should the physician do otherwise? Life and death may be involved in his testimony,

and the consequence of his rash confidence may be the ruin of a fellow being, and a harvest of self-upbraiding to himself. He loses no reputation necessarily, by honestly stating that he is unprepared to give an opinion without mature consideration, but he cannot help losing much by taking the opposite course. He should also bear in mind that the object of counsel, as everybody knows, is not so much to elicit the truth as to serve their client, and thus every particular question, as well as the general tenor of the examination, is adapted to this purpose. They form an hypothesis, or lay down a plan of operations, and then frame their questions so as to bring out the wished for reply. Let the witness never forget, therefore, that every question has its object, and take care that his answer be carefully considered.

§ 602. It also happens that an ignorance of medical terms, if not of medical subjects, often prevents the counsel from using language with that degree of precision which is indispensable in the discussion of scientific subjects. The witness should insist, therefore, on having the question clearly expressed, and never allow himself to answer a question he does not thoroughly comprehend. Equally necessary is it for him to be careful how he returns categorical answers to the questions put to him, for they are apt to leave wrong impressions upon those who are imperfectly acquainted with the subject, and may be adroitly used to embarrass the witness and discredit his testimony. If he would avoid this result, he must, in spite of the authoritative demand for a *yes* or a *no*, so qualify and explain his answers, as to prevent any mistake of their meaning, and no dread of amplification should deter him from this purpose. Let him bear in mind that he has an unquestionable right to express his opinion in his own way, and that he is put upon the stand, not solely to answer such questions as the ingenuity of counsel may prompt to further their ends, but to give an opinion on a scientific subject for the purpose of promoting the cause of justice. Such, in point of fact, notwithstanding our modes of procedure, is the proper function of the expert, and, as courts generally are disposed to receive any light he can

furnish, they will sustain him in his endeavor to make himself thoroughly understood. Indeed, they are less likely to yield their confidence to categorical and unqualified statements, indicative as they must be, either of ignorance or trepidation, than to the cautious and guarded manner characteristic of true science.

§ 603. The medical witness must be on his guard against another favorite manœuvre of counsel — that of supposing cases, and drawing out of the witness an opinion that may be advantageously applied to the case in hand. It is easy enough for an active imagination to create a case apparently favorable to a certain hypothesis. And this is its radical fault, that it is without life or substantiality, a mere figment of the brain. It is a well-settled principle, that in matters of science, opinions must not be formed on a partial statement of facts ; but how can any statement be regarded as complete or incomplete, which is professedly fictitious? In a case where the validity of a will was contested on the ground of the insanity of one of the subscribing witnesses, it appeared in evidence, that he had, at one time, entertained some gross delusions and attempted suicide, but that for a few months previous to the execution of the will, he had renounced the delusions, pursued his studies, wrote a very good book, and in short, seemed to be entirely like himself, with the exception of unusual shyness and desire for solitude. To one of the experts who had expressed the opinion that this person was of sound mind, this question was put; — "Supposing he had committed murder about the time he witnessed the will, would you have considered him as morally responsible for the act?" The question was artfully founded upon the imputed disposition of the expert to admit too readily the plea of insanity in criminal cases. The court did not permit it to be answered, but the reply would have availed the party nothing. An act of homicide is a fact, or more properly a body of facts, a knowledge of every one of which may be necessary to throw any light on the mental condition of the person committing it. Nothing could be more presumptuous than to form an opinion in such a case,

without an exact knowledge of all, even the minutest of the circumstances attending it. Here was an endeavor to draw out a professional opinion on an abstract idea, and even if a tissue of circumstances had been *supposed*, they would have formed no ground for an opinion.

§ 604. Another professional manœuvre of a kindred nature, is that of selecting one or more particulars which have been adduced among the indications of insanity, and then asking the medical witness if he regards *that* as a proof of insanity. It is always one of those things which, whatever they may signify when viewed in connection with one another, yet, singly considered, prove nothing respecting the mental condition. And it is for this very reason, that the attempt is made to throw the expert upon the horns of a dilemma, for, if he replies in the negative, he appears to deny what he has but just virtually affirmed; if in the affirmative, he stultifies himself in his eagerness to avoid a fancied inconsistency. The only course for him is, to state the general principles which no one sees exemplified oftener than himself; that, in a large proportion of cases, insanity is manifested, not so much by any particular trait, as by the general character of the person's conduct and conversation, as compared with that which he exhibited when admitted to be sane; that, in regard to many patients, it would be impossible to mention a *single* trait that none but an insane man would exhibit; that even in the strongest cases, it would often be difficult to give reasons for a belief that would be satisfactory to those who have no practical knowledge of insanity; and that this difficulty becomes an impossibility when the indications are obscure, or consist more in the general style of the conduct and discourse than in any single act or notion. At any rate, let him firmly decline to form an opinion on one or two selected facts.

§ 605. Lawyers are much disposed to ask for a definition of insanity, and it will be well for the witness to be prepared on this point, bearing in mind that the object of the question is, not so much to obtain any light on the subject, as to perplex and embarrass him. Medical writers have exercised

their wits in seeking what they are pleased to call a definition of insanity, in the belief that if once discovered, they would know precisely what insanity is and what it is not. It is generally admitted, that no one has yet succeeded in accomplishing this laudable purpose, for insanity belongs to a class of phenomena that may be described and explained, but are not the proper object of a definition; and the reason why an unexceptionable one has not appeared, is not so much on account of the obscurity of the subject, as because the thing is inappropriate and nugatory. If the medical witness suffer himself to be drawn into a metaphysical discussion, he will be sure to be worsted, for his opponent is cool and prepared, while he is taken by surprise, and unable to see the point to which he is dexterously led.

§ 606. The witness is sometimes asked if all people are not more or less insane, and if all crime is not temporary madness. The object of the question is to excite a prejudice against the plea of insanity generally, by implying that it is used to shield the evil-doer from the penal consequences of unbridled passion. Although never relevant to the case in hand, yet the witness may sometimes deem it proper to return a formal and deliberate answer; and if his views on the subject agree with ours, he will firmly maintain the distinction between normal passion and maniacal fury, — between the infirmities and short-comings of a limited nature, and the manifestations of unequivocal disease. If people choose to set up, in good faith or otherwise, a fancied ideal of perfection, and regard every one who falls short of it as more or less unsound, the only objection is the misapplication of terms; but while we acknowledge the difficulty sometimes of running the line between vice and insanity where they border on each other, for the most part they are wide enough asunder and easily distinguished. Nature draws no dividing lines in the realms of moral or natural science. Classes and orders and genera are merged in one another, and the inquirer is ever treading upon some debatable ground, where the clearest distinctions and definitions quite vanish away. Why then should it be thought so strange, that the

empire of health should be divided by no palpable line from that of disease? or that this fact does not authorize the conclusion that their respective phenomena can seldom be accurately distinguished from one another? Our knowledge of the philosophy of crime, if we may use the phrase, has been greatly enriched of late years, by observations in hospitals, jails, and court-rooms, in the purlieus of vice and the walks of respectable society; but the old landmarks, the fundamental distinctions, remain as prominent as ever.

§ 607. In this country the course usually adopted for eliciting the opinion of the expert, is, to ask him if he has heard the evidence, and if he has, and supposing it to be true, what is his opinion respecting the mental condition of the party. In *Commonwealth* v. *Rogers* [1] (1844), the court said, "the proper question to be put to the professional witnesses is this: If the symptoms and indications testified to by other witnesses are proved, and if the jury are satisfied of the truth of them, whether, in their opinion, the party was insane," etc. "They are not," the court adds, "to judge of the credit of the witnesses, or of the truth of the facts thus testified by others. It is for the jury to decide whether such facts are satisfactorily proved."

§ 608. For the first time in this country, a different rule was adopted by the federal court of this circuit, in *United States* v. *McGlue* [2] (1851). The medical experts "were not allowed," says the court, Mr. Justice Curtis presiding, "to give their opinions on the case. It is not the province of the expert to draw inferences of fact from the evidence, but simply to declare his opinion on a known or hypothetical state of facts; and therefore, the counsel on each side have put to the physicians such states of fact as they deem warranted by the evidence, and have taken their opinions thereon. If you consider any of these states of fact put to the physicians are proved, then the opinions thereon are admissible evidence to be weighed by you. Otherwise, their opinions are not appli-

[1] 7 Metcalf, 500. [2] 1 Curtis, 1.

cable to this case." English decisions to the same effect, chiefly of very recent occurrence, may be found in the books, and may be briefly noticed.

§ 609. At the trial of Earl Ferrers,[1] in 1760, his counsel proposed to ask the medical witness, "whether any and which of the circumstances which have been proved by the witnesses, are symptoms of lunacy." Whereupon, the question being objected to by the Attorney-General, Baron Henley, who presided as Lord High Steward, observed that it "tended to ask the doctor's opinion upon the result of the evidence," and that he "must be asked whether this or that fact is a symptom of lunacy."[2] More recently in *Regina* v. *Francis*[3] (1849), a physician who had heard all the evidence, was asked whether from all he had thus heard, he was of opinion that the prisoner, at the time he did the act in question, was of unsound mind. The court, Baron Alderson, interposed, saying, "I cannot allow such a question to be put;" and on being reminded that the question was so put in McNaughton's case, he added, "I am quite sure that decision was wrong. The proper mode is, to ask what are the symptoms of insanity, or to take particular facts, and assuming them to be true, to ask whether they indicate insanity on the part of the prisoner. To take the course suggested, is really to substitute the witness for the jury, and allow him to decide upon the whole case." Shortly after, in *Doe d. Bainbrigge* v. *Bainbrigge*[4] (1850), Lord Campbell ruled out the same question, and for the same reason. In *Reg.* v. *McNaughton*[5] (1843), the question was put to an expert who had heard the whole trial, "judging from the evi-

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[1] 19 Howell, 943.

[2] This ruling of Baron Henley which we have given in full, precisely as reported, besides being wrongly attributed to Lord Hardwicke, is wonderfully amplified and embellished in Lord Brougham's version of it, contained in his remarks in the House of Lords on the McNaughton case. See 67 Hansard, 614.

[3] 4 Cox, C. C. 57.

[4] Ibid. 451.

[5] Report of the trial of D. McNaughton by Bousfield & Merrett, 73.

dence which you have heard, what is your opinion as to the prisoner's state of mind?" and no objection was made. The judges, in their replies to the questions proposed by the House of Lords in consequence of this trial, say, however, that although "where the facts are admitted, or not disputed, and the question becomes substantially one of science only, it may be convenient to allow the questions to be put in that general form, yet the same cannot be insisted on as a matter of right."

§ 610. Such are the principal decisions which furnish the authority in the case of *United States* v. *McGlue*, for departing from the American practice on this subject. It will be observed that in these cases, the question to the expert, disallowed by the court, was not exactly in the terms of that allowed in the Rogers case, as quoted above. In the former, the opinion is given under the single condition that the expert has heard all the evidence, so that in fact, he passes upon the evidence precisely like the jury. In the latter, there is another condition, — he must suppose the evidence to be true. It is not for him to exercise any judgment on this point, but to regard it as all true, without restriction or qualification. This is an important difference, and it may be fairly questioned whether this additional ingredient in the terms of the query, would not have obviated the practical difficulty contemplated by the English courts. It thus becomes the hypothetical case which they require. It may have no foundation in truth. It may have no more reality than the baseless fabric of a vision, yet for the present purpose, it is to be regarded as true, and made the basis of an opinion. It is immaterial, certainly, whether the hypothetical case is presented in the language of the counsel, or of the witnesses, — whether it is to be received directly from the latter, or, at second hand, by a tedious process of circumlocution.

§ 611. That the rule would have been modified in the manner here supposed, seems not unlikely in view of the fact, that in other cases, similar in principle, the question as put in the Rogers case, was allowed, though objected to by

counsel. In *Malton* v. *Nesbitt*[1] (1824), and *Fenwick* v. *Bell*[2] (1844),— cases resulting from collision of vessels — where the question at issue was one of negligence or unskilfulness on the part of the master, nautical men who had attended the trial, were asked whether, *supposing the evidence to be true*, the master was, in their opinion, guilty of negligence. In *Beckwith* v. *Sidebotham*[3] (1807), this mode of putting the question was sanctioned by Lord Ellenborough. The question at issue was the unseaworthiness of a vessel, and eminent surveyors of ships were allowed, upon the evidence of other witnesses, to give their opinion on this point.

§ 612. The principal, if not the only objection, to this mode of putting the question to experts, is that it essentially removes the expert from the witness-box to the jury-box, and allows him to usurp the functions of both judge and jury. How a witness can be said to usurp the functions of the jury, who may, if they please, render a verdict in the very teeth of his opinion, is not very obvious. If the jury choose to shape their verdict by his opinions, they no more surrender to him their functions, than they do to the court or counsel whose remarks may influence their decisions. Neither is it easy to understand, so far as this issue is concerned, why the opinion of the expert upon the facts which have appeared in evidence, should be more objectionable than his opinion upon a hypothetical state of facts, because if the latter is at all similar to the former, his opinion upon it may equally affect the conclusions of the jury. Lord Brougham, in his remarkable version of Baron Henley's decision, seems to have appreciated the force of this conclusion, by prohibiting the expert from giving his opinion upon the evidence in any shape. "You shall ask them," he says, "if such a fact is an indication of insanity or not — you shall ask them, upon their experience, what is an indication of insanity — you shall draw from them what amount of symptoms constitute insanity," "but you must not ask a witness whether the facts

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[1] 1 Car. & Payne, 70.

[2] 1 Car. & Kir. 312.

[3] 1 Campbell, 116.

sworn to by other witnesses preceding him, amount to a proof of insanity."[1] So, too, in the case cited above, Lord Campbell said, "The witness may give general scientific evidence on the causes and symptoms of insanity, but he must not express an opinion as to the result of the evidence he had heard with reference to the sanity or insanity of the testator."[2] Not a word is said in either case about making a hypothetical statement of facts.

§ 613. To say that an expert, in expressing an opinion upon the facts given in evidence, is thereby assuming the functions of the jury, indicates a confusion of ideas in a quarter where it would have been least expected. Nothing would seem to be plainer than the distinction between the duty of the jury and that of the expert, and that distinction authorizes no apprehension of their being confounded under any tolerably intelligent administration of the law. The jury are bound to decide for themselves as to the truth of the facts which appear in evidence. What those facts may signify, it is for the expert to say. To render a just verdict, the jury must of necessity rely more or less on the opinions of the experts. So far as those opinions are allowed to influence the verdict, so far may the expert be said to assume the functions of the jury; but, be it it observed, in the legitimate performance of his own part. Perhaps the opinion of the expert may be decisive of the question at issue, and thus determine the verdict. And why should it not? If that opinion is correct, it would be highly reprehensible in the jury to disregard it, although not bound by any legal enactments. When a person is convicted of some criminal act, though regarded by men long familiar with the phenomena of insanity to have been insane at the time of its commission, the jury no more deserve the praise of intelligence and courage, than if they had disregarded the calculations of a mathematician on a question of water-power.

§ 614. In the construction of a doubtful rule of evidence,

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[1] 67 Hansard, 614.

[2] *Doe d. Bainbrigge* v. *Bainbrigge*, 4 Cox, C. C. 451.

it would seem as if that should be preferred which let in upon the jury in the largest measure, the light of science and liberal knowledge, — directly and clearly, without the intervention of refracting media. What the jury want is light upon the dark points of the case before them. The question is not what may be the expert's views in regard to the mental condition of A, B, C, or any other individual, real or imaginary, but what he thinks of the only person with whom the court has any concern. In a case involving a question of insanity, the expert is called in expressly to give the jury the benefit of his special acquaintance with the subject, — a benefit which he has a right to give, and they a right to receive — and thus assist them in arriving at a correct verdict. For this purpose he hears all the evidence, and carefully forms his opinion upon it. The next step, it might be naturally supposed, would be to express that opinion on the witness stand. But here the new rule is interposed, and the expert is told that he must not utter a word respecting the case, the details of which he has been following day after day, perhaps for weeks together, but he may tell them what he thinks about some other case. The admirable fitness of this rule for promoting the ends of justice must be obvious to the dullest apprehension. The jury, embarrassed and perplexed by a multitude of traits and incidents, the full significance of which is utterly beyond their reach; anxious to get at the truth, but unable rightly to appreciate the facts on which it is to be founded, would gladly avail themselves of the superior insight of men to whom such facts are familiar as household words, but this privilege is refused. Experts may be called, it is true, but they are to talk about any thing rather than the case in hand — the only case regarding which the jury care to have their opinion at all.

§ 615. But, it is replied, you may state a hypothetical case, embracing all the essential facts related by the witnesses, and thereby obtain from the expert precisely the same opinion as if the question had been put to him according to the formula used in the State courts. If this is really so, it is not very clear how the technical difficulty is avoided.

You may not ask the expert, say the court, whether, supposing the evidence to be true, he believes the party to have been insane, but you may repeat to him in detail all the symptoms and occurrences related by the witnesses, and ask him whether, supposing them to have really happened, the person concerned was insane. If there is any difference between these two propositions, it seems to be very much like that between "Come out here, Mr. McCarthy," and "Mr. McCarthy, come out here." In neither case is the expert bound to believe that the facts on which he founds his opinion, have actually occurred, while in both, it is understood that these facts, whether real or imaginary, are precisely the same. It is hardly credible that a difficulty like this, which could be removed by a paltry shuffling of words, should be allowed to change a rule of evidence universally recognized in the courts of the country. Besides, if the case put to the jury is precisely that which has appeared in evidence, it is but little better than quibbling to call it a hypothetical case. It certainly is regarded by jury and expert as the case which is on trial, and in spite of any modification of language or change of subordinate points, the opinion of the latter will inevitably be shaped by what he has heard from the witnesses. If, on the other hand, a case truly hypothetical is put to the expert, then it needs but little reflection to see that the less it resembles the case exhibited by the witnesses, the less will it enlighten the jury in the formation of their verdict. But this method is not only useless, it is positively mischievous. It is very easy for counsel, by suppressing some circumstances and adding others, to present a case sufficiently like the one on trial, to seem to the jury the same, but really so different as to elicit from the expert, an opinion very different from that he had formed respecting the actual case, and which, perhaps, he had already expressed. The jury are mystified by such apparently contradictory views, and it would not be strange if they concluded to disregard such deceptive lights altogether, and rely on their own unassisted judgment.

§ 616. Another objection to this new mode of obtaining

an expert's opinion is, that it violates one of the settled rules of philosophy. It is well understood among scientific men that they are not to enter on the discussion of facts that have not been carefully observed, and duly authenticated. The true disciple of modern science will scarcely allow himself to talk of the attributes and incidents of a thing that never had an objective existence, because, if the thing never really existed, we are liable, with our limited faculties and scanty knowledge, to attribute to it incidents more or less incompatible with one another. A hypothetical case must be always open to this objection, that being the offspring of fancy it may be such a case as never did and never could exist in nature; and therefore that the opinion of an expert on such a case must be more or less unreliable. Indeed, nobody supposes that the hypothetical cases stated by counsel always represent cases that have actually occurred, for it is well understood that they may be merely a collection of such particulars as best suit the counsel's purpose. Were we to enumerate a train of symptoms chosen at random, and ask an expert what disease they would signify in a patient who might exhibit them, we should commit no greater absurdity than the counsel does who picks out an incident here and there from a man's conduct and discourse, and then asks the expert on the witness-stand, if he considers them as conclusive proof of insanity.

§ 617. It would seem as if the soundness of this principle would be instantly recognized by lawyers, with whom it is a sort of professional rule never to give counsel on a supposititious case. We know very well what would be the reply of any lawyer having the slightest regard for his reputation, to one who should seek his opinion in this manner. "If the case you put is merely a matter of speculation or curiosity, I am willing to talk about it, but if you wish my opinion for a practical purpose, on a case that has a real existence, you must state that case with all its particulars, without addition or suppression; and since your imperfect knowledge of these things might lead you unconsciously to misrepresent the case, you had better get a lawyer to state it for you."

And yet, when the opinion of an expert on a matter of science is required, distinguished lawyers say he must not be asked about facts which have been stated with all that precision and completeness which only a judicial examination can secure, but you may draw upon your memory or your imagination for the materials of a hypothetical case, and ask his opinion about that. A fiction, an acknowledged creation of fancy, is supposed to serve the ends of truth and justice better than actual facts!

§ 618. Thus far we have gone upon the supposition that the rule now advanced, is, at least, practicable. Unquestionably, it may be in many cases; but in those cases, by no means few, where the facts touching the mental condition of the party proceed from a cloud of witnesses, each one contributing something towards the general impression which is made upon the mind of the expert, it cannot be strictly carried out without manifest injustice. We had an opportunity a few months ago, of seeing it applied in a criminal trial, in a federal court held in a neighboring district. A ship-master was on trial for beating to death one of his crew, and defended on the plea of insanity. After a large number of witnesses had been examined, the prisoner's counsel proceeded to put the question to the experts in the usual way, whereupon the district attorney objected, and his objection was sustained in an elaborate opinion from the circuit judge. No better illustration of the folly of the rule could be had than was furnished by the actual result of all the discussion which it provoked on this occasion. The court having pronounced its decision, the following colloquy took place between the court and the prisoner's counsel:

Counsel. — I may assume a state of facts, I suppose?

Court. — Unquestionably that may be done. That is the decision of Judge Curtis.

Counsel. — Then am I to ask the witness thus: Taking all the facts as testified by the mother of the prisoner, the statement of Capt. F., and then the account given by C., etc., what would be his opinion as to the state of the prisoner's mind, or am I to read over my notes, and point out certain facts?

Court. — You can ask your question.

Counsel. — (To witness.) Taking all the testimony of Mrs. H. in regard to the condition and history of her son up to the time of this occurrence of the 22d of January; the statements and testimony of young C. as to the sickness which, prior to the 22d of January, the prisoner had endured; all the testimony of his previous life which goes to show his nervous sensibilities; the testimony of Capt. F. and Capt. N. as to the occurrences at the Chincha Islands, and the extent of the injury which occurred to him there; the testimony of C. and F. in regard to the occurrences of the 22d of January, during the whole of that day and the succeeding and following days and nights, until they arrived at P; —— upon the assumption and basis that all that testimony is true and believed by the jury, what, in your opinion, was the mental condition of Capt. H. on the 22d of January?

§ 619. Here were a multitude of transactions bearing upon the question of the prisoner's mental condition, every one of which it was necessary for the expert to take into the account in making up his opinion. They could not be stated hypothetically in any other language than that of the witnesses, with all the collateral circumstances, and so obvious was this, that neither the opposing counsel nor the court objected; and thus, in this case, the new rule was utterly disregarded. Thus, we apprehend, it must always be disregarded, where the evidence unfolds a large mass of particulars essential to the right understanding of the question at issue.

§ 620. It is a curious fact, not without some significance, we imagine, if we could but see it, that in all the cases where the new rule of evidence has been applied, the question at issue was one of mental disease, while in cases where it was a question of other diseases, or wounds, no objection has been made to the application of the old rule. In the trial of Capt. Donellan for the murder of Sir T. Boughton (1780), for instance, several physicians had stated the symptoms observed before death, and the results of the autopsy after death, when the celebrated John Hunter was called, and examined as follows:

Question. — Have you heard the evidence that has been given by these gentlemen?

Answer. — I have been present the whole time.

Q. — Did you hear Lady Boughton's evidence?

A. — I heard the whole.

Q. — Did you attend to the symptoms her Ladyship described, as appearing upon Sir Theodosius Boughton, after the medicine was given him?

A. — I did.

Q. — Can any certain inference upon physical or chirurgical principles be drawn from those symptoms, or from the appearances externally or internally of the body, to enable you, in your judgment, to decide that the death was occasioned by poison? [1]

§ 621. Had the question been whether or not Capt. Donellan was insane when he took the life of Sir T. Boughton, then probably the court would have said, Mr. Hunter must not be asked what opinion respecting the prisoner's mental condition the evidence has led him to form, but he may give his opinion on a hypothetical state of facts. He has no right to believe that a single word which he has heard from the witnesses is true, but you may set up a fictitious Capt. Donellan and a fictitious Sir Theodosius Boughton, and an imaginary chapter of incidents, and ask what he thinks about them. This, and numerous similar instances which might be cited did our limits permit, constrain us to ask, why this distinction? Is it because insanity is supposed to be plead in defence of crime more frequently than it should be, and therefore to be met with every kind of restriction and hinderance which the practice of the law will permit? If this is the reason, we need only say that there never was a greater mistake than to imagine that error or nonsense can be put down by denying it fair play and full discussion.

§ 622. We are brought to the conclusion that the rule in

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[1] Trial of Capt. John Donellan, etc., reported by Joseph Gurney. Quoted in Beck, ii. p. 792.

question is not calculated to promote the ends of justice and humanity; and that a true reform would be to confine the expert to the case in hand as revealed by the evidence, and debar him entirely from giving opinions upon hypothetical cases. Such a course is not entirely without judicial sanction. In the trial of Prescott for the murder of Mrs. Cochran, in New Hampshire, (1834), the defence being insanity, an expert was asked by the attorney-general the following question: "If no act of violence precede or follow the fatal deed, and no apparent motive can be found for the murder, should you believe a homicide to be insane, merely because he has insane ancestors?" To this the prisoner's counsel [Hon. Ichabod Bartlett] objected, simply because it was improper to get the opinion on a supposed case. The attorney-general replied that "the prisoner was setting up the plea of insanity on the ground that some remote ancestor of his was crazy; and that the court would perceive that the question was only to get the opinion of the witness on a case precisely such as may be proved to exist in this instance." The court [Chief-Justice Richardson] observed "that the question being founded on a supposed case, could not properly be put." [1]

§ 623. If we are to have a new rule on the subject to prevent the expert from encroaching on the province of the jury, let it be that laid down by lords Henley and Brougham, whereby the expert is debarred from giving opinions respecting the case on trial, or any other case, and allowed only to answer questions as to the causes, symptoms, and other incidents of insanity. In this way very important information would no doubt be kept from the jury, but the mischief arising from hypothetical cases would also be prevented.

§ 624. It cannot be denied, however, that the course permitted by our State courts is encumbered by a practical difficulty which should be carefully considered. It not unfre-

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[1] Report of the Trial of Abraham Prescott for the Murder of Sally Cochran, etc., etc. Concord, N. H. 1834.

quently happens that discrepancies and contradictions appear in the testimony, quite inconsistent with the idea of its being all true. Having no right to decide for himself, between the true and the false, what is the expert to do? We can only say that where these contradictions are of a trivial character and confined to subordinate points, they may be overlooked, apparently without any impropriety; but where they involve the main facts at issue, it is not easy to see how he can arrive at any conclusions without assuming the functions of the jury. In this contingency, he can only candidly state his embarrassment and show how the testimony clashes, describe the bearing which its several portions may have on his opinion, and leave the further disposal of the matter to the court.

§ 625. It often happens, too, that the evidence, without involving any manifest contradiction of facts, bears the marks of high coloring, of exaggerated statement, or unintentional omissions. Different witnesses, we well know, seldom state the same facts precisely alike. There will be something either of addition or omission, in the testimony of each, calculated to leave an impression different from that produced by the rest. Here the expert is permitted, if not required, to make such allowances as are naturally made by every other person around him, otherwise he would be forever debarred from giving an opinion in a judicial inquiry. But the expert must never forget, that it is the *whole* evidence on which his opinion must be founded, and if it be contradictory or deficient, he will best consult his own reputation and promote the ends of justice, by candidly stating the fact.

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